ANNEX 2

REPUBLIC OF SERBIA
MINISTRY FOR KOSOVO AND METOHIJA

-DEPARTMENT OF JUSTICE, HUMAN AND PROPERTY RIGHTS-

REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN KOSOVO AND METOHIJA 2002-2008
I  BACKGROUND NOTES

INTRODUCTION

Department of Justice, Human and Property Rights in the Ministry for Kosovo and Metohija (hereinafter: Department of Justice) conducted analysis of the legal system and factual state in Kosovo and Metohija with special regard to the state of human rights concerning non-Albanian population. The analysis spans over the period between May 2002 and July 2008. Reports written by the Organisation for Security and Cooperation in Europe for Kosovo and Metohija (hereinafter: OSCE) were used as sources in the production of the analysis as well as the reports from human rights defenders (The Ombudsman Institutions in Kosovo), reports of international and domestic non-governmental organisations (hereinafter: NGO), such as Amnesty International and Praxis. Practical experience was also conducive to the report’s elaboration as well as documentation from the Department of Justice, regular perusing of periodicals, laws and international conventions on human rights.

It can be claimed with utmost certainty that human rights and freedoms in Kosmet are still being violated or neglected to a great degree, particularly the rights of non-Albanian communities. This was also stated in the report issued in October 2002 by the Department of Justice and Human Rights under the Kosovo and Metohija Coordination Centre which included the period from June 1999 until May 2002. The peculiarity of the problem in Kosmet lies in that the civil authority (legislative, executive and judiciary) has been in the hands of the international Civil Mission, i.e. UNMIK, while the military authority has been held by KFOR as envisaged by the UNSC Resolution 1244. Ever since the withdrawal of the FRY military and security forces and those of the Republic of Serbia from the territory of Kosovo and Metohija in June 1999, the actual and legislative authorities in the territory of the Province have been performed by UNMIK and KFOR. Therefore these organisations, i.e. the international community, are responsible for the respect and implementation of human rights in Kosovo and Metohija. It may be said with utmost certainty that human rights and freedoms are still violated to a great extent, especially the rights of non-Albanians. Since 2001, or since the adoption of the constitutional framework for the Provisional self-government in Kosovo in May 2001, UNMIK has delegated to a great extent its authority to the Provisional Institutions of Self-Government (hereinafter PIS), which are, we may say, predominantly Albanian and which took all the necessary measures towards creating another Albanian state in the Balkans, thus destabilising the territorial unity and sovereignty of the FRY and later on the Republic of Serbia. All the aforementioned things resulted in an unlawful proclamation of the so called Republic of Kosovo by the PIS Assembly on February 17th 2008 and the enactment of its Constitution on June 15th 2008.

CURRENT LAW IN KOSOVO AND METOHIJA

The current legal system is generally considered to be one of the weakest institutions in Kosovo and Metohija. Uncertainty about the current legal system, i.e. the hierarchy of legal instruments, is still the greatest problem in the functioning of legislation in Kosovo and Metohija. This fact is reflected in the attitude of the European Union which is directing its efforts towards activities in Kosovo and Metohija to solve problems in policing and legislation. The supreme law in Kosovo and Metohija is one of a formal legislative nature – the United Nations Security Council Resolution No. 1244. According to Directive No. 1999/24 of UN Special Representative for Kosovo and Metohija, Directives of Special Representatives,
i.e. UNMIK, are applied in Kosovo, as well as the laws which had been acting until March 22nd 1989 when the legislative authority of the Republic of Serbia was overtaken by the AP Kosovo, with a provision that in case of conflict Directives should take precedence in the application of law. Under the aforementioned Directive, laws of the Republic of Serbia enacted after March 22nd 1989 shall be applied in case of settling legal issues which had previously not been covered by legislation and unless they had been enacted with a view to incite discrimination in Kosovo and Metohija. Regulations adopted by the Provisional Institutions of Self-Government (hereinafter: PIS), established within the Constitutional Framework for Provisional Self-Government in Kosovo promulgated in May 2001, are part of the source of law in Kosovo and Metohija provided that they have been approved of by the Directive of the UNMIK Special Representative. Apart from the aforementioned regulations, the public authorities are obliged to respect internationally approved standards concerning human rights such as the International Covenant on Civil and Political Rights (hereinafter: ICCPR) and the European Convention for the Protection of Human Rights and Freedoms, to name but a few.

Among the laws pertaining to the sphere of human rights protection in Kosovo and Metohija, the following Laws are in application: Provisional Criminal Code of Kosovo (PCC), Provisional Criminal Procedure Code of Kosovo (PCPC), - which were adopted through the UNMIK Directives No. 2003/25 and No. 2003/26 (they came into force on April 6th 2004), Law on Execution of Penal Sanctions (UNMIK Directive No. 2004/46) and Juvenile Justice Criminal Code of Kosovo – JJCC (UNMIK Directive No. 2004/8). The aforementioned, internationally recognised standards regarding human rights are also being directly applied.

