



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## **Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo<sup>1</sup>**

**23 – 27 March 2009**

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<sup>1</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

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## Introduction

1. The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, conducted a visit to Kosovo from 23 to 27 March 2009. Besides Prishtinë/Priština, the Commissioner and his delegation<sup>2</sup> visited north Mitrovica/Mitrovicë, including the Roma, Ashkali and Egyptian camps of Česmin Lug and Osterode.
2. The Commissioner would like to express his sincere thanks to all the people with whom he met during the course of his visit. This report is based on information acquired during the visit from all relevant partners. Reports prepared by Council of Europe bodies and other international organisations, as well as non-governmental organisations, have also been considered in the preparation of this report.
3. In this report, the Commissioner seeks to analyse the human rights challenges for the people living in Kosovo without entering into the broader political context, which is not within his mandate. All references to the authorities with whom the Commissioner met shall be understood within the context of the general status neutrality of the Council of Europe. The Commissioner's hope is that people living in Kosovo, regardless of their ethnicity, shall benefit from European standards of human rights protection. He believes strongly that those individuals living in Kosovo should not be held hostage to the lack of international consensus on the status of Kosovo.
4. This report does not aim to provide an exhaustive analysis of the human rights situation in Kosovo, but rather reflects priority concerns which the Commissioner has identified during his visit. The Commissioner hopes that this report can serve as a tool for future co-operation and follow-up.

## I. International Presence in Kosovo

5. Kosovo unilaterally declared independence from Serbia on 17 February 2008, confirming its acceptance of the Comprehensive Proposal for the Kosovo Status Settlement (CSP),<sup>3</sup> its agreement to the deployment of the European Union's Rule of Law Mission and to the continuation of NATO's force. As outlined in the CSP, in April 2008, the Prishtinë/Priština government adopted "the Constitution of the Republic of Kosovo", which came into force in June 2008, when it assumed a number of responsibilities from the United Nations Interim Administration in Kosovo (UNMIK). 60 States have to date recognised Kosovo, of which 33 are Council of Europe Member States.
6. On 8 October 2008, the General Assembly of the United Nations adopted Resolution 63/3 which requested the International Court of Justice to render an advisory opinion on the following question: "Is the declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?". The opinion is still pending.<sup>4</sup>
7. It is obvious that a reconfiguration of the international presence is taking place in Kosovo. The Report of the UN Secretary General on UNMIK of 12 June 2008 stated that, 'the European Union will perform an enhanced operational role in the area of rule of law under

<sup>2</sup> The Commissioner was accompanied by Mrs. Rachael Kondak and Mr. Berry Kralj.

<sup>3</sup> The Comprehensive Proposal for a Status Settlement for Kosovo was presented by the Secretary-General of the United Nations to the UN Security Council members on 26 March 2007. It was drafted by a team headed by President Martti Ahtisaari, Special Envoy of the Secretary-General, and was the result of over one year of negotiations, including face-to-face talks between Belgrade and Prishtinë/Priština.

<sup>4</sup> A/63/L.2

the framework of Resolution 1244 (1999) and the overall authority of the United Nations...It is understood that the international responsibility of the United Nations will be limited to the extent of its effective operational control.<sup>7</sup> UNMIK has rapidly downsized its operation in recent months from 5 000 to no more than 500 staff. As the Secretary General of the UN notes in his recent report to the Security Council,<sup>5</sup> UNMIK faces ever-increasing challenges to its ability to fulfil its mandate envisaged in Resolution 1244 (1999).

8. Almost 14 000 troops from the NATO-led Kosovo Force (KFOR)<sup>6</sup> are still deployed in Kosovo to help maintain a safe and secure environment. KFOR cooperates with and assists the UN and EULEX and other international actors, as appropriate, to support the development of a stable, democratic, multi-ethnic and peaceful Kosovo.
9. The European Union's Rule of Law Mission in Kosovo, EULEX, began its operations in the area of rule of law on 9 December 2008 within the framework of UN Security Council Resolution 1244 (1999) and under the overall authority of the United Nations. EULEX is the largest civilian mission ever launched under the European Security and Defence Policy (ESDP) and has now reached full operational capability<sup>7</sup>.
10. EULEX's central aim is to assist and support the Kosovo authorities in the rule of law area, specifically with regard to the police, judiciary and customs. It is clear from its mandate that the mission is not in Kosovo to govern or rule, and therefore differs considerably from the former functioning of UNMIK. EULEX is a technical mission, which will monitor, mentor and advise whilst retaining a number of limited executive powers.<sup>8</sup> For example, it will have some limited correctional powers in the broader field of rule of law, in particular to investigate and prosecute serious and sensitive crimes. The initial mandate is for 2 years but the mission is foreseen to be terminated when the Kosovo authorities have gained enough experience to guarantee that all members of society benefit from the rule of law. The Commissioner strongly encourages the relevant authorities to work with EULEX as a technical mission which is working for the interests of all people in Kosovo.
11. The European Union Special Representative (EUSR) in Kosovo, Mr. Pieter Feith, offers advice and support to the Government of Kosovo in the political process towards European integration, provides overall co-ordination for the EU presences in Kosovo, and contributes to the development and consolidation of respect for human rights and fundamental freedoms. An EU Council Joint Action set up the office of the EUSR on 4 February 2008.
12. Pieter Feith also acts as the International Civilian Representative (ICR), and thus supervises the implementation of the Comprehensive Proposal for the Kosovo Status Settlement (CSP). As ICR, Mr. Feith reports to the International Steering Group (ISG) on Kosovo; a group made up of countries that have recognized Kosovo's independence. In June 2008, the European Council reconfirmed that the EU remained committed to playing a leading role in ensuring the stability of Kosovo. It also recalled its willingness to assist the economic and political development of Kosovo through a clear European perspective, in line with the European perspective of the region.
13. The European Commission Liaison Office has been operating in Kosovo since 2004. It provides significant project funding to strengthen institutions, develop the economy and realise European standards. It supports the Stabilisation and Association process.

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<sup>5</sup> Report of the Security General on the United Nations Interim Administration in Kosovo, 17 March 2009.

<sup>6</sup> 13 991 troops from 33 Nations (25 NATO and 8 non-NATO).

<sup>7</sup> EULEX Press release of 6 April 2009: "EULEX Kosovo, the largest civilian mission ever launched under the European Security and Defence Policy, has reached Full Operational Capability".

<sup>8</sup> EULEX Programme Strategy.

14. The OSCE Mission in Kosovo was established by the OSCE Permanent Council on 1 July 1999 through decision No. 305. The UN Secretary General, in his reports to the UN Security Council of 12 June 1999 and 12 July 1999, assigned the lead role of institution-building within UNMIK to the OSCE and indicated that one of the tasks of “the OSCE-Pillar” should include human rights monitoring and capacity building.<sup>9</sup>

## **II. Structures for the protection of human rights**

### *2.1 Legal framework*

15. “The Constitution of the Republic of Kosovo” (the Constitution) was certified by the International Civilian Representative on 2 April 2008, approved by the Kosovo Assembly on 9 April 2008 and entered into force on 15 June 2008. Under the Constitution, two new ministries were created, the Ministry of Foreign Affairs and the Ministry for the Kosovo Security Force.
16. According to Article 22 of the Constitution, the following agreements and instruments are directly applicable in Kosovo: The Universal Declaration on Human Rights, the European Convention on Human Rights, the International Convention on Civil and Political Rights, the Framework Convention on the Protection of National Minorities, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention against Torture and other Inhuman Treatment and Punishments.
17. The general awareness of these instruments at the central and local level, as well as in the general population is low, due to lack of diffusion of the laws in the Albanian and Serbian languages. The fact that the International Covenant for Economic, Social and Cultural Rights (ICESCR) has not been integrated in Article 22 of the Constitution is regrettable.<sup>10</sup>
18. While rights guaranteed under the European Convention on Human Rights are legally implemented in Kosovo, at least in substantive terms, there is no legal basis for the exercise of jurisdiction by the European Court of Human Rights.
19. The Commissioner notes that the Constitution provides a good legal framework for human rights protection, however he underlines that it is now incumbent on the authorities, including the local authorities, to put these commitments into practice. Further awareness-raising programmes, at ministerial and local level, regarding the rights contained within the Constitution should be considered.
20. Chapter VII of the Constitution foresees the establishment of the Constitutional Court, which will be the final authority for the interpretation of the Constitution and the compliance of laws within the confines of the Constitution. In May 2009, the Assembly of Kosovo elected the six local members to Kosovo’s Constitutional Court. The elected judges, four Kosovo Albanians, one Kosovo Serb and one Kosovo Turk, will be appointed by the President and will have a nine-year, non renewable mandate. The International Civilian Representative has recently appointed three international judges to the Constitutional Court, who will join the six national counterparts.<sup>11</sup>

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<sup>9</sup> Paragraph 13 of the report of 12 June 1999 and paragraph 79 of the Report of 12 July 1999.

<sup>10</sup> See the Eight Annual Report of the Ombudsperson Institution in Kosovo, 2007 – 2008.

<sup>11</sup> See News Release of 12 June 2009 from the International Civilian Office.

## 2.2 Ombudsperson institution

21. In 2000, the Ombudsperson Institution in Kosovo was established<sup>12</sup> for the purpose of enhancing and protecting human rights. The first International Ombudsperson was Marek Antoni Nowicki, who held the position from 2000 – 2005. In 2005, UNMIK took steps to transform the Ombudsperson Institution into an entirely local body, which was achieved by January 2006.
22. The Ombudsperson Institution is an independent institution, which responds to disputes concerning alleged human rights violations or abuse of authority between individuals<sup>13</sup> and central or local institutions in Kosovo. The Ombudsperson accepts complaints, initiates investigations and monitors the policies and laws adopted by the authorities to ensure that they respect human rights standards and the requirements of good governance. In practise, the Institution has no oversight over the human rights situation in north Mitrovica/Mitrovicë.<sup>14</sup>
23. Following the entry into force of the Constitution, the mandate of the Ombudsperson Institution was strengthened by allowing him/her to initiate proceedings before the Constitutional Court to address the question of compatibility of the Constitution with laws, decrees from the President or Prime Minister, regulations and municipal statutes. The Constitution also foresees in Article 132-3 that “every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law”.
24. On 12 February 2009, the Kosovo Assembly failed for the fourth time<sup>15</sup> to elect an Ombudsperson after three rounds of voting, as none of the three candidates managed to pass the threshold of 61 votes. The International Community expressed their unanimous regret that the Assembly had failed to ensure that Kosovo puts into place this important human rights mechanism.
25. On 4 June 2009, the Assembly elected Mr. Sami Kurteshi as the next Ombudsman for Kosovo. The election of his four deputies, one from the Kosovo Albanian community, one from the Kosovo Serb community and at least one other from a non-majority community is expected shortly.
26. The Commissioner expresses his satisfaction following the recent election of an Ombudsperson for Kosovo.<sup>16</sup> An Ombudsperson must be independent from the authorities and the Parliament and a credible partner for all the citizens of Kosovo, regardless of ethnicity. The Commissioner strongly encourages parliamentary debates of the Institution’s annual reports to address structural problems which are addressed by the Institution.

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<sup>12</sup> UNMIK Regulation Number 2000/38.

<sup>13</sup> Individuals, groups of individuals, and legal entities.

<sup>14</sup> UNMIK Progress Report (2008) in response to the Advisory Opinion of the Council of Europe’s Framework Convention on National Minorities.

<sup>15</sup> For a summary of the various attempts to elect an Ombudsperson, see the Eight Annual Report of the Ombudsperson’s Institution, 2008, page 42.

<sup>16</sup> Recalling Recommendation No. R (97) 14 of the Committee of Ministers to Member States on the Establishment of Independent National Human Rights Institutions.