With regard to the application of regulations, it may be claimed that there is no legal security in Kosovo and Metohija. Citizens, as well as the holders of legislative authority, frequently do not know which regulation should be applied in a particular legal matter. Namely, there have never been any set criteria determining which law adopted by the Republic of Serbia or FRY following 1989 should be considered inapplicable due to its discriminating nature. In most of the cases, the acting judges decide arbitrarily as to which law is to be applied in a particular legal issue. This practice leads to legal insecurity and discrimination among parties who receive different verdicts on the same legal matter depending on the judge who was presiding at the time.

Even when the applicability of law is not called into question, there are many situations in which individuals, administrative officers and courts are not sure about how to apply a specific legal provision. This is often the case with the UNMIK Directives, many of which have introduced new concepts and structures which had not previously existed in the current legal system. In other parts of Europe and the world, legal experts write commentaries which are then used in the interpretation of the most important laws. Such commentaries do not exist in Kosovo, except for those regarding the old Yugoslav laws, many of which have been replaced by the new ones.

The laws which have been passed by the Assembly of the so called ‘Independent Kosovo’, in the wake of the unlawful recognition of independence on February 17th 2008, have contributed to a further confusion in the legal system in Kosovo and Metohija. It was a package of laws envisaged by the so called the Ahtisaari Proposal for the status of Kosovo. These laws are used in regulating certain questions instead the UNMIK Directives (e.g. issues related to the return of property to displaced persons, privatisation and security service). However, so far UNMIK has neither approved of nor absolved in its Directives these regulations, so it is a moot issue which law is actually being used in Kosovo and Metohija.

There is confusion in the application of the enacted laws since certain provisions lend themselves to various interpretations. For instance, Article 254 of the Provisional Criminal Procedure Code in Kosovo stipulates that a public prosecutor or court may order on-the-scene investigation or reconstruction
of the criminal proceedings. As a result, neither the court nor the public prosecutor is sure what actually falls under the scope of their competence. Courts consider the public prosecutor to be competent, while the public prosecutor does not want to interfere with the courts’ authority. The fact that the court, public prosecutor and police have the right to conduct investigations or reconstructions only further complicates the matter.

A great problem in the legal system in Kosovo and Metohija, which has been pointed to in the OSCE annual reports, is the permanent lack of vacatio legis in almost all legislation passed by the Assembly (PIS) or in the UNMIK Directives. Vacatio legis is the deferment of the coming into force of a law, whose aim is to give the public and the institutions which will apply the law the opportunity to get adjusted and prepared for a new legal situation. So far, neither UNMIK nor PIS has agreed that there is need for the introduction of such practice. With the lack of this type of delay, UNMIK Directives and laws adopted by PIS come into effect immediately after their passing.

THE JUDICIARY SYSTEM IN KOSOVO AND METOHIZA

In the justice system of Kosovo and Metohija there is a dichotomy stemming from the existence of international judges and prosecutors, working in the UNMIK Department of Justice, who are elected by the Special Representative to a six-month term of office. There are also local judges and prosecutors who have been too elected by the Special Representative since February 17th 2008, on the proposal of the Kosovo Judicial Council.

The mechanism of appointing international judges and prosecutors proves that the independent judiciary does not exist in Kosovo and Metohija as the holders of judicial functions are appointed and dismissed by the Special Representative. The holders of judicial functions are appointed periodically most usually every six months, which jeopardises their independence and impartiality. UNMIK’s detailed procedures for the election of these judges are not transparent for the public and they depend solely on the Special Representative. International judges and prosecutors are not subject to general rules concerning dismissal, except for the rules holding for all UN officials. Consequently, they still sign contracts with the UNMIK Department of Justice to only six months with a possibility to extend their term. The aforementioned facts show that there are no indicators of independence and impartiality regarding international judges and prosecutors, and that they are practically mere servants who are dependent on the UNMIK Department of Justice, i.e. the Special Representative him/herself as the head of Administration in Kosovo and Metohija. The regulations which apply to the mentioned officers are the following: UNMIK Directive No. 2000/06 as of February 15th 2000, which was amended by Directive No. 2000/34 on May 27th 2000 and Directive No. 2001/2 as of January 12th 2001.

Regarding local judges and prosecutors, it may be said that in Kosovo and Metohija there is no independent judiciary. Independent judiciary implies that both parties are involved in the prosecution; the executive authorities or any other entity must not put any kind of pressure on the judge or interfere with judicial matters. The general concept of independent judiciary in Kosovo and Metohija does not prevail. Both international and local administration has unofficially contacted judges regarding various legal matters.

A typical example of the influence exercised on the judiciary can be seen in complaints for compensation on the ground of destroyed property of non-Albanians since June 1999. Shortly after KFOR entered the Province in 1999, a great proportion of movable and immovable property owned by non-Albanians was destroyed by Albanian extremists. Conflicts which broke out in March 2004 brought about yet another wave of destruction of this property.
The people whose property was damaged demanded that their cases be solved before the regular courts in Kosovo and Metohija (local courts which were set up by UNMIK administration). In 2004 thousands of Serbs in Kosovo filed complaints to the regular court, seeking compensation for the damage inflicted after June 1999. A considerable number of these complaints have been filed against UNMIK, KFOR, Provisional Institutions of Self-Government – Government of Kosovo and local self-governments, which are responsible for the damage because they did not take any precautionary measures to protect the property at issue (pursuant to Article 180 of the Law on Contracts and Torts of SFRY No. 29/78). According to estimates of the OESC, UNMIK and Ministry for Kosovo and Metohija, 22,000 requests have been filed.

On August 24th 2004, the UNMIK Department of Justice sent a circular letter to presidents of the Supreme, District and Municipal Courts, issuing the instructions not to deal with the mentioned cases, as an adequate solution for them still cannot be found. On November 15th 2005, the Department of Justice issued a new set of instructions requesting from the courts to deal only with those complaints for compensation of damage inflicted by the identified persons following October 2000.

The rationale provided for this instruction by the UNMIK Department of Justice was that the great number of complaints would heavily burden the court’s functioning, and that the already great number of unsolved cases would become even greater. This instruction affects human rights as it restricts access to courts to Serbs in Kosovo who have filed a complaint, as well as their right to have their cases solved in due time. Owing to the instructions issued by the Department of Justice, the aforementioned cases are still pending their outcome before the courts.

Moreover, there is no legal remedy that could alleviate interminable court proceedings.

**HUMAN RIGHTS PROTECTION**

It could be said that there is generally no legal security in the territory of Kosovo and Metohija. The deficit of legal security is the product of the overall legal chaos, which has often been mentioned in reports by OSCE, Amnesty International and other international and domestic non-governmental organisations. The heart of the matter lies in the lack of responsibility for and awareness of human rights among international and country’s civil servants. Moreover, this chaos in the legal system only contributes to insecurity concerning human rights issues.

The territory of Kosovo and Metohija is one of the rare places in Europe where the European mechanisms for the protection of human rights of the Council of Europe are not applied. Although Serbian Government ratified the European Convention on Human Rights in 2003, this Convention has not been applied in the territory of Kosovo and Metohija which is under the jurisdiction of UNMIK. The status of UNMIK as an international mission prevents ratification of this Convention which is a multilateral agreement reached among the signatory countries. Although UNMIK is responsible to UN Council of Europe, this body deals with individual complaints regarding human rights.

Most often, the citizens of Kosovo and Metohija are not informed enough on the existing regulations and their rights. Also, it may be said that an independent mechanism for the protection of human rights does not exist.

Situation regarding disrespect for human rights is further aggravated by the expiry of the International Ombudsman’s mandate in December 2005 (Mr Marek Novitsky). According to UNMIK
Directive No. 2006/06 and 2006/15, the Institution of Ombudsman was transferred onto the local self-government institutions. The complaints against UNMIK have been excluded from the authority of the Ombudsman in Kosovo. As a result of the restrictions placed on the authority of the Ombudsman, a competent body which would investigate into UNMIK with regard to violations of human rights and abuse of an official position does not exist. This should mean that UNMIK administration cannot be brought under any mechanism of responsibility. After the restriction of its authority, the Ombudsman constantly demanded instructions from UNMIK as to what should be done in the unsolved cases against the administration of UNMIK. Since the answer to these requests has not been given, these cases have been closed due to the lack of jurisprudence.

In the attempts to fill out the holes existing in UNMIK responsibility, the Special Representative set up an Advisory Human Rights Council via Directive No. 2006/12. The Council was established so that it could deal with complaints concerning human rights violated by UNMIK or the local authorities. The Council consists of three international legal experts, who are proposed by the President of the European Human Rights Court, and elected by the Special Representative. Regarding complaints which have been filed, the Council draws conclusions which may be implemented only if the Special Representative, who will draw up separate decision on this, agrees. It is clear that this advisory body is in fact part of UNMIK, as their members are elected by the Special Representative, who is representative of the executive power, and is not an independent mechanism for the protection of human rights.

The mandate of the OSCE mission in Kosovo and Metohija implies monitoring of the state of human rights in Kosovo and Metohija as well as control over public authorities in terms of human rights. However, this Mission has no control mechanisms to sanction violations of human rights, and in itself represents the Third Pillar of UNMIK. In other words, is part of the executive authority, which is a unique characteristic in the functioning of OSCE Missions in other countries in the world.

Regarding KFOR, the international military Mission in Kosovo and Metohija, there are still no mechanisms for the protection of standards of human rights and freedoms, which have been violated through the operation of KFOR. There are many cases when KFOR uses private land for construction and maintenance of their quarters but without paying rent to the landowners. The owner may get certain compensation only if he/she can get in touch with the KFOR National Contingent Command which uses the land in question. However, this practice varies among various contingents. In most cases, KFOR offers meagre compensation which is at odds with the market price, acting on ‘take-it-or-leave-it’ principle and only for the period after an agreement has been reached and not for the whole period during which the land was in the ownership of KFOR. The owner of the land may file a complaint against such a low compensation only to a special commission within the High Command of KFOR, which usually rejects such requests. In Kosovo and Metohija there is not a court or any other body whereby the owner could seek compensation for the land which has been used by KFOR.