### 2.3 Kosovo Assembly

27. The Assembly has 120 members elected for a three-year term. 100 seats are directly voted into the Assembly, while the rest are reserved as follows: 10 seats for the Serb community, 4 seats for the Roma, Ashkali and Egyptian communities, 3 seats for the Bosniak community, 2 seats for the Turkish community and 1 seat for the Gorani community. The Assembly elects its President. A nomination for the President requires the support of the party having the largest number of seats or at least 25 members. Since January 2008, the President of the Assembly is Mr. Jakup Krasniqi.
28. After the elections on 17 November 2007, there were 24 ethnic minority members in the Kosovo Assembly, including 10 Kosovo Serbs and 14 members of other groups, including ethnic Turks, Bosniaks, Gorani, Roma, Ashkali and Egyptians. 37 seats are now held by women, which represents 30% of the Assembly, however, only 2 out of 13 parliamentary commissions are headed by women.
29. Since its inaugural session on 10 December 2001, the OSCE has provided substantial assistance to the Assembly of Kosovo. Indeed, in the last year the Assembly has passed 90 laws, a good proportion of which address human rights issues, such as education, health and decentralisation.
30. Nevertheless, it appears that the Assembly is falling short of fulfilling its key role in a democracy. It struggles to find its place as a democratic institution through independent and critical debate. A number of the Commissioner's interlocutors commented on the difficulty of electing appointees to many high-level posts, for example the Ombudsperson.
31. In the Commissioner's opinion the Assembly should increase its efforts to scrutinise government action and ensure its independence from government. The Commissioner encourages and supports further capacity building for parliamentarians.

### 2.4 Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender Issues

32. The Office on Good Governance, Human Rights, Equal Opportunities and Gender Issues<sup>17</sup> was established within the Office of the Prime Minister in 2002. It coordinates human rights issues within the line ministries (as well as the municipalities), and monitors their performance. In addition, the Office is responsible for drafting policy documents, and raising the awareness of citizens and institutions on human rights issues. The Office acts as the Secretariat for relevant committee work, such as the Committee on respect for children, chaired by the Prime Minister, and the Committee on Persons with Disabilities.
33. In December 2008, the Office published a Strategy and Action Plan on Human Rights 2009-2011. The Strategy intends to focus the work of the authorities in the following areas: drafting policies, strategies and action plans in the area of human rights, issuing necessary legislation, including the review and implementation of present legislation; building institutional capacities dealing with human rights, including the establishment of various mechanisms and the development of training activities; establishing reporting and monitoring mechanisms, with particular emphasis on reporting to international organisations; and strengthening co-operation between government institutions and civil society, with a particular emphasis on the Ombudsperson Institution.
34. The Commissioner commends the authorities' Strategy and Action Plan on Human Rights, which is an important tool to create more effective, sustainable and coordinated policies in

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<sup>17</sup> Created by UNMIK Regulation 2001/19 as amended.

the area of human rights. He underlines the need for a comprehensive costing exercise and budgetary allocation to secure its effective implementation.

## 2.5 *Human Rights Units within Ministries*

35. Since 2005, human rights units have been created in all ministries.<sup>18</sup> In 2007, such units were also created at the municipal level as well, with the result that 26 municipalities have therefore their own human rights unit. While the broad responsibility of the ministries is to comply with relevant human rights obligations, the human rights units have a more focused task to ensure monitoring and compliance.
36. The authorities themselves concede that there have been some difficulties and obstacles in the establishment of these units.<sup>19</sup> In particular, some of the ministries have not employed a sufficient number of staff. According to some civil society groups some of the units are still at the early stage of their development. The Commissioner encourages the authorities to further develop these units to ensure full working capacity.

## 2.6 *Civil Society, NGOs and Human Rights Activists*

37. There are a great many non-governmental organisations in Kosovo acting for the promotion and protection of human rights, focusing on the rights of children, women, ethnic minorities, pensioners, persons with disabilities, the Roma, Ashkali and Egyptian communities, and the rehabilitation of victims of torture amongst other issues. The Commissioner met with a large group of NGOs in Prishtinë/Priština and a smaller group in Mitrovica/Mitrovicë.
38. Given the extent of the international presence in Kosovo, the Commissioner notes the risk of over-dependence of the NGO sector on donor assistance, especially financial assistance. In the Commissioner's opinion it is important to ensure the self-sustainability of the NGO community.
39. The UN Special Representative on Human Rights Defenders, Ms. Hina Jilani, visited Serbia, including Kosovo, in September 2007. She expressed concern about the overall climate in Kosovo which discouraged criticism which she found a result of the past conflict and ongoing tensions along ethnic lines. In particular, human rights activists working on corruption issues reported receiving threats as a result of their work. In February 2009, the Commissioner was alerted by *Frontline* regarding reports of harassment against one NGO, "ÇOHU!" In addition, the Kosovo Women's Network has reportedly received threats because of awareness-raising work on the accountability of politicians, as has the Director of the Balkan Investigative Reporting Network (BIRN), Ms. Jeta Xharra. Human rights activists who support the rights of Lesbian, Gay, Bisexual and Transgender persons encounter difficulties in their advocacy work.
40. The Commissioner appreciates the involvement of civil society in the consultation process for the Strategy and Action Plan on Human Rights 2009-2011, and further emphasises the need to ensure systematic participation of civil society in legislative and policy decision-making. It is important to develop further the concept of active citizenship for Kosovo citizens. Some NGOs working in North Mitrovica/Mitrovicë on Serbian minority issues expressed their dissatisfaction with exclusion from the decision-making processes at the political level.

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<sup>18</sup> Based on Administrative Instruction no. 8/2005.

<sup>19</sup> Report on activities in the areas of human rights, equal opportunities, minority rights, anti-discrimination and anti-corruption, July- December 2008, Office of the Prime Minister of Kosovo.



### III. Rule of law

#### 3.1 *The Justice system*

41. The court system in Kosovo includes a Supreme Court, five district courts, including a commercial court, 25 municipal courts, 25 minor offence courts, and an appellate court for minor offences. There is no Administrative Court, which some consider as a lacuna.
42. The independent Kosovo Judicial Council (KJC)<sup>20</sup> and the Ministry of Justice<sup>21</sup> were established in 2005. However, the KJC is currently not operational which is having a detrimental effect on the functioning of both the local judiciary and the EULEX judges. A Special Chamber of the Supreme Court deals with Kosovo Trust Agency related matters. The Judicial Inspection Unit (JIU) is an independent office mandated to investigate complaints of judicial and prosecutorial misconduct.
43. The Kosovo Special Prosecutors Office (established in January 2007) focuses on serious crimes, including Trafficking in Human Beings, corruption and counter-terrorism. It includes six Kosovar special prosecutors. Some Kosovo district courts, for example the court in Peja/Peć, do not have an acting President and no measures can be taken to remedy such situations due to the non-functioning of the KJC.
44. Legal Aid is covered by UNMIK Regulation No. 2006/36 on Legal Aid. In September 2007, the Legal Aid Commission was formerly inaugurated and in January 2008, five District Legal Aid Bureaus opened to the public providing legal aid to eligible persons in civil and administrative legal matters.
45. Kosovo's justice system and the ICTY continue to identify and punish perpetrators of war crimes from the 1998-99 conflict; however, many cases remain unresolved. The Commissioner supports full co-operation with the ICTY.
46. Despite the structures in place, the Kosovo judicial system remains weak at all levels. Shortcomings include excessive length of criminal and civil proceedings which results in a large backlog of cases<sup>22</sup> and delayed enforcement of court decisions with an insufficient number of court bailiffs. In criminal cases, the non-execution of judgments results from insufficient capacity in the prisons and the application of time-bars.
47. A crucial issue is the widespread public perception of corruption in the judiciary.<sup>23</sup> According to a number of the Commissioner's interlocutors, there is a total lack of confidence in the justice system.
48. The minority communities also express their lack of trust in the judicial system. There is a need to increase the number of judges and prosecutors from minority communities.
49. A problem highlighted by interlocutors was the continuing existence of three parallel sources of legislation in Kosovo: ex-Yugoslav law, UNMIK regulations, and Kosovo law passed by the Assembly. The inter-relation and compatibility of these legal acts remains problematic for complainants and judges alike. In north Kosovo, the parallel courts apply Serbian law.

<sup>20</sup> UNMIK Regulation No. 2005/52

<sup>21</sup> UNMIK Regulation No. 2005/53

<sup>22</sup> 24 000 claims have been filed against UNMIK, KFOR and municipalities for damages following the 1999 NATO bombing. These cases, suspended under UNMIK regulations, amount to half of the backlog of civil cases in Kosovo.

<sup>23</sup> In its Resolution 1595 (2008), the Council of Europe's Parliamentary Assembly recommended addressing the well-known deficiencies of the judiciary in Kosovo.

50. One of the central aims of EULEX's Justice Component is to improve and strengthen Kosovo's judiciary. 31 EULEX judges and 20 prosecutors are deployed in Kosovo. EULEX judges and prosecutors work together with local counterparts in mixed panels or teams. This is to ensure that serious cases are investigated, prosecuted and adjudicated properly.
51. In accordance with the relevant law,<sup>24</sup> EULEX judges are able to exercise judicial functions in Kosovo courts. Article 2.4 of the Law also foresees that "besides exercising their judicial functions pursuant to the provisions of Articles 3, 4 and 5 of this law, EULEX judges will monitor, mentor and advise the Kosovo Judges, in the respect of the principle of independence of the judiciary and according to the modalities as established by the present law and by the EULEX Kosovo." In addition to having competences over a large range of criminal proceeding including war crimes, terrorism, organised crime, and financial/economic crimes, EULEX judges exercise jurisdiction over civil cases. According to Article 5.1 of the Law on Jurisdiction, EULEX civil judges "will have the authority to select and take responsibility" over civil cases which range from cases within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters to "any new or pending property related civil case, including the execution procedures falling within the jurisdiction of any court in Kosovo" under the conditions specified in the Law.
52. As a result of the transfer of criminal cases handled by UNMIK, the EULEX Judges Unit has received all together 185 different criminal cases. These complex criminal cases include preliminary and pre-trial investigations, indictments, trials, appeals, extraordinary legal remedies and re-trials. The charges in these criminal cases vary from war crimes against the civilian population, money laundering, organized crime, commission of terrorism, accepting bribes, etc. EULEX Judges have retained 123 cases from the UNMIK legacy. The remainder of the criminal cases, in which there were no grounds to establish primary or subsidiary competence of the EULEX judges, have been referred mainly to competent courts of Kosovo for further proceedings as necessary, or have been forwarded to the EULEX Prosecutors for consideration.
53. The OSCE, who monitor a number of judicial proceedings in Kosovo, provide useful observations on the functioning of the legal profession. In a number of cases they found that lawyers neglected to provide professional and responsible representation of their clients.<sup>25</sup> There is a lack of access to legal sources for many lawyers, including the jurisprudence of the European Court of Human Rights. The Commissioner supports the work of the OSCE in trial monitoring and is in favour of a continuation of their mandate in this area. Trainings for lawyers in professional ethics and the case-law of the Strasbourg Court would also be of use. Increased co-operation between the Council of Europe and EULEX in the field of European rule of law and human rights standards would be of benefit to the people of Kosovo.
54. The situation of the poorly functioning judicial system in the northern municipalities continues to be of great concern to the Commissioner. There are still no functioning municipal or minor offences courts in the municipalities of Leposavic/Leposaviq and Zubin Potok. The Mitrovica/Mitrovicë District Court functions in a very limited way. Four EULEX judges (3 assigned to criminal and 1 to civil proceedings) together with one Kosovo Serbian and one Kosovo Albanian legal adviser are working in the Court House in north Mitrovica/Mitrovicë. The Court's registry and the local colleagues are in Vushtrri/Vučitrn. Every effort is made to have the EULEX Mitrovica/Mitrovicë Court Team functioning as in

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<sup>24</sup> The Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation EULEX judges and Prosecutors in Kosovo ("Law on Jurisdiction").

<sup>25</sup> OSCE Monthly reports January 2009, Human Rights and Communities Department, Legal System Monitoring Section.

any other District Court in Kosovo. The first trial was held in March 2009 and the first inter-ethnic case was tried in June 2009.

55. The main problem faced by the judges in the Mitrovica/Mitrovicë District Court is that they do not have access to all the court files, following the ransacking of the Court's offices during the March 2008 siege. The Commissioner joins the call for an urgent inventory of the court files. The Commissioner fully supports steps towards the normalization of the functioning of this court. It is clear that the right of access to justice and the right to a fair and public hearing in a reasonable time are not being respected in practice.
56. One practical effect of the almost non-functioning of the Mitrovica/Mitrovicë District Court is that approximately 45 persons (of which 20 are under alternative sanctions, such as house arrest) are currently being held in pre-trial detention. Most of those held are Kosovo Albanians, some in detention since 2007. Their trials are not being heard because the judges do not have the case files available. The Commissioner deplors the fact that there are persons waiting in pre-trial detention without the hope of a forthcoming hearing because of the non-functioning of the court. He urges that the cases of these men are dealt with promptly and as a matter of priority.
57. In northern Mitrovica/Mitrovicë, the Serbian parallel court is dealing with the most urgent civil issues but not criminal trials.

### 3.2 *Corruption*

58. Allegations of corruption in different sectors of public life and in particular the judiciary are widespread. Many of the Commissioner's interlocutors emphasised that corruption was a major problem in society. The causes included insufficient legislative and implementing measures, a lack of determination on the part of the authorities, as well as the weakness of the judicial system. The Anti-corruption Strategy and Action Plan remain to be adopted by the Assembly.
59. The Anti-corruption Agency (the Agency) began its operations in July 2006 with the appointment of its Director, Mr. Hasan Preteni, appointed by the Kosovo Assembly. The Agency became fully operational on 12 February 2007. The responsibilities of the Agency are based on provisions in the Law on Suppression of Corruption. According to this law, the Agency is accountable to the Anti-Corruption Council. The Council comprises of nine members; three are elected by the Assembly, and one each by the President's Office, the Government, the Supreme Court, the Public Prosecutor's Office, local authorities and civil society.
60. The Agency is currently supported by a staff of 35. Where allegations of corruption are made, the Agency undertakes the preliminary investigations. Claims which are substantiated by the Agency are then submitted to the Prosecutor's Office; approximately one third of all claims received. While many cases are followed-up by way of criminal proceedings, not a single anti-corruption case has been finally adjudicated by the courts. This is a reflection of the functioning of the judicial system.
61. There is now a legal obligation on all senior officials to disclose their assets, such as the President, the Speaker of the Assembly, Ministers, Judges and Prosecutors.<sup>26</sup> The Agency follows-up on a yearly basis the declared assets to see if there are any discrepancies. Holders of office are also required to make a declaration of gifts. The Agency does not have any executive powers itself; so for example, if it is informed of a corrupt bidding/tendering process it cannot stop the procedure but can call on the relevant ministry to do so.

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<sup>26</sup> The Assembly approved the Law on the Declaration and Origin of the Property of Public Senior Officials.

62. The fight against corruption includes prevention and education. The Agency have opened a free hot-line and a website where complaints can be made. The Agency pays visits to various institutions to raise awareness about corruption and encourage people to become involved in the fight against corruption. For example, it tries to visit at least two municipalities per month. The OSCE and UNDP have been supporting their work. The Agency is now starting to co-operate with EULEX, in particular in relation to the work of prosecutors.
63. In general, the work of the Agency should be better supported by the authorities. This year was the first year in which the Agency had been allocated the budget it requested. The staff salaries are still too low and the premises are now too small for the growing number of employees.
64. Some interlocutors suggested to the Commissioner that there should be a better delineation of responsibilities between the Agency and the Office of Good Governance, whose head was also the deputy head of the Anti-Corruption Council. The Commissioner is of the view that the powers of any supervisory body of the Agency should be clearly defined so as to avoid undue interference in the work of the Agency. The Commissioner hopes that the Agreement of Cooperation between the Office of Good Governance and the Agency will support clarification and separation of responsibilities.
65. The Commissioner regrets the fact that the anti-corruption legislation is still incomplete. He encourages the prompt adoption of the Anti-Corruption Strategy and Action Plan. In the Commissioner's opinion, officials who have not declared their assets should be sanctioned in accordance with the law. Coordination with other mechanisms, such as the Office of Good Governance, the Anti-Corruption Council and the Ombudsperson Institution, should be improved. The Commissioner supports efforts to increase awareness of corruption within the public administration and society in general.

### 3.3 *Accountability of the international community*

66. According to UNMIK Regulations, KFOR and UNMIK including their personnel "shall be immune from any legal process".<sup>27</sup> Nevertheless, UNMIK has made clear that all persons undertaking public duties or holding public office in Kosovo should observe internationally recognised human rights standards.
67. In 2004, the Council of Europe's Venice Commission noted the lack of "an adequate and consistent mechanism for the examination of alleged human rights breaches by the two institutional sources of potential human rights violations in Kosovo, UNMIK and KFOR".<sup>28</sup> The Venice Commission proposed that UNMIK establish an independent Human Rights Court. In 2005, the Council of Europe's Parliamentary Assembly also called for the setting up of a Human Rights Court.<sup>29</sup>
68. As a compromise solution, a Human Rights Advisory Panel (the Panel) was established in 2006<sup>30</sup> to examine complaints by individuals or groups of individuals claiming to be a victim of human rights violations by UNMIK.<sup>31</sup> After a delay of one year, its members were appointed on 12 January 2007. The first inaugural session of the Panel was in November 2007.

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<sup>27</sup> Under Sections 2 and 3 of UNMIK Regulation no. 2000/47 of 18 August 2000.

<sup>28</sup> Opinion on Human Rights in Kosovo: possible establishment of review mechanism, CDL-AD(2004)033

<sup>29</sup> See Resolution 1417(2005).

<sup>30</sup> UNMIK Resolution No. 2006/12 of 23 March 2006 on the Establishment of the Human Rights Advisory Panel.

<sup>31</sup> Its competence is limited to assessing violations which occurred after 23 April 2005. It has no power to review the conduct of KFOR.

69. The Panel is a quasi-judicial body which is fully independent of UNMIK. It is the first complaints mechanism of its kind within a UN peace-keeping mission which exercised transitional administration powers. As such, it is confronted with certain unique issues, including the definition of the scope of the acts or omissions which are attributable to UNMIK, assessing a complainant's exhaustion of available remedies in the context of general UN immunity from legal proceedings, and characterising continuing and non-continuing violations within the context of the Panel's limited temporal jurisdiction.
70. Complaints submitted to the Panel concern a wide range of alleged human rights violations, including the right to life, the prohibition of ill-treatment, the right to a fair trial, the right to respect for private and family life, the right to an effective remedy and the right to the enjoyment of property. Most of the complaints invoke a violation of the European Convention on Human Rights or its Protocols.
71. Two complaints, in particular, have drawn considerable public attention. The first relates to the allegedly unauthorized and disproportionate use of force by UNMIK police in the dispersal of a street demonstration in February 2007, which led to the deaths of two individuals and injuries to other complainants.<sup>32</sup> The other concerns a complaint in relation to the alleged lead poisoning and other violations of rights of a large number of members of the Roma community living in camps for internally displaced persons in northern Kosovo.<sup>33</sup>
72. The three part-time Panel members are nominated by the President of the European Court of Human Rights and then appointed by the UN SRSG in Kosovo.<sup>34</sup> The panellists come to Kosovo once a month for three to four days.
73. In March 2008, the Panel launched a public information campaign to promote awareness of its mandate. The panel is currently examining a number of cases, some of which have been referred to the UN SRSG in accordance with the provisions of Regulation 2006/12.
74. On 12 November 2008 the Panel adopted its first opinion, in which it found a violation of the procedural aspect of the right to life because of the lack of an effective investigation into the killing of the wife of the complainant, *Shaip Canhasi*. The Panel concluded that there had been a number of deficiencies by UNMIK in the standards required for compliance with the procedural aspect of the right to life. UNMIK had failed to carry out an effective criminal investigation into the circumstances surrounding the death of Mrs. Canhasi and a violation of Article 2 had been committed.<sup>35</sup> The panel recommended a police investigation and compensation. UNMIK have not yet indicated publicly how it will respond to the panel's recommendations.
75. According to recent information, there are soon likely to be 600 cases pending before the Panel.
76. The Commissioner was made aware of a number of difficulties facing the Panel in its everyday functioning. One of these difficulties relates to staff shortages. From July 2009 the Panel will have to function with just one two legal officers and one administrative assistant.

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<sup>32</sup> *Balaj et al.*, 04/07

<sup>33</sup> *Mehmeti et al.*, 26/08

<sup>34</sup> Mr. Marek Nowicki (Poland), former Ombudsman in Kosovo, was elected President in January 2008. Mr. Paul Lemmens (Belgium), Judge in the Belgian Council of State and professor of human rights law at the University of Leuven. Ms Snezhana Botusharova (Bulgaria), a former Judge in the European Court of Human Rights, Strasbourg was nominated by the President of the European Court of Human Rights and appointed to the Panel by the SRSG on 6 May 2008. However, she was appointed to Kosovo's Constitutional Court on 12 June 2009, which means that a third Panel member will now have to be appointed.

<sup>35</sup> HRAP Annual Report 2008.

Another serious problem relates to the renewal of the contracts of the Panel members, which has the potential to affect the continuity and consistency of their work.

77. The Commissioner appreciates the important work of the Human Rights Advisory Panel. It is essential to deal with the legacy of UNMIK while it exercised executive powers in Kosovo and the UN should set the best possible example for Kosovo and other UN missions. It is crucial that the International Community provide Kosovo with an effective mechanism to challenge the conduct of the international civil and security presence whenever the conduct is deemed to infringe human rights.<sup>36</sup>
78. In the Commissioner's opinion the current practice whereby the President of the European Court of Human Rights nominates Panel Members should not be altered; this guarantees the independence of the Panel and its work. Panel members should be appointed for a term of not less than one year, as stipulated in UNMIK Regulation No. 2006/12. Any shorter term of contract would de-stabilise the functioning of their work, particularly in view of the important cases before them.
79. The Commissioner encourages UNMIK to allocate increased resources for funding supplementary legal officers for the Panel. It is important that the Panel can deal expeditiously with the complaints before it. The Commissioner also encourages UNMIK to respond promptly to publish opinions of the Panel. Finally, in the Commissioner's opinion public hearings are a necessary part of the procedure of the Panel.
80. The EU's Rule of Law Mission, EULEX could also consider the advantages of setting up an independent accountability mechanism. EULEX does have the possibility to exert some executive powers, even if they will not be used very often. For the time-being complaints made against EULEX personnel are being dealt with internally. There are a number of possibilities for accountability mechanisms for EULEX. One possibility is that EULEX could take on the model of the current Human Rights Advisory Panel; another is that that complaints could be dealt with by the Ombudsperson's Institution. A third option is that EULEX could create its own independent mechanism. The Commissioner urges EULEX to establish an effective accountability mechanism as a matter of priority. Such a mechanism would have the power to investigate thoroughly any allegation of wrongdoing and would subject EULEX representatives to the scrutiny of an independent and transparent body.<sup>37</sup> The International Civilian Representative could also consider the advantages of such an accountability mechanism.