There have been situations when in a car accident caused by a KFOR vehicle in which grave injuries were inflicted or death ensued, the injured party or family members were not able to get compensation for the damage from KFOR in court proceedings since the KFOR personnel are exempt from civil and criminal liability under UNMIK Directive No. 2000/47.

A typical example of the restriction of human rights by the local Albanian authorities in Kosovo and Metohija is a Decision made on July 4th 2007 saying that in the territory of Kosovo and Metohija a motor vehicle cannot be registered unless one produces evidence on settled electricity bills.

This Decision was made in the form of a Memorandum of Cooperation and Understanding signed on July 4th 2007 between the Ministry of the Interior, Ministry of Energy and Mining and Kosovo Energy Corporation. Article 3 of the Memorandum prescribes that in registration of vehicles every
owner or user of the vehicle in question is obliged, besides other documentation, to produce evidence on the payment for the consumed amount of electricity, any proof regarding debt reprogramming or any other evidence which proves that he/she is not indebted to the Kosovo Energy Corporation (KEC).

Such a decision made by the provisional bodies of Kosovo cannot serve as a legal basis for determining additional obligations in registering motor vehicles. Such an obligation may be determined only by law or its amendment which would be adopted by the Assembly, and confirmed in the Directive issued by the Special Representative of the Secretary-General of the UN. Memorandum of Cooperation between the provisional bodies and other institutions may be used to establish technical cooperation among them, but cannot be used by any means for determining obligations for citizens as these may be set only by laws or by-laws adopted in accordance with law and by following the prescribed procedure.

Although the aforementioned decision refers to all citizens, it strikes the Serbian community the most. The majority of Serbs have been evicted from their houses or apartments and live as internally displaced persons in Serbian enclaves, very often in a difficult financial position. Even those Serbs who stayed in their homes have been dismissed from work and cannot make for a living. Under the circumstances, Serbs normally cannot pay their electricity bills. Also, it should be mentioned that the Kosovo Energy also fails to provide its services to the users, and does not provide them with regular power supply. According to unofficial records, in Kosovo and Metohija electricity bills have not been settled by 70% households, among which are Serbs. Also, in many cases KEC sent Serbian citizens bills for the electricity which was used by the Albanians who had usurped their houses following June 1999.

PROHIBITION OF TORTURE (Article 7 of ICCPR)

Officers of the UNMIK police force and KFOR are protected by immunity provisions so that only the country that has sent them may take action against them. Moreover, this usually happens after the person has been sent back home, which practically denies the complainant the information on the results of the investigation, if there has been one in the first place. For this reason, the future police and justice mission of the EU in Kosovo and Metohija should be brought under the authority of the Constitutional Court and Ombudsman, which would meet the obligations as set forth in Article 2, Paragraph 3, Point (a) of ICCPR – the right to an effective complaint even in cases when the offence has been perpetrated by the person acting in an official capacity. OSCE has supervised cases in which the authorities did not carry out proper investigation into the alleged inhumane and degrading treatment and/or alleged offences which were committed by either official or natural persons. OSCE states that in a case investigated by the prosecutor’s office, the police arrested a person alleged to have committed a criminal offence. In the first interview at the police station, the suspect admitted to having committed the criminal offence. Later on, the suspect told the prosecutor that he had admitted to the alleged crime only because he had been threatened and beaten by the police. He also showed his ripped clothes which revealed the signs of the alleged maltreatment. The victim of the alleged criminal offence in his/her statement before the prosecutor confirmed that he had witnessed the policemen’s abuse of the suspect. Nevertheless, the prosecutor did not start the investigation into the alleged abuse. Instead of that, the judge in charge of the pre-inquest hearing sent the defendant to police custody for a month. In a second case, the public prosecutor rejected the police criminal charges stating that a husband had attacked his wife inflicting upon her physical injuries, which means he committed a criminal offence which is to be prosecuted ex officio. According to the information gathered by the police, this couple had previously had similar violent outbursts. Briefly, prosecutors were not quick enough to investigate and prosecute possible inhumane and degrading treatment. Therefore, according to domestic law, both standards regarding paying due attention and the prosecutor’s legal obligations have been violated.
It is extremely important to shed light on the fate of missing and kidnapped Serbs and other non-Albanians since June 1999 in the light of the facts published in Carla Del Ponte’s book “The Hunt: Me and War Criminals” in which she states that the victims from Kosovo and Metohija, who had been intended for organ harvesting, were taken to Albania. The books also levels accusations against the current Prime Minister of Kosovo, Hashim Taci, and the former Prime Minister and one of the KLA commanders, Ramush Haradinaj, who was acquitted of all charges by the Hague Tribunal. Although having been informed on this, UNMIK administration did not react, while the involvement of the highest officials of provisional institutions in Kosovo in these crimes and the lack of effective protection of witnesses in criminal proceedings, leaves no hope that the Kosovo judiciary will in any way react in the case mentioned, which is a direct violation of international obligations stated in Article 2, Paragraph 3, and Articles 6 and 7 of ICCPR (right to life, prohibition of torture). So far, only the War Crimes Prosecutor's Office of the Republic of Serbia has reacted by submitting a proposal to the War Crimes Council within the Belgrade District Court that certain investigation actions should be initiated.