#### **IV. The Police**

81. The Kosovo Police (KP) holds command of all 33 police stations in Kosovo and five out of six regional police headquarters across Kosovo. In northern Kosovo, the KP do not report directly to the KP command in Prishtinë/Priština but report provisionally through the EULEX Police Operations Room to the Head of the EULEX Police Component.
82. The KP is an executive agency which operates under the Ministry of Internal Affairs. The force is made up of approximately 7 000 police officers from 13 different ethnic communities. Ethnic minorities make up 16% of the police force (10% of which are Serbian). 14% of the police force is women at all levels, including the Deputy Police Director. The KP has been particularly active in mainstreaming gender equality throughout

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<sup>36</sup> See the Viewpoint of the Commissioner for Human Rights of 8 June 2009 entitled "International Organisations acting as quasi-governments should be held accountable".  
[http://www.coe.int/t/commissioner/Viewpoints/default\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/default_en.asp)

<sup>37</sup> See the ITPCM (International Training Programme for Conflict Management) newsletter of 1 April 2009 on "Kosovo: the quest for accountability" by Emanuele Sommario.

the service by appointing a Gender Advisor in 2006. There is a domestic violence and community policing unit at the station, regional and headquarter levels. The internal investigation Department is also organised at the same three levels.

83. After almost 10 years of service in Kosovo, UNMIK police completed their operations, including in the Mitrovicë/Mitrovica region. The residual UNMIK mission maintains a liaison component to deal with Interpol and the ICTY and to facilitate international police cooperation. On 9 December 2008, EULEX reached its Initial Operational Capacity (IOC). On that day, the EULEX Kosovo Police Component deployed Kosovo-wide and assumed its mandate. The mandate is twofold; firstly it works to monitor, mentor and advise the KP. Secondly, the mandate also enables the use of corrective powers, but only in exceptional cases; for instance when the KP fail to prevent violence against non-majority communities or when there is political interference undermining the rule of law. UNMIK coordinates with EULEX on operational issues where they arise.
84. The EULEX Police Component is part of the overall EULEX support to the Kosovo authorities in the rule of law area. EULEX assists the KP in working towards a multi-ethnic police force that is free from political interference and serves all the citizens of Kosovo. The EULEX Police Component has a total strength of approximately 1 400 International police officers. The personnel are structured according to their respective tasks in three departments: the Strengthening Department, Executive Police Department and Special Police Department. To this end, EULEX police officers are co-located with their KP counterparts, although the KP are in the lead and EULEX acts in a supportive role only.
85. Concerning the question of war crimes, EULEX is running a War Crimes Investigation Unit currently comprising of 27 international investigators who are taking care of the approximately 1 200 war crimes inherited from UNMIK. After becoming operational the unit has reviewed 1 109 out of 1 119 inactive cases together with the Special Prosecutor's Office of the Republic of Kosovo's war crime prosecutor, who will take decisions about further actions concerning these cases. At the moment it is estimated that about 300 of these cases will have to be dismissed. In addition, the unit has inherited about 50 active cases from UNMIK and opened three new investigations. Several of the inherited active high priority cases are being investigated, the rest being analyzed and prioritized. Until now investigation/prosecution has been completed in two cases (defendants sentenced to 17 and 7 years' imprisonment) - the third trial will start at the end of June 2009.
86. The legal framework for the KP has been improved following the adoption of the Law on the Police, which regulates the rights and responsibilities of the police and its organisational structure in line with international policy standards. The Law on the Police Inspectorate of Kosovo establishes an independent institution within the Ministry for Internal Affairs responsible for overseeing the performance of the police service. Both laws came into effect in June 2008. The legal framework for the establishment of a centre for public safety training was also approved by the Assembly.<sup>38</sup>
87. By law, arrests must be based on prosecutor orders and arrestees must be brought before a judge within 72 hours. It appears that in general this rule is largely observed in practice.
88. The Commissioner did not visit any places of police detention during his visit. However, the Council of Europe's Committee for the Prevention of Torture (CPT) visited Kosovo in March 2007 and published their visit report, including UNMIK's response, in January 2009.<sup>39</sup> The Committee delegation visited nine police stations. During the course of the visit, the Committee received a number of allegations of physical ill-treatment of persons held by

<sup>38</sup> OSCE Mission in Kosovo, Background Report, Human Rights, Ethnic Relations and Democracy in Kosovo, Summer 2007 – Summer 2008.

<sup>39</sup> CPT/Inf (2009)3.

officers of the KP with varying degrees of severity, from slaps and kicks in the course of interviews to a few cases of treatment which could be described as torture (mock execution/ severe prolonged beatings). The CPT expressed concern with the handcuffing of detainees to fixed objects, for example radiators. The CPT recommended that a formal statement from the highest political authorities be delivered to the KP officers to remind them that they should respect the rights of persons in their custody and that ill-treatment will be the subject of severe sanctions. It was also recommended that appropriate steps be taken to ensure that persons who may have been victims of ill-treatment by police officers are able to lodge a formal complaint effectively.

89. The CPT made specific recommendations concerning the implementation in practice of the fundamental safeguards against ill-treatment (such as the right of those detained to have access to a lawyer from the very outset of their deprivation of liberty, the right to notify a family member, and the right of access to a doctor). Allegations of ill-treatment need to be taken seriously by judges and prosecutors. The CPT recommended that appropriate steps be taken to ensure that prosecutors/judges conduct proceedings in such a way that the persons concerned have a real opportunity to make a statement about the manner in which they have been treated. Shortcomings were noted regarding the keeping of custody records.
90. Steps have been taken to combat ill-treatment by the police in Kosovo. For example, a directive has been issued to police officers and draft legislation has been prepared to aggravate sanctions against police officers who use force unnecessarily and/or in a disproportionate manner. Steps have also been taken to intensify the training of police officers and to strengthen the legal safeguards for persons detained by the police.<sup>40</sup>
91. For the time being, the OSCE and NGOs continue to monitor police detention cells. According to the OSCE, progress has been made concerning police holding cells and detention conditions.<sup>41</sup> One NGO the Kosovo Rehabilitation Centre of Torture Victims complained of obstacles, which they face in order to obtain full access to correctional places. They need to conduct private interviews as part of their monitoring, and sometimes this is not allowed. During the visit, the question of whether the OSCE will continue with their monitoring role or whether EULEX will take over was discussed.
92. In 2006, the Police Inspectorate of Kosovo (PIK) was set up to hold police accountable for their actions.<sup>42</sup> Investigations started in October 2007. The PIK is intended to provide external oversight of the KP, following complaints and upon the initiation of a police supervisor. The Inspectorate is composed of around 40 civil servants specially trained by the OSCE. The PIK's method of dealing with complaints against the KP is based on inspection visits, during which the PIK inspectors have access to both KP officers and electronic and paper files.
93. Following the February 2008 unilateral declaration of independence, a great number of Kosovo Serb police officers south of the Ibar River resigned from work, boycotting police structures. 324 Kosovo Serb officers remain suspended from service with full pay.<sup>43</sup> On 15 April 2009, the Minister of Internal Affairs announced that 30 June 2009 had been set as the deadline for Kosovo Serb police officers to return to work to ensure their continuing salary. So far 46 Kosovo Serb police officers have reported back to work in police stations south of the Ibar.

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<sup>40</sup> UNMIK's response to the CPT report, press release published by the CPT on 20 January 2009.

<sup>41</sup> OSCE Mission in Kosovo, Background Report, Human Rights, Ethnic Relations and Democracy in Kosovo, Summer 2007 – Summer 2008.

<sup>42</sup> UNMIK Administrative Decision 2006/9.

<sup>43</sup> Out of a total number of 701 Kosovo Serb police officers Kosovo-wide.



94. The Commissioner welcomes the efforts made in police training and development and encourages more capacity-building for the police force. Efforts to combat organised crime and corruption must be intensified. In the Commissioner's opinion inspection of police detention cells is essential, and he considers that the OSCE, as an independent organisation, should continue with its work in this field. The Commissioner regrets the continuing deadlock concerning the return to work of a number of Kosovo Serb police officers. In his view, it is essential that Kosovo retains a multi-ethnic police service with officers from all ethnic backgrounds at every level of the police force, including the very top.

## V. Non-discrimination

### 5.1 General

95. According to Anti-Discrimination Law, passed on 19 September 2004,<sup>44</sup> there shall be 'no direct or indirect discrimination against any person or persons, based on 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'.<sup>45</sup> However, the translations of the definition into Albanian and Serbian are inconsistent with the English version sometimes excluding one or more distinctions between sex and gender; or between ethnic origin and nationality. Further, despite the government's approval of detailed implementing instruments, including a 2005-2007 Action Plan for the implementation of the law the enforcement of this legislation has fallen short of expectations. By way of example, there have been only a few cases of claims of discrimination in the courts to date.<sup>46</sup>
96. The Anti-Discrimination law mentions the Ombudsperson as an extra-judicial body competent to receive and review discrimination-related complaints in both the public and the private sectors. Besides dealing with a number of individual complaints against alleged discriminatory practices, the Ombudsperson Institution has also issued *ex officio* reports on age and gender discrimination in the past and also conducted awareness-raising campaigns on discrimination issues.
97. Discrimination on ethnic grounds is a concern raised by many members of minority groups, especially Kosovo Serbs and Roma (including Ashkali and Egyptians) living in Kosovo, as well as by returnees. They claim that they face discrimination in all areas of their daily life including employment, health, education, right to property and access to police services and the courts.<sup>47</sup> This important issue is dealt with in more detail in the chapter on Minority Rights below. According to EULEX, a new project is currently being developed on improving hate-crime reporting in order to obtain accurate statistical data on the true extent of ethnically motivated crime.

### 5.2 Women

98. Women in Kosovo are disadvantaged with respect to employment, property ownership, education, decision-making as well as active participation in nearly all aspects of public life. The Law on Gender Equality sets forth a 40% quota for female representation in public institutions, but the present reality suggests shortcomings in the implementation of this provision. Gender-based violence, including domestic violence, is a concern, with many cases going unreported. Traditional social attitudes towards women, gender stereotypes,

<sup>44</sup> UNMIK Regulation 2004/32.

<sup>45</sup> Article 2, paragraph a.

<sup>46</sup> OSCE Mission in Kosovo Report "Implementing the anti-discrimination law: A challenge for Kosovo", June 2007.

<sup>47</sup> Eight Annual Report of the Ombudsperson Institution in Kosovo, 2007 – 2008.

low literacy rates (as a result of a high drop-out rate of girls from schools) and high female unemployment<sup>48</sup> contribute to inequalities in society.<sup>49</sup> Gender issues are new and sensitive in Kosovo and a number of interlocutors felt that it would take some time to change attitudes.

99. Article 22 of the Constitution foresees the direct applicability of the Convention on the Elimination of All Forms of Discrimination against Women, and Article 24 provides that everyone enjoys the right to equal legal protection without discrimination. In domestic law, gender equality is regulated by the Law on Gender Equality which entered into force on 7 June 2004. In compliance with Article 6 of the law, the Ombudsperson Institution established a Gender Equality Unit in order to receive and deal with complaints alleging gender-based discrimination as well as to promote and monitor gender equality. Gender Equality Officers have been established in each ministry and also at the municipal level.
100. The Agency for Gender Equality was established under the Prime Minister's Office; although article 5 of the Law on Gender Equality identifies the entity "as a separate institution of government". In September 2007 the Agency took over the mandate and tasks of the Office for Gender Equality which had been set up in August 2005.<sup>50</sup> The Agency's primary tasks are to monitor and report on developments on gender-related issues within international law, to provide recommendations and comments from a gender perspective on primary and secondary legislation, to co-operate with local and international institutions and to act as a facilitator with other stake-holders.
101. In general, the legislation in place is of good quality, for example the 2004 Law on Gender Equality, but the implementation remains poor. UNMIK Regulation No. 2003/12 on Protection against Domestic Violence foresees the possibility for the victim to make a request to the court to issue a protection order against the perpetrator of the domestic violence. However, most courts called upon by victims of domestic violence do not respond within the time-limit specified. Better coordination and information flow between law enforcement agencies, the Ministry of Justice's "Division for Protection and Assistance of Victims" is necessary to improve the protection of victims and to sanction perpetrators. One issue highlighted during discussions was the lack of proper statistical data to understand the extent of gender discrimination in Kosovo. Much of the data received by the Agency is provided by civil society. The Commissioner underlines the importance of having disaggregated data which can then be analysed in a meaningful way.
102. In 2004 the Agency developed an Action Plan for Achievement of Gender Equality and a Framework Programme for Gender Equality 2008-2013, which identifies objectives, policies and institutions involved in implementing the Law for Gender Equality. A number of gender equality mechanisms have been established at the ministerial level and at the municipal levels with gender officers being the focal points. The Programme itself covers six areas, namely women and the economy, education, health, work, social welfare and decision-making. The Agency co-operates regularly with the Ministry of Labour and Social Welfare, which takes care of issues related to the family.
103. The Agency is working to tackle the problem of domestic violence which is prevalent in society.<sup>51</sup> A draft law on domestic violence is being prepared and the Agency is attempting to collect statistics to understand the full extent of this problem. In cases where domestic violence is reported, victims are subject to a referral system or offered a place in a shelter.

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<sup>48</sup> Unemployment rates for women are estimated at 60%, some sources give an even higher figure.

<sup>49</sup> See "Women and Men in Kosovo" March 2009, published by the Ministry of Public Services, Statistical Office of Kosovo.

<sup>50</sup> UNMIK Regulation 2004/18.

<sup>51</sup> A recent representative survey for Kosovo shows that 46% of female respondents had experienced violence in their family life. See Report on Domestic Violence in Kosova, Agency for Gender Equality of the Prime Minister's Office and the Kosova Women's Network, November 2008.

In total, eight shelters assisted victims of domestic violence and trafficking, including one run by an international NGO. According to some NGOs the shelters lack resources and need to be made suitable for longer-term stays. Some victims who do not receive sufficient support is forced unwillingly back to their husbands or tragically end by committing suicide.

104. Another interesting project envisaged by the Agency is the introduction of a university course in Gender Studies, with an Institute on Gender Studies operating at first from within the Agency.
105. Together with the UNMIK Office of Gender Affairs, the Agency for Gender Equality has prepared its initial report to the UN Secretary General under the UN Convention on the Elimination for All Forms of Discrimination against Women (CEDAW)<sup>52</sup> although the report has yet to be formally submitted, which the Commissioner regrets. UNMIK stands ready to facilitate and assist, at the request of the Kosovo authorities, its dialogue with CEDAW.
106. The Commissioner supports further public promotion of gender equality in Kosovo, with more of an emphasis on the implementation of the Law on Gender Equality. Additional resources should also be allocated, in particular to the response to domestic violence. The Commissioner would also like to see a clear delineation of the responsibilities between the Agency for Gender Equality and the Office of Good Governance, Human Rights, Equal Opportunities and Gender Issues. Some interlocutors pointed to the lack of a clear division of labour between the two bodies. The Commissioner encourages the prompt submitting of the report to the UN CEDAW Committee.

### 5.3 *Disabilities*

107. According to data provided by local and international NGOs, there are approximately 150 000 persons, both adults and children, with disabilities in Kosovo, or 7% of the population.<sup>53</sup> The Commissioner regrets the fact that governmental statistical data on persons with mental and/or physical disabilities is not available in Kosovo.
108. In December 2000, UNMIK established a working group under its administration, which published a policy document, entitled "Comprehensive Policy Framework for the Issue of Disability in Kosovo." This document, which came out on 3 December 2001, was to provide the basis for policy and laws to further the position of persons with disabilities in Kosovo. Despite these efforts, the situation of persons with disabilities in Kosovo remains unsatisfactory, as the authorities themselves testify.<sup>54</sup> Basic issues, such as the access of persons with disabilities to public premises, have not been addressed, despite initiatives from the Ombudsperson Institution, for example.
109. The authorities decided in March 2008 to draft a National Strategy and implementing Action Plan concerning the improvement of the situation of persons with disabilities. A Working Group on the drafting of the Plan was established in April 2008 and started to meet in June 2008. Six sub-working groups have been set up to deal with the specific issues of education, health, social protection, employment, access and infrastructure and statistics. The Ministry of Health, supported by the World Health Organisation, drafted a Mental Health Strategy for the period 2008 - 2013.
110. The National Council for Persons with Disabilities established in 2006 has not received sufficient support from the authorities.<sup>55</sup> The Commissioner underlines the importance of ensuring the integration and protection of socially vulnerable groups and people with

<sup>52</sup> For the period from 1999 to 2007.

<sup>53</sup> Strategy and Action Plan on Human Rights 2009 – 2011

<sup>54</sup> Strategy and Action Plan on Human Rights 2009 – 2011, page 20.

<sup>55</sup> Eight Annual Report of the Ombudsperson Institution in Kosovo, 2007 – 2008.

disabilities. The Commissioner refers the authorities to his Issue Paper entitled "Human Rights and Disability: Equal rights for all".<sup>56</sup> Whilst the legislation in force prohibits discrimination against person with disabilities, in practice considerable discrimination exists. Educational programmes to sensitive society would be of use.

## VI. Minority Rights

### 6.1 Background

111. According to the Statistical Office of Kosovo, out of a population of approximately 2.1 million inhabitants, 92% are Albanian, 5.3% are Serbian, and 2.7% are from another ethnic group.<sup>57</sup> However, as many of the Commissioner's interlocutors commented during his visit, there is no reliable data on the ethnic composition in Kosovo given that the last census was conducted in 1991. The Commissioner encourages efforts to ensure that the next census includes a wide participation from all minority communities.
112. Chapter III of the Constitution provides for the Rights of Communities and their Members, as well as representation in public institutions and in local government. In 2005 the Ministry for Returns and Communities was created. The Assembly adopted the Law on the Rights of Communities and their Members in March 2008.<sup>58</sup> An Office for Communities within the Prime Minister's Office was set up in September 2008 and a Consultative Council for Communities also exists under the authority of the President.
113. According to a number of the Commissioner's interlocutors, there are too many bodies with overlapping mandates focussing on the protection of the rights of minority communities. The Commissioner underlines the importance of further clarification of the respective roles of the Consultative Council and the Office for Communities.
114. A number of the Commissioner's interlocutors were of the opinion that the institutional framework responsible for minority communities has difficulty responding to the various and diverse needs of the communities. The proper implementation of legislation and its monitoring need to be improved.
115. In the Kosovo Serb regions, notably in northern Kosovo, parallel political and administrative structures have been constituted. These structures are not recognised by the Kosovo authorities or most of the international community. The authorities in Prishtinë/Priština retain only limited control in the north over services such as the police, the judiciary, customs and public transport. In southern Kosovo, parallel structures function in a much more limited way. Courts connected with the Serbian Ministry of Justice in Belgrade continue to operate in Kosovo but are not always functioning.<sup>59</sup> Those persons working in the Serbian parallel institutions, such as the hospital and schools may receive a salary from Belgrade as well as Kosovo, although according to a directive issued by Belgrade in 2006, Kosovo Serbs should not accept salaries from Kosovo institutions. According to one NGO with whom the Commissioner met, people north of the Ibar live in fear and uncertainty, facing a serious problem of organised crime. Kosovo

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<sup>56</sup> CommDH (2008)2, 20 October 2008.

<sup>57</sup> Various other communities live in Kosovo, such as Turks, Bosniaks, Roma, Ashkali, Egyptian, Goranis, Croatians, and Montenegrins.

<sup>58</sup> [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L047\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L047_en.pdf)

<sup>59</sup> The parallel District Court of Mitrovicë/Mitrovica ("Kosovska Mitrovica District Court") in the Zvečan/Zveçan Municipality, and parallel municipal courts of Leposavić/Leposaviq and Mitrovicë/Mitrovica continue to operate. The parallel municipal court of Mitrovicë/Mitrovica deals also with cases from Vushtrri/Vučitrn and Skenderaj/Srbica municipalities and is also operating a sub-office in Zubin Potok.

Albanians in a minority situation, such as those in north Kosovo also experience real security threats.

## 6.2 *Inter-ethnic relations*

116. Improving relations between the Serbs and Albanians is still one of the greatest challenges in Kosovo today. According to information provided to the Commissioner, approximately 130 000 Serbs live in Kosovo, with just under half north of the Ibar river<sup>60</sup> and the remaining communities living in Serb enclaves. While some progress has been made in the field of security and freedom of movement for minority communities, inter-ethnic tensions between the two communities are real and have worsened since February 2008. Albanian and Serbian communities continue to live essentially separate lives.<sup>61</sup>
117. Practices which adversely affect minority communities were discussed during the Commissioner's visit, including collective power cuts to some Serb villages by the Kosovo Energy Corporation (KEK). KEK asserts that the power cuts are no more frequent in Serb villages than Albanian ones and that where residents have failed to sign contracts on electricity supply with KEK or have failed to pay their electricity bills, KEK is not repairing damaged connections. Kosovo Serbs felt they were targeted because of their ethnicity and the effect, particularly during the winter months, was devastating to their communities. Since the Commissioner's visit, the overwhelming majority of Kosovo Serb villages south of the Ibar River have now signed contracts with KEK.
118. Freedom of movement is another issue for the Serbian community who live north of the Ibar and in the enclaves. Some of the Roma and Kosovo Serbs, who live in northern Mitrovica/Mitrovicë, complained to the Commissioner that when they travel by car to south Kosovo they are stopped by the police because of their Serbian licence plates. Sometimes their driving licences are confiscated by the KP and they are required to pay a fine to get the licence back. According to discussions with the police, this practice is not authorised or condoned by the authorities, but it does appear to continue nonetheless. The Commissioner has been informed that in April 2009, the Kosovo Interior Minister issued an instruction to Kosovo Police to allow the temporary use of Serbian licence plates and driving licences.
119. The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities adopted an Opinion on Kosovo in November 2005, in which they found that hostility between Albanians and Serbs was still very tangible, a situation which also harms the protection of other communities in Kosovo, for example the Roma.<sup>62</sup> The Advisory Committee returned for a visit to Kosovo in April 2009.
120. In November 2008, the United Nations Committee on Economic, Social and Cultural Rights expressed concern that the "population of Kosovo remains deeply divided along ethnic lines, as reflected by recurring incidents of inter-ethnic violence and a climate of intolerance among ethnic communities in Kosovo".<sup>63</sup>

<sup>60</sup> In the three Municipalities of Zubin Potok, Zvecan/Zveqan, Leposavic/Leposaviq and also in northern Mitrovica/Mitrovicë.

<sup>61</sup> Eight Annual Report of the Ombudsperson Institution in Kosovo, 2007 – 2008.

<sup>62</sup> ACFC/OP/I(2005)004. The Opinion is based on an Agreement concluded on 23 August 2004 between the Council of Europe and UNMIK related to the monitoring of the Framework Convention. UNMIK submitted a progress report on 25 July 2008.

<sup>63</sup> United Nations Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights, E/C.12/UNK/CO/1, 19 November 2008.