HUMAN TRAFFICKING – prohibition of slavery and slave-trade (Article 8 of ICCPR)

Human trafficking is still the biggest problem in the field of human rights in Kosovo. By investigating into human trafficking files in 2006 and 2007, OSCE discovered a disconcerting lack of preparedness of Kosovo’s bodies to handle these cases. According to the OSCE report on human trafficking in Kosovo and Metohija from November 2007, since the beginning of 2006, 41 cases on human trafficking have been initiated, but they are still lying unsolved in Kosovo courts. During this period, a number of other cases concerning possible human trafficking, which have been qualified by the prosecutors as minor criminal offences, reached courts. The number of unreported cases is probably much bigger. Article 2, Paragraph 3 of ICCPR stipulates that the country’s prosecutors are obliged to carry out full-scale investigations into violations of human rights, including those which were committed by natural persons. OSCE supervised a number of cases in which prosecutors failed to initiate or expand investigations against persons suspected of human trafficking. Due to the lack of prosecutors’ diligence, in the investigations aimed at finding any evidence based on which the crime of human trafficking can be proved, the court did not convict the accused person for human trafficking in none of the cases even though there was irrefutable evidence regarding every single point of the criminal act. Investigations which are conducted may involve telephone tapping of the accused person, video surveillance, provision of financial documentation (such as receipts on wages or the accused person’s bank reports) or medical reports indicating maltreatment undergone by the victims. It has been noticed that prosecutors do not prosecute persons who are known to have been using sex services of human trafficking victims. Persons enjoying sex services provided by the victims of human trafficking must be prosecuted as they create demand for sex exploitation of human trafficking victims. In fact, traffickers dealing in women and children for sex services would not have any interest in doing such business if it were not for the people who use these services. Furthermore, users of sex services consciously contribute to the exploitation of these victims. Therefore, it is essential that the police and prosecutors react rightfully during investigations and criminal proceedings. However, although in many cases of human trafficking alleged victims have reported names (e.g. customers, bars and motels) of people who used their services, in most of these cases the authorities have not conducted investigation in order to prosecute the alleged perpetrators. In a few cases that were monitored, the authorities did not prosecute persons who had allegedly participated in human trafficking for other criminal offences committed to a victim. OSCE notices a disturbing tendency of the judicial authorities to view criminal offences, such as assault, infliction of physical injuries and rape, as the main parts of human trafficking, rather than as separate criminal offences.
All state authorities dealing with prosecution of human trafficking should, above all, commit themselves to providing safety for victims of human trafficking. It has been noticed that police, prosecutors and judges fail to understand the role and position of victims of human trafficking. There are a number of problematic areas. First of all, competent state bodies often do not recognize victims of slave-trade or they consider them victims only if they can produce some evidence against alleged human traffickers. Second of all, OSCE supervised cases of unlawful prosecution of (possible) victims of human trafficking on the grounds of prostitution or illegal residence in Kosovo. Third, it is a widespread situation that victims are not informed on their rights in criminal proceedings, and they are not provided an attorney or counsel. Finally, OSCE watched over cases in which victims of slave-trade were interrogated unlawfully or insolently by judicial authorities. Since public bodies are obliged to identify potential victims of human trafficking, the victims should receive optimal protection and care regardless of the level of cooperation with the police and prosecutors. A disconcerting tendency has been noticed with the police who detain possible victims of human trafficking and/or threaten them with charges which will be pressed against them unless they provide incriminating evidence against the alleged human traffickers.

**FREEDOM AND PERSONAL SECURITY (ARTICLE 9 OF ICCPR)**

- The Case of Mr Marko Simonović -

We are stating the case of Mr Marko Simonović, arrested in Priština on September 25th 2007 by the Kosovo Police Service under dubious circumstances. Mr Marko Simonović was arrested on charges of participating in a group which had committed murder of four persons and attempted to do the same with another two Albanians in the residence area Aktaš in Priština on June 15th 1999. At the time of this crime, Mr Simonović was 16 years old. In June 1999 Mr Simonović was forced to leave Priština with his family as most other Serbs in this city. Mr Marko Simonović worked in the Ministry for Communities and Return within the Provisional Institutions of Self-Government in Priština from June 1st 2005 until May 31st 2007. In order to be employed, he had to be issued by the Municipal Court in Priština a Decision HPN No. 5878/2005, dating May 10th 2005, stating that he was not under investigation and that he had not been previously convicted. The aforementioned also possessed an ID issued by UNMIK. All that time, no charges had been pressed against Mr Simonović and he was under no investigation regarding war crimes. He had been living in Priština relatively peacefully for almost two years then. He was arrested on May 29th 2007 at the police station Centre in Priština where he had come for the second time, asking for help and police intervention after his family house, owned by his grandfather from his mother’s side, Mr Živorad Krstić, had been usurped again. On June 25th 1999, his grandfather was dragged out of the bus on his way from Priština to Prizren in the village Crnovljevo by KLA members and has been reported missing ever since. The family house was usurped immediately after the war by Mr Miljajim Zeka, the alleged publicist and employee in TV Priština. The Simonović family reported the usurpation to the Housing and Property Directorate, which issued a decision ordering Mr Miljajim Zeka to vacate the usurped property and return the house to the family Simonović. After having been previously moved out of the house by the HPD, Mr Zeka once again demolished the front door and usurped the house again. In the proceedings which the family Simonović initiated before the HPD in order to get their family house back, Mr Miljajim Zeka produced evidence of ownership in the shape of the purchase agreement which had been allegedly signed by Mr Živorad Krstić in the capacity of seller on August 15th 2001, i.e. three years after his kidnapping. The HPD reached a decision in favour of the family Simonović. However, Mr Marko was arrested at the police station when he came to demand police intervention against Mr Miljajim Zeka, who had refused to willingly leave the house. There are serious indications that the usurper, Mr Miljajim Zeka, arranged for the arrest of Mr Marko Simonović in order to cover up illegal activities around the family house.
Not only was Mr Simonović interrogated immediately after his arrest by the local district prosecutor in Priština, but the only investigation procedure involved was the identification of the carried out by the alleged witnesses. The identification parade was conducted in a very suspicious way, and its results were revealed on April 10th 2008. Prior to this, Mr Simonović had been brought to and sent away from the District Court in Priština on two occasions, and at the time he was held tied to a bench in the backyard. His photo also appeared in the press. On the day of line-up, Mr Simonović was the only person wearing blue clothes on the upper part of his body. It is indicative that all persons participating in the identification claimed they had not seen him since 1999. At the time when the crime was committed, he was 16 years old. There is an objective question that arises: is it likely that he had not undergone any physical change since then, having in mind his formation age and 8 years which had elapsed? Mr Marko Simonović is currently in custody while the investigation is on even though no other action has been undertaken except for the identification. However, according to law, cases involving detention are supposed to be dealt with as soon as possible. Moreover, his detention period should be brought down to a minimum bearing in mind that Mr Simonović is being treated as a minor in this case as the alleged crime was committed at his age of 16. For all the reasons mentioned, Mr Marko Simonović went on hunger strike on April 10th 2008 demanding that his case be opened as soon as possible.

There is reasonable doubt that the accusations levelled against Mr Marko Simonović for the alleged murder have been rigged so that the family Simonović could be prevented from getting back their usurped family house situated at Aktaš St. 80 in Priština. The house was usurped by a certain Mr Miljajim Zeka from Priština, who, according to family Simonović, drew up a false purchase agreement in 2001. After this Mr Marko Simonović went to the police station in Priština and demanded that the usurper be evicted from the house when all of a sudden the charges for murder in 1999 appeared.

- The case of Mr Momčilo Jovanović -

The case of Mr Momčilo Jovanović, 47, a displaced person from Vitomirci near the town of Peć, who fled to Arandelovac with his family after June 1999, is rather unique. Mr Jovanović was arrested on March 12th 2008 in Peć as a member of a group of displaced persons who were visiting their demolished homes in Vitomirci. The visit was organized by UNHCR and the Danish Refugee Council. Mr Jovanović was arrested after he was given away by his former Albanian neighbour, Mr Delija Prelvukaj. Mr Prelvukaj accused Mr Jovanović of the alleged crime from May 12th 1999, saying that he was a member of a group who killed his two brothers and kidnapped his sister. Although there had been no indictments or reports against Jovanović regarding any criminal offence during the armed conflict 1998-1999, and although he had been to Peć on two previous occasions without any problems, the international prosecutor Ms Marija Bamijeh requested his detention. On March 15th 2008, the international judge Ms Lolita Dumalo turned down the request for court custody due to the lack of material evidence. Unfortunately, owing to the pressure from the Albanian side and the UNMIK Department of Justice, the initial decision was altered by the Decision of the District Court in Peć No. 33/08 on March 18th 2008. Mr Jovanović was sent to court custody for 30 days. Meanwhile, another Albanian family Grabovci appear with accusations that Mr Momčilo Jovanović killed three male members of their family.

On March 27th 2008 acting upon the defendant’s complaint, the District Court in Peć alters the decision on detention so that Mr Momčilo Jovanović is sentenced to in-house custody instead of going to prison. As Mr Jovanović’s family property was demolished, and his family is now living in Arandjelovac, the courts decided to place Mr Jovanović in the house of a Serb, Mr Miodrag Dašić, who lives in the neighbouring village Brestovik. The Ministry for Kosovo and Metohija requested that the UNMIK Department of Justice and the Special Representative allow Mr Jovanović to be out on bail and defend
himself. The bodies of the Republic of Serbia had to guarantee that the defendant will be available to the judicial authorities in the course of the proceedings. On April 11th 2008 the International Council of the Kosovo Supreme Court turned down the request from the Ministry for Kosovo and Metohija, providing an explanation that the Agreement on technical cooperation in cases like these has not been signed between UNMIK and the Republic of Serbia. The Decision of the Kosovo Supreme Court from April 25th 2008 extended in-house custody for Mr Momčilo Jovanović until June 11th 2008 with regard to being part of the group which participated in the killing of the family Prelvukaj members, but in-house custody was retained in relation to the accusations for the killing of the members of the family Aliju.