121. NGOs complain that there is no real strategy for reconciliation and inter-community dialogue from the authorities.

## 6.2 *Minority Education*

122. According to the legislation in place, minority communities have the right to public education at all levels in one of the official languages of their choice, i.e. Albanian or Serbian. In addition, persons belonging to non-majority communities are entitled to pre-primary, primary and secondary public education, even if it is not an official language.<sup>64</sup> The Kosovo Ministry of Education, Science and Technology are responsible for improving the education of non-majority communities.
123. In reality, however, the language policies in most schools do not encourage a multi-lingual society. Kosovo has yet to develop an educational curriculum in the Serbian language, for example. In some areas of Kosovo schools teach in Turkish and Bosnian. Albanian language classes for non-Albanian students are insufficient. Parallel educational structures exist for the Serb and Gorani communities in Kosovo. Serbian students and the majority of Roma and Gorani students follow the Serb curriculum in schools and faculties under the jurisdiction of the Serbian Ministry of Education. In reality, two education systems co-exist in Kosovo.
124. As regards higher education, the Kosovo authorities provide no higher education in the Serbian language<sup>65</sup> and limited higher education in the Bosnian language.<sup>66</sup> There has been a problem with school leaving certificates (diplomas) stamped with a special Republic of Kosovo stamp, which are not recognised by the public university in northern Mitrovica/Mitrovicë and the universities of the Republic of Serbia. For the academic year 2008/09 a temporary solution has been found whereby a second certificate with an UNMIK stamp was issued. However the solution was temporary, therefore the issue is still relevant and students still risk being denied enrolment at these universities in the future.
125. The situation of the Gorani children in Dragash/Dragaš was also brought to the Commissioner's attention during his visit. Most of the Slavic speaking inhabitants of the Gora region identify themselves as Gorani and wish to pursue education in Serbian. Some 1 254 Gorani children in the Dragash/Dragaš Municipality attend schools under the curricula of the Republic of Serbia. The Kosovo Ministry of Education, Science and Technology has granted annual exemptions to the Gorani community for all school years up to 2006/2007, providing for the continuation of education in the Serbian language. However, since the beginning of the school year 2007/2008 parents, pupils, and teachers of the Gorani community who attend and support parallel schools have come under renewed pressure from the Kosovo Institutions to abandon any educational activity funded by the Republic of Serbia.
126. With respect to the "Nezim Berati/Nebojša Jerković" primary school in Dragash/Dragaš town, the situation has deteriorated since the beginning of the 2008/2009 school year. Following a municipal decision, teachers who have not signed contracts with Kosovo institutions were being denied access to the building. Many teachers remained unwilling to sign contracts with Kosovo institutions, which provide less favourable conditions than those offered by the Serbian authorities.

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<sup>64</sup> Article 8.1. of the Law on Protection and Promotion of Rights of Communities and their Members.

<sup>65</sup> Higher education in Serbian is provided by the Serbian Ministry of Education in the University of Mitrovica.

<sup>66</sup> Bosniaks can follow higher education at the higher business school in Peje/Peć and a faculty for education in Prizren. In addition, there are also private universities where members of these two communities can follow higher education in their own language.

127. The OSCE High Commissioner on National Minorities, together with the OSCE mission in Kosovo, has addressed this particular issue on several occasions, including during his latest visit to Kosovo in February 2009. The European Union Special Representative (EUSR) in Kosovo has also been involved in trying to broker a deal to enable the 135 children of the “Nezim Berati/Nebojša Jerković” primary school to return to class. The Gorani students and teachers were expected to resume classes in the school premises as of 3 March 2009, in mixed shifts with Kosovo Albanian teachers and students. Unfortunately, it appears that this deal has broken down, at least for this school year, which the Commissioner regrets.
128. The Roma, Ashkali and Egyptian communities are still the most vulnerable minority in Kosovo, and efforts to improve Roma schooling are urgently needed. A low-level of education and high drop-out rate, especially for girls, are pervasive problems. A model to address the students’ drop-out is piloted in 15 primary schools in 10 municipalities focusing on the Roma, Ashkali and Egyptian children and 10 municipalities have developed an action plan to respond to students’ drop out from school. An education programme is provided in the Roma Camp Osterode to support the education and development of children and their families, which the Commissioner visited. Further development of a curriculum in the Roma language is needed.
129. The Commissioner calls for intercultural education policies promoting mutual respect, understanding and tolerance<sup>67</sup>. He supports the prompt setting up of an Independent Commission on Education, the development of a Serbian language curriculum in Kosovo, better provision of Albanian language classes for minority groups, and the provision of textbooks at all levels for non-majority communities.

#### 6.4 *Roma, Ashkali and Egyptian communities*

130. It is estimated that there are approximately 35 000 to 40 000 Roma, Egyptian and Ashkali living in Kosovo and an estimated 70 000 – 100 000 outside Kosovo who left during and after the 1999 conflict.<sup>68</sup> The Kosovo Roma, Ashkali and Egyptian communities face significant challenges to their everyday life. Years after the conflict, thousands remain IDPs in Kosovo (approximately 18%) or refugees in other Balkan countries and EU states, and many of them remain practically stateless. Members of the community face marginalization and discrimination in the areas of education, social protection, health care and housing. Poverty and unemployment<sup>69</sup> touch them more profoundly than the rest of society. Security remains a concern and according to a number of sources, ethnically-motivated incidents continue to go unreported.
131. A large number of persons from these communities lack personal documentation (civil status registration and registration as habitual residents of Kosovo). This further complicates their ability to exercise rights and access services. Many have lost documents during the conflict, or never registered and without them, they cannot access social benefits and services. The Commissioner met with one NGO which is currently working on a large civil registration project, hoping to register the 10 000 to 11 000 members of the community who find themselves without papers. The Commissioner commends this initiative and also encourages the authorities to become active in finding a solution to this problem as well.

<sup>67</sup> See the Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002.

<sup>68</sup> Strategy for the Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo, 2009 – 2015.

<sup>69</sup> With unemployment reaching 98% according to the Eight Annual Report of the Ombudsperson Institution in Kosovo, 2007 – 2008.

132. Another crucial issue relates to property, that is documentation, assertion and the legalisation of informal communities. Traditionally, Roma and other settlements were constructed on municipal lands often without obtaining prior authorisation and never registering their property rights. This makes it difficult for municipalities to recognise the right to property in such cases. For those Roma, Ashkali and Egyptian IDPs who wish to return to Kosovo and hope for the reconstruction of their destroyed homes, the municipalities should regularise their previous informal settlements.<sup>70</sup>
133. The Strategy for the Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015 was adopted on 24 December 2008 and is in force. It was initiated by the OSCE Mission in 2006 and developed under the umbrella of a memorandum of understanding between the Office of the Prime Minister, the OSCE Mission and the Kosovo Foundation for Open Society (Soros Foundation). The three partners have provided expertise and ensured the participation of the three communities into the strategy development as well as the participation of experts from the lines ministries and the international communities. The Kosovo Ministry of Education adopted its part of the Strategy at the end of 2007. However, concrete Action Plans for the implementation of the Strategy have not yet adopted. The Commissioner encourages the prompt adoption of the Action Plans and the creation of a body within the government which is in charge and responsible for their implementation.
134. The Commissioner supports a civil registration campaign for these communities.

#### 6.4 *The lead poisoning of the Roma, Ashkali and Egyptian communities in northern Mitrovica/Mitrovicë*

135. Before the Balkan conflict (1990-1999) the Roma, Ashkali and Egyptian, approximately 8 000, lived in a southern Mitrovica/Mitrovicë neighbourhood, known as the Roma Mahalla. In the immediate period following the 1999 Kosovo conflict, the Roma Mahalla was completely destroyed. After the destruction of the Mahalla, the Roma fled to different areas of northern Kosovo, such as Zvečan/Zveqan, Leposavic/Leposaviq and north Mitrovica/Mitrovicë. While approximately 1 000 stayed in Kosovo, others fled abroad.
136. Between September 1999 and early January 2000, the displaced Roma families were moved to two camps, Česmin Lug and Žitkovač, due to the pressure of the local population. A third unofficial camp, Kablar, was developed after the occupation of the French KFOR barracks in 2001. The camps were located within 3 kilometres of the Trepča smelter and within 300 metres of two mine tailing sites. The Trepča smelter in Mitrovica/Mitrovicë extracted metals including zinc, arsenic, lead, and cadmium from the products of nearby mines. Trepča operations have been an important part of the Mitrovica/Mitrovicë economy in the past, providing employment in both the smelter and the mines to people in the region. Three mine tailing dams are located in northern Mitrovica/Mitrovicë and the nearby town of Zvečan/Zveqan.
137. The UN halted mining operations in August 2000 after UN peace keeper forces in the area were discovered to have high levels of lead in their blood. Although the smelter has been closed since 2000, the environment has remained heavily contaminated. The Roma population remains the most affected, for a number of reasons: the proximity of the slag heaps to their camps and the poor hygienic conditions in which they often live, for example, children being exposed through playing in contaminated soil.
138. The three camps were initially intended to serve as temporary housing only.

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<sup>70</sup> Eight Annual Report of the Ombudsperson Institution in Kosovo, 2007 – 2008.



139. As early as November 2000, a WHO report entitled "First Phase of Public Health Project on Lead Pollution in Mitrovica/Mitrovicë Region" evaluated the actual impact of Trepča emissions on workers and the civil population around by a series of blood sampling. The results confirmed the earlier information about the high degree of lead pollution in Mitrovica/Mitrovicë and Zvečan/Zveqan. The long-term strategy included "relocation of the Roma camp to a lower risk area and continuous education campaigns on how to reduce lead exposure".
140. In June 2004 the WHO reported again following blood testing. It showed that the Roma Ashkali and Egyptian communities were affected by extremely high levels of lead contamination, especially children who had lead blood levels which amounted to a medical emergency. As a result UNMIK agreed to close two of the camps, Žitkovač and Kablar
141. In December 2005, 560 individuals or 125 families moved into Osterode, an old French KFOR barracks, which was thought to be safer (but not safe), again as a temporary measure. It should be underlined that Osterode is only 5 minutes walk from the contaminated Česmin Lug camp. At the time, there were warnings that Osterode itself was contaminated through particle contamination being blown down wind. All relocation from Osterode should have been completed by August 2007, however families still remain living there.
142. The WHO supported local institutions and NGOs in treating the most affected families through the provision of fresh food, milk and drugs (chelation therapy). At the same time negotiations started for the reconstruction of the Roma Mahalla, which so far has led to the return of 460 people in 2007 and 2008. After relocation the lead in their blood levels had significantly reduced. In general there is a poor rate of occupancy of the buildings which have been constructed – due to the lack of employment conditions and the dissatisfaction of the Roma community with some parts of the project. Some of the families refuse to move because they are afraid that their moving would preclude the search for a sustainable and durable solution. Others fear moving south of the Ibar because of the potential loss of their benefits from Serbia.
143. Approximately 500 people remain living in the contaminated camps of Česmin Lug and Osterode. In the past the camps were run by Norwegian Church Aid however, now the Ministry of Community and Returns and a local NGO, KAAD, are responsible. Their children attend a nearby 'Roma' school which the Commissioner visited. 76 Roma, Egyptian and Ashkali children are educated in the Roma primary school and 26 in the pre-school. The attendance rate in the secondary school was much lower.
144. In April 2008, the Republic of Serbia's Institute for Public Health and Protection performed a test on 104 children. Results showed that the overall situation had not improved, and that the Roma, Ashkali and Egyptian population still suffered from an extremely high level of contamination.
145. On 1 April 2009 the then acting Ombudsperson in Kosovo, Mr. Hilmi Jashari, wrote to the Mr. Thaci concluding that there has been a continuous violation by UNMIK of more than one international human right standard.
146. According to statements of a number of international monitoring mechanisms this is the most serious humanitarian and environmental problems in Europe. The Council of Europe's Advisory Committee to the Framework Convention for the Protection of National Minorities found in their 2005 Opinion that 'the situation, which constitutes a serious health risk in particular for children and pregnant women is not compatible with the principles contained in Article 4 of the Framework Convention and merits urgent attention and targeted measures.'