Although investigation has not been initiated yet and since no other investigating activities except the hearing of witnesses have been carried out, the District Court in Peć extended in-house custody until October 10th 2008. Not once has Mr Momčilo Jovanović breached the conditions of in-house custody, nor has he attempted to escape. However, the international prosecutor Ms Marija Bamić suggested at one point that the defendant should be sent to prison as Mr Miodrag Dašić, whose house he had been staying in, no longer had the conditions necessary to accommodate Mr Jovanović. This is an unprecedented example in jurisdiction that a harsher measure is determined for the accused person who has not in any way violated any of the existing measure. Even the international judge and the prosecutor themselves claim that there is no reasonable doubt that Mr Momčilo Jovanović committed murder in the family Prelvukaj based on which he was arrested in the first place.

This crime is a typical example of putting pressure on other potential returnees of Serbian nationality, who are thus prevented from trying to return to Kosovo and Metohija under threat of being arrested and prosecuted based on testimonies of Albanians alone, with UNMIK authorities assisting them in the indictment and proceedings.

FREEDOM OF MOVEMENT (ARTICLE 12 ICCPR)

Lack of security and no freedom of movement for Serbs and members of other non-Albanian communities are still evident in the territory of Kosovo and Metohija. Consequently, persons that have been banished from the territory of Kosovo and Metohija are not coming back to their homes.

Since the NATO intervention, more than 230,000 people of Serbian and other non-Albanian nationalities have been banished from Kosovo and Metohija, while 22,000 of them stayed in the Province under the status of displaced persons (they live in Kosovo and Metohija but they have been banished from their homes). Nine years after the establishment of UNMIK, 16,000 returnees have been registered according to UNMIK data, but even such a small number of returnees in comparison to a whole banished population seem to be enough to say there is some kind of return, if fictitious. According to the records from the Republic Commissariat for Refugees, there are only 2,000 real returnees as the majority report their residence only in order to get certain refugee privileges, while they normally live with their families in central Serbia.

These facts indicate that in Kosovo and Metohija non-Albanian population has no freedom of movement or security both due to direct pressures and threatening by the radical Albanian extremists as well as to veiled pressures from the local administration. We are stating the example of a pre-war president of the municipality Mr Klin Dabižljević who was forbidden by the municipal authorities of Klin in 2006 to return to this place because of the alleged crimes he had committed during the war conflicts. However, the aforementioned person had never been prosecuted indicted before.
The case of Mr Momčilo Jovanović, who was arrested in March 2008 on his visit to his demolished house in village of Vitomirici, is another example of pressures put by the Albanian local authorities on the potential returnees.

The situation in Dečani is particularly serious since three Serbian returnees (Ms Milanka Popović, Ms Vesna Ilić and Mr Božidar Tomić) have left this town since June 6th. Their houses and apartments were demolished, their land usurped, so they returned to Dečani expecting the local authorities to give them land and renovate their houses and apartments. On May 21st 2008 the returnee Mr Božidar Tomić was physically assaulted and hurt; his house had been usurped by his Albanians neighbours and he was denied access to it.

On July 17th 2008, at the centre of Istok, a Serb, Mr Žarko Orović, a displaced person living in the area, was beaten and mugged; he was visiting his demolished property in village of Dobruša and municipality Istok intending to check what the conditions were like for his possible return. Mr Orović and his spouse were intersected by two persons of Albanian nationality at the centre of Istok, and were asked to hand in their IDs after which Mr Orović was beaten and robbed of EUR 350. Kosovo Police Station has not tracked down the attackers yet.

In the village of Preoce near Lipljan, some Albanians attacked their neighbours, brothers Mr Branko and Dragan Nedeljković, while they were working on their family farm inflicting hard physical injuries to them because they refused to the Albanians’ order to stop working. The property of the Nedeljković brothers is located near the illegal building site intended for the Albanians.

In the village of Suvi Do near Kosovska Mitrovica, the Albanian population have been trying for months to build a piping system across Serbian properties. There are no urban blueprints for this piping network and property cases have not been solved, which results in conflicts with Serbian owners. In an incident, on July 7th 2008, Albanians seriously injured Mr Predrag Jeftić as a result of a feud over the system’s construction. Suvi Do normally has forty Serbian households, completely surrounded by the Albanians and it can be assumed that the construction works, encouraged by the president of the Albanian municipality of Kosovska Mitrovica, Mr Bajram Rehxhepi, the former KLA officer, are in fact geared towards banishing the Serbian population.

Another example of institutional pressure put on non-Albanians is a case in village Berivojce near Kosovska Kamenica. The Assembly of the Municipality Kosovska Kamenica reached a decision to build a mosque in the part of the village mainly populated by Serbs. Due to a huge unrest on the Serbian side, the municipality representatives of UNMIK suspended the decision on building, but the municipality resumed works later on, causing conflicts between the Serbian community on one side and Roma and Albanians on the other.

GUARANTEES FOR PROCEDURE RIGHTS IN CRIMINAL PROCEEDINGS (Articles 9, 14 and 15 of ICCPR)

Guarantees for procedure rights in the criminal proceedings (especially the rights of the convicted person), guaranteed in Articles 9, 14 and 15 of ICCPR, have been implemented in the Provisional Criminal Procedure Code of Kosovo. There have been many violations of these guarantees, which have been pointed out in the OSCE monthly reports during 2007 and 2008:
Persons arrested by the police are often deprived of freedom for more than 74 hours, i.e. more than it is set forth by the law, which is not in conformity with domestic legislation and international standards (Article 9 of ICCPR).

In some of the observed cases, the Prosecutor’s Office carried out investigation without a previous decision on conducting the investigation, as prescribed by the law and guaranteed by Article 9 of ICCPR (in one case, which dealt with alleged criminal offences of bribery and abuse of official position, District Public Prosecutor even said that he failed to make a decision by mistake because he wanted first to be sure about the qualification of the crime he was investigating into. After the hearing of the accused and the injured parties on October 23rd 2007, a decision was issued, bearing the following date – October 8th 2007.

The accused person pledged guilty without having been informed on the consequences of such a pledge; they were convicted based on such an invalid pledge (contrary to Article 14, Paragraph 3, Point (d) of ICCPR).

It has been found that a number of district and municipal courts in Kosovo still do not make public a full and updated schedule of trials, thus violating the principle of the public character of trials (Article 14, Paragraph 1 of ICCPR). This problem affects the work of international judges. Very often the members of staff in the local courts do not put up the schedule of public discussions chaired by international judges, mainly because they are not given in advance enough information on the inquest by the international staff. Therefore, in most of the cases, the only way of getting necessary information is to go to the judge in person (domestic or international), which is not an appropriate way to guarantee publicity of the court discussion in question. For example, the trials schedule is never posted in the Municipal Court in Priština and District Court in Gnjilane, and almost never in the District Court in Peć. The Human Rights Fund in its report on trials regarding war crimes in Kosovo and Metohija, singles out the case against Mr Bedri Krasnići, who was charged by the international judge for an assault on a vehicle with Kosovo Police Service officers on November 23rd 2003, when two officers were killed and one was injured. The assaulted policemen were investigating into the politically inspired murders in the region of Dukadin. The defendant was for some time a follower of Mr Ramush Haradinaj. The Trial Chamber of the District Court in Peć presided by the international judge, found the defendant guilty and sentenced him to 27 years in prison. What is characteristic of this trial is the fact that the major part of the trial was inaccessible to the public, and it involved only the prosecutor, defendant’s counsel and plaintiff’s attorney.

Courts have not respected the principle of legality (Article 15 of ICCPR) by prosecuting persons on charges for criminal offences that at the time of their commission did not constitute a criminal offence, or by passing sentences exceeding the maximum which is set by the law. In a case at the District Court on November 7th 2006, an indictment was confirmed against the defendant charged with human trafficking in compliance with Article 139, Paragraph 3 of PCC for which a sentence of 7 to 20 years of imprisonment is predicted. However, the alleged offences occurred in 1999, two years before human trafficking was classified as a specific criminal offence in the legal system of Kosovo, and five years before the enactment of the law on which the indictment was based. In a second trial before the District Court on August 16th 2007, the Court convicted two persons of illegally crossing the border, sentencing each to EUR 900. The law normally sets a fine of up to EUR 250 for this offence. In the first example, the court applied the criminal law retroactively, while in the second case it pronounced a more severe punishment than allowed by the law, which is in contradiction with Article 15 of ICCPR.

It is obvious that in the majority of the observed cases the Kosovo courts still fail to legally justify cases when imprisonment is the preferred solution. International human rights standards demand that courts state reasons behind their decisions. Adequate explanations are critical for the defendant to be able to enjoy his right to appeal in case imprisonment decision (Article 9 of ICCPR).

There have been cases in which courts conducted general hearing without the defendant’s presence, thus violating his right to presence in trial and defence (in contrast to Article 14, Paragraph 3 Point (e) of ICCPR). In the case before the Magistrates’ Court in Peć, thirteen persons were convicted of violating public order and peace. In court hearings held during four days, the judge invited defendants to
testify one by one. After this, the defendants who did not have a defence counsel were asked to leave the courtroom. None of them was present when a few witnesses were examined. This is so partly because the judge’s office where the trial was taking place is so small that only four people, besides judge, could fit in at the same time. The fact that the judge failed to ensure the presence of the defendants violated the right to fair trial, preventing the injured parties from following the procedure, presenting their defence and cross-examining the witnesses. In the second case regarding a number of theft allegations before the District Court in Prizren, two defendants were brought before the investigating judge on November 22nd 2006 for hearing on imprisonment. Ten minutes into the hearing, the third defendant was brought into the courtroom. Instead of resuming the trial, the investigating judge only continued with the procedure. In this case, the absence of one of the defendants at the start of the trial prevented him from being informed of his rights and accusations levelled against him. The defence counsel could not hear the prosecutor