147. The adverse health effects of lead exposure include damage to the brain and nervous system, reproductive abnormalities, high blood pressure, memory and concentration problems, muscle and joint pain. The longer term risks to adults are harder to determine, but reports of higher than normal death rates are credible in the Commissioner's opinion.
148. In children, the effects can be even more detrimental and include behaviour and learning deficits, slowed growth and damage to the brain and nervous system. The health consequences of lead contamination undoubtedly cause permanent developmental damage to children. These the Commissioner viewed with his own eyes.
149. In the present circumstances, the Commissioner calls on UNMIK and the Kosovo authorities to address this humanitarian disaster as a matter of priority and medical emergency. The Kosovo authorities must take active steps to work together with UNMIK to find a workable and practical solution which is agreed by all. The Commissioner commends the setting up of a steering group by the Kosovo authorities with the participation of some international organisations to discuss a solution. It is very sad that these vulnerable people are hostages to a political situation by reason of the fact that they are living in an area where no authority is obviously in charge. The Roma, Ashkali and Egyptians living in these camps are a European community who should not be abandoned.<sup>71</sup>
150. The Commissioner strongly urges an immediate relocation of the Roma, Ashkali and Egyptian population living in the camps in northern Mitrovica/Mitrovicë to a safe uncontaminated location, recalling the positive obligations including the prevention of harm to life, under Article 2 of the European Convention on Human Rights. The Commissioner urges the closure of Česmin Lug and Osterode as a matter of priority, the construction of adequate housing for these families, in the Mahalla if they wish, and repeated courses of decontamination treatment for all families affected.

## **VII. Refugees, Internally Displaced Persons (IDPs), and Forced Returns to Kosovo**

151. Approximately 235 000 Serbs, Roma and members of other minority communities fled Kosovo at the end of the July 1999 conflict. The majority fled to Serbia, while others went further afield in Europe. In 2004, another 4 200 persons, including Serbs, Roma and Ashkali were displaced.<sup>72</sup> There are currently some 20 000 internally displaced persons (IDPs) in Kosovo, and according to Serbian government sources 206 000 inhabitants of Kosovo are displaced in Serbia. Some 16 000 are displaced in Montenegro. The creation of a climate conducive to the return of displaced persons is a priority in the European Partnership for Kosovo.
152. In general terms, the return process to Kosovo has been very slow. As of April 2009, only 7 490 Roma, Ashkali and Egyptians returned to Kosovo since January 2000 according to UNHCR data. A number have subsequently left Kosovo due to economic reasons.<sup>73</sup> There has been a continuously declining trend of returns per year since 2003.<sup>74</sup> While

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<sup>71</sup> See the recent report by Human Rights Watch of 26 June 2009, "Poisoned by Lead: A Health and Human Rights Crisis in Mitrovica's Roma Camps".

<sup>72</sup> Amnesty International Report: Kosovo (Serbia). No Forcible Return of Minorities to Kosovo, May 2007.

<sup>73</sup> See the Strategy for the Integration of Roma, Ashkali and Egyptians Communities in the Republic of Kosovo, 2009 – 2015.

<sup>74</sup> Although according to UNHCR figures, 2007 showed a slight increase as opposed to 2006, with 1 685 minority returns in 2007 as opposed to 1 627 in 2006. Figures were down again to only 679 persons returned in 2008. The return figures for January – April 2009 indicates 137 individuals have returned.

- municipalities are developing more returns projects, lack of funding and administrative/managerial capacity remain important obstacles. Nevertheless, following renewed joint efforts by the international community and the authorities in Belgrade and Prishtinë/Priština, 2009 may see an increased expression of interest in return by IDPs and refugees in the region.
153. The Ministry for Communities and Returns co-ordinates the voluntary return of refugees and IDPs to Kosovo. Unfortunately, it still has no database on returnees, which leads to confusion and uncertainty. At the local level, municipal authorities need to improve their capacity to implement return policies. The Commissioner recalls the 1998 UN Guiding Principles on Internal Displacement<sup>75</sup> according to which states have the duty to establish conditions and provide the means which would allow displaced persons to consider one of the following options: *Voluntary return*: that the IDPs return to their homes or places of habitual residence in safety and with dignity; *Voluntary resettlement*: that they resettle in another part of the territory; and *local integration*: that they get support for their choice to stay in the community where they are and integrate there.
  154. The Commissioner discussed the issue of forced or involuntary returns, with a number of his interlocutors during the visit. Those countries which have accepted large numbers of refugees from Kosovo are keen to return them. Since November 2008, the repatriation of forced returnees is dealt with by the Ministry of Internal Affairs. Between 2005 and April 2009, there have been approximately 13 828 forcibly returned persons belonging to the majority and minority communities to Kosovo.
  155. The government approved a Reintegration Strategy for Repatriated Persons in October 2007. The strategy seeks to ensure sustainable and durable solutions for forcibly returned persons in the areas of health, education, employment, legal reintegration, social welfare, housing and property related issues. It also addresses the needs of vulnerable sections of society and minority communities. The Strategy has yet to be implemented. An action plan for the implementation of the reintegration strategy was finalised in April 2008.
  156. Some countries believe that they should have the possibility of forcibly returning a person following an individual assessment of his/her case.<sup>76</sup> Many Western European countries, including Germany and Switzerland are in the process of negotiating bilateral readmission agreements with the Kosovo authorities. In the Commissioner's opinion, Kosovo is under political pressure to accept these agreements, without having in place the budget or the capacity to receive these families in dignity and security.
  157. The Commissioner wishes to recall the standards contained in the Committee of Ministers *Twenty Guidelines on Forced Return (2005)*<sup>77</sup> according to which voluntary returns should be promoted by host states. Host states should also evaluate and improve, if necessary, programmes implemented to that effect.
  158. Many of those forcibly returned are not assisted by the Kosovo authorities and find themselves homeless. Some have ended up in the lead-contaminated camp of Osterode. The Commissioner met one such boy, who had been forcibly returned with his family from Germany, and was living in the lead-polluted camp and attending a nearby Roma-only school.

<sup>75</sup> <http://www2.ohchr.org/english/issues/idp/standards.htm>

<sup>76</sup> Report from the International Roundtable on Roma, Ashkali and Egyptians of Kosovo: Challenges and Prospects of Sustainable Integration, Vienna 22 October 2008.

<sup>77</sup> Available at [www.coe.int/t/cm](http://www.coe.int/t/cm).

159. The UNHCR has maintained its position against the forced returns of Roma, Serbs and minority Albanians to Kosovo since June 2006, assessing that the overall security situation has not changed since then. In its Position Paper on the Continued International Protection Needs of individuals from Kosovo, UNHCR states that "*Roma and Serbs and minority Albanians are in need of international protection and their return to Kosovo should be limited to return on voluntary basis*". In October 2007 the Council of Europe's European Roma and Travellers Forum called for a moratorium of at least 2 years regarding implementation of the those parts of readmission agreements concerning the return.
160. In the Commissioner's opinion forced returns from Western Europe and neighbouring countries will have a negative effect on the situation of the minority communities currently living in Kosovo as this will inevitably deprive them of the remittances they receive. The Commissioner shares the view expressed by the Council of Europe's Parliamentary Assembly that "a mass influx of returnees (forced or voluntary) would not be sustainable and could destabilise the already fragile security situation and increase ethnic tensions".<sup>78</sup>
161. The Commissioner recalls that in his letter to the authorities of Bosnia and Herzegovina dated 18 June 2007 he urged the authorities to "grant refugees coming from Kosovo, at the very least, permission to stay in the country until conditions in Kosovo permit their safe return".
162. The return process remains a key challenge for the Kosovo authorities. The Commissioner considers that those persons who wish to return to Kosovo should be supported by the Kosovo authorities and that the return process should be planned, informed and sustainable. The Kosovo authorities must provide a safe environment, housing, education and possibilities to earn a living for those who choose to come back.
163. The Commissioner appeals to governments in Europe to avoid forced returns of minorities to Kosovo and to regulate the status of those in their host country until conditions in Kosovo permit their safe return. In the Commissioner's assessment there is currently no adequate capacity on the part of the authorities to receive and integrate mass returns in Kosovo. The economic and social situation is a major obstacle to a sustainable return process. While security issues have improved, in the Commissioner's opinion the situation remains tense with inter-ethnic violence occurring sporadically.

## VIII. Property Restitution

164. The issue of property restitution and returns is evidently connected. The 1999 conflict forced thousands of people to leave their homes and land. In the meantime, many properties have been illegally occupied, farmland has been cultivated by unauthorized people, constructions have been built illegally on other people's land, and many expropriations have been made in violation of property and human rights.<sup>79</sup> The situation is also aggravated by the displacement of municipal and central records to Serbia at the height of the conflict in 1999. Since the cadastral bodies in Serbia and Kosovo do not cooperate with each other, there is no exchange of records or mutual recognition of issues documents. Ownership certificates taken from property registers are not always authentic or updated. Ten years after the conflict, only a very small number of internally displaced persons have returned to their homes.<sup>80</sup>

<sup>78</sup> PACE Legal Affairs report Jan. 2008.

<sup>79</sup> Venice Commission, Opinion on Human Rights in Kosovo: Possible Establishment of review mechanisms, Commission Staff working document, 2004.

<sup>80</sup> CESCR, Forty-first session Geneva, 3-21 November 2008, Consideration of Reports Submitted by State Parties under Art. 16 and 17 of the Covenant.

165. In order to resolve property and housing claims fairly and efficiently, UNMIK created the Housing and Property Directorate (HPD) in November 1999 and the Housing and Property Claims Commission (HPCC) in October 2000.<sup>81</sup> By 2007, the HPD/HPCC had taken decisions in some 28 828 residential property cases (98.9% of its total caseload).<sup>82</sup> As of June 2007, 5 199 claims resulted in a successful request for repossession. In 10 108 cases, the properties were found to be destroyed and no remedy was available from the HPD/HPCC apart from declaratory statements confirming lawful possession. In a number of other cases, the claims were withdrawn or the occupant received a temporary permit to remain in the property and the owner received a rental income.
166. The Kosovo Property Agency (KPA) was established on 4 March 2006,<sup>83</sup> as the successor to the HPD/HPCC, but with an enlarged mandate. In addition to residential property, the KPA can also resolve disputes relating to immovable agricultural and commercial property.<sup>84</sup> The KPA has three main functions: to receive, register and resolve claims on private immovable property, to enforce legally final decisions and to administer abandoned properties.<sup>85</sup>
167. The KPA also implements the decisions on residential property made by its predecessor, the HPD/HPCC. The claims' intake of the KPA commenced on 5 April 2006 and closed on 3 December 2007. By this date, the Agency had received approximately 40 000 claims.<sup>86</sup> The KPA's mandate includes supervising the rental of abandoned properties in Kosovo, most of which belonged to Kosovo Serbs. To that end, the Agency manages a rental scheme for properties under its administration, enabling property holders to receive rental income. The implementation of the rental scheme is still unsatisfactory. Out of 3 989 properties managed by the KPA, more than 2451 were included in the rental scheme. Rental agreements for more than 890 properties have so far been signed, but little rent is actually collected. There are currently around 850 cases pending eviction for rent-related reasons out of which 633 are in Mitrovica/Mitrovicë, and approximately 50 evictions are carried out each week. There is still confusion over the transfer of cases by the KPA to local courts.
168. The KPA is composed of three main bodies, namely an Executive Secretariat (ES), responsible for managing the claims process, the Property Claims Commission (PCC) an autonomous quasi-judicial body adjudicating the claims and a Supervisory Board (SB) providing oversight and policy guidance. The primary responsibilities of the ES include the collection and registration of claims and replies to claims and the processing of claims prior to their presentation for adjudication before the PCC.
169. The PCC is conferred with jurisdiction to adjudicate claims referred to it by the ES. Approximately 2 500 draft reports are sent to the PCC for decision every other month. As of May 2009, the PCC took decisions in 18 794 cases.<sup>87</sup> Unlike the previous HPD/HPCC

<sup>81</sup> See UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, November 15, 1999, and UNMIK Regulation 2000/60 On Residential Property Claims Commission, October 31, 2000.

<sup>82</sup> OSCE –Mission in Kosovo, "Eight Years After: Minority Returns and Housing and Property Restitution in Kosovo," Department of Human Rights, Decentralization and Communities, June 30, 2007.

<sup>83</sup> Under UNMIK Regulation 2006/10. The regulation expired on 31 December 2008.

<sup>84</sup> Arising from the armed conflict that occurred between 27 February 1998 and 20 June 1999. See also UNMIK Regulation 2006/10 On the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, as superseded by UNMIK Regulation 2006/50.

<sup>85</sup> See UNMIK Reg. 2000/60, Section 1. Abandoned is "any property which the owner or lawful possessor and the members of his/her family have permanently or temporarily, other than for an occasional absence, ceased to use and which is either vacant or illegally occupied".

<sup>86</sup> See the KPA's website on [www.kpaonline.org](http://www.kpaonline.org).

<sup>87</sup> Ibid.

- mechanism, parties can appeal against decisions to a Special Chamber of the Supreme Court, which is composed of two internationals and one local judge. The decision of the Supreme Court is considered final. However, the Special Chamber mandated to hear such appeals is not yet fully functional, thereby blocking implementation and enforcement of PCC decisions.
170. The SB is comprised of five members, two of whom are nominated by the Prime Minister. The SRSG designates one member as Chairperson of the Board.
  171. The KPA's headquarters are based in Prishtinë/Priština. The Agency has a number of regional offices in Montenegro, "the former Yugoslav Republic of Macedonia" and until last year in Serbia. Since 13 June 2008, the KPA operates under the European Union's International Civilian Representative.<sup>88</sup>
  172. On 19 June 2008, the Serbian government suspended the operations of the KPA offices in Serbian cities. This has made it nearly impossible for the KPA to verify documents in Serbia, contact claimants, and communicate to the parties the results of the adjudication process.
  173. The Agency is dealing with just over 40 000 claims, out of which approximately 18 000 have now been decided. The majority of claims are by made by claimants of Serbian ethnicity and are not contested.<sup>89</sup>
  174. There are also reportedly around 20 000 compensation claims before Kosovo courts arising from the destruction of property in 1999 and 2000. These had been suspended by the UNMIK Department of Justice. A majority of these cases are claims against UNMIK, Kosovo authorities or KFOR, predominantly by Kosovo Serb displaced persons. They represent half of the backlog in the civil court system.
  175. In May 2008, UNMIK issued an Administrative Direction exempting property right claimants from paying utility bills accrued over periods when their properties were under KPA administration or where a tenant under the rental scheme failed to pay these bills. However, there are no measures to ensure that the same applies to owners of properties not claimed through the KPA. Therefore, displaced persons who have not had the opportunity to claim their property through the KPA are burdened with the payment of bills charged to their properties while those properties were or are still illegally occupied.
  176. Despite efforts made by the KPA and the courts, there is still no adequate and effective protection of property rights in Kosovo. Illegal construction, occupation and expropriation remain the rule rather than the exception, despite the legislation in place. Urban planning and development policies are also lacking in a majority of municipalities. The Ombudsperson Institution has been active in responding to numerous complaints about illegal construction, occupation and its effects on the neighbouring areas, as well as the issue of expropriations.
  177. The protection of property rights is affected by the general weakness in the rule of law in Kosovo. Moreover, it is hampered by incomplete and missing records, inadequate property-related legislation, and problems regarding the implementation of the laws. The Commissioner regrets the fact that the KPA is unable to fulfil its mandate for the benefit of all communities, including the Serbian community, following the closure of its regional offices in Serbia.

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<sup>88</sup> Law No. 03/L-070, amending UNMIK Regulation 2006/50, On the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, June 13, 2008.

<sup>89</sup> See the KPA's website on [www.kpaonline.org](http://www.kpaonline.org).

## IX. Trafficking in Human Beings

178. Kosovo is mainly considered as a place of transit and a destination for trafficking in human beings,<sup>90</sup> however increasingly it is also considered as a source of trafficking victims. There has been a rise in the number of trafficked women and girls who originate from Kosovo. A growing number of Kosovo Albanian minors are recruited among the most vulnerable and disadvantaged families.<sup>91</sup>
179. There are number of different statistics on trafficking in human beings depending on the source, namely the Trafficking in Human Beings Investigation Section of the Kosovo Police, local NGOs and international organisations.
180. On 12 January 2001 the UNMIK SRSG promulgated UNMIK Regulation on Prohibition of Trafficking with Persons in Kosovo. The Criminal Code offers the definition of the crime of trafficking in accordance with the definition of the UN Protocol. Whoever engages in the crime of trafficking may be punished with imprisonment from a minimum of six months to up to twelve years. In cases where one engages in trafficking with an organised criminal group, the punishment might be up to twenty years. Procuring or using the sexual services of a person with the knowledge that that person might be a victim of trafficking is punishable by law from three months to up to five years. In practice no such cases have been brought to the courts due to the difficulty of proving that the user knew the person was a victim of trafficking.
181. The Trafficking in Human Beings Investigation Section (THBS) of the Kosovo Police Service started its work in May 2006. The Department of Social Welfare of the Ministry of Labour and Social Welfare has the primary responsibility to protect women and children in Kosovo and is mandated by law to make risk assessments and offer shelter and support to cases in need of protection. The Department of Social Welfare coordinates 32 municipal centres for social work, which can offer help for *inter alia* victims of domestic violence and trafficking in human beings. NGOs are also contracted by the authorities to offer services and assistance to victims of domestic violence and trafficking in human beings. Kosovo has eight shelters which offer assistance and shelter to victims of gender-based violence
182. Most anti-trafficking awareness campaigns are run by international organizations and NGOs with the government's support. The International Organisation for Migration and the Ministry of Justice sponsor anti-trafficking hotlines. The Prime Minister's Advisory Office for Good Governance co-ordinates communication among counter-trafficking entities in Kosovo, including the relevant ministries, NGOs and international organizations.
183. According to the Strategy Plan 2008-2011 the approach towards the victim is focused on the protection of his/her rights in the sense of obtaining necessary information, physical and legal protection, material assistance and compensation aiming at enabling their sustainable integration.
184. Recalling the principles set out in the Council of Europe Convention on Action Against Trafficking in Human Beings,<sup>92</sup> the Commissioner finds the legal framework for combating trafficking in human beings in Kosovo is sufficient but is poorly implemented, in particular by the courts. The Commissioner supports an increase in budget in order to provide longer term support to victims of trafficking in human beings.

<sup>90</sup> National Strategy Plan 2008 – 2011, Ministry of Internal Affairs, 30.07.2008.

<sup>91</sup> Commission of the European Communities, Brussels, 05.11.2008 Sec(2008) 2697 Kosovo(Under UNSCR 1244/99) 2008 Progress Report.

<sup>92</sup> CETS No. 197, 2005.

## **X. Missing Persons**

185. An estimated 5 998 people were reported missing in relation to the conflict in Kosovo between 1998 and 2000. In May 2009, 1 907 still remain unaccounted for. Of this figure, approximately 70% are Kosovo Albanians and 30% are Kosovo Serbs and other minorities. There is a difficulty in indentifying the remains of 421 persons. While DNA has been extracted, there are no matching blood samples from living people. A possible conclusion is that some persons might have been misidentified.
186. The International Commission for Missing Persons (ICMP) has provided essential technical assistance and capacity building to the actors involved, above all UNMIK, the Kosovo authorities and Serbian government institutions and bodies. Since 1999, these actors have been increasingly working together – with some setbacks—to determine the fate and whereabouts of missing persons. Although shortcomings in the cooperation between Belgrade and Prishtinë/Priština remain, improved cooperation has resulted in the number of unresolved cases having been reduced by more than 60%.
187. In Kosovo, there are several bodies, both institutional and private, that are working to reduce the number listed as missing. In 2002, the Office of Missing Persons and Forensics (OMPF) was created as a division of UNMIK’s Department of Justice. As of 9 December 2008, the Office works with EULEX’s justice component, to clarify the fate of missing persons, to assess and exhume suspected graves, to perform autopsies of unidentified remains in order to determine the cause of death whenever possible and to complete identification in a professional manner, using DNA analysis whenever necessary. The Office keeps the families of the missing informed of the progress made and returns the identified remains to them. It also keeps up-to-date records and statistics on missing persons in Kosovo.
188. The Kosovo Commission on Missing Persons was established as an inter-ministerial body in late 2006. The heads of the Commission represent the Kosovo Albanian and non-Albanian communities respectively. The authorities took steps to enhance the capacity of the Commission. The Commission’s mandate is to search for missing persons from the conflict regardless of their national, ethnic or religious origin.
189. A Working Group on Missing Persons in Kosovo was created in 2004. Under the Chairmanship of the International Committee of the Red Cross (ICRC), Prishtinë/Priština and Belgrade have cooperated on the resolution of the remaining cases since March 2005. Today, the main challenge is the lack of information on new grave sites. In support of the Working Group, the ICRC has requested and partly obtained access to international organisations’ archives and archives of countries which contributed to KFOR troops in 1999 and 2000, with the purpose to identify grave sites. Recently, slight improvements were noticed in the relevance of the documents exchanged through the Working Group, including a few new grave sites; however, both authorities must make additional effort to investigate cases of missing persons and provide answers to the families. The ICRC also chairs a Sub-Working Group on Forensics, of which the OMPF and ICMP are members.
190. A number of family associations and NGOs have organised themselves under the umbrella of the Family Associations’ “Coordinating Council for Missing Persons”. Representatives of family associations may join the meetings of the Working Group, albeit not regularly as some meetings between Prishtinë/Priština and Belgrade remain closed for non-working-group members.
191. The Commissioner’s delegation met with representatives of the “Coordinating Council for Missing Persons” to discuss the present situation and deliberate on possible ways



- forward to improve the cooperation between Belgrade and Prishtinë/Priština to help resolve the remaining cases. The representatives complained that families and NGOs often felt excluded from the official bodies. Progress was also said to have been slow due to the fact that both sides were politicizing the issue. Communication between Prishtinë/Priština and Belgrade deteriorated since February 2008 which has had a negative impact on attempts to further resolve the fate of the remaining missing persons.
192. The Commissioner encourages Belgrade and Prishtinë/Priština to increase dialogue and cooperation and resolve the remaining cases of those presumed missing. Regardless of the numbers at stake, both sides have a common interest and goal that should facilitate mutual understanding and joint action. The Commissioner recalls the crucial importance of addressing the remaining cases regardless of the ethnic, religious or national origin of the missing person. Wherever possible, information on grave sites should be provided at the highest level on both sides. Customary international law, humanitarian law and several articles under the European Convention on Human Rights protect the right to know what has happened to one's relatives.<sup>93</sup> In the Commissioner's view, it is essential for all families to know the fate of their loved ones.

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<sup>93</sup> See the report by the Commissioner for Human Rights on his visit to Azerbaijan, CommDH (2008)2 paragraph 118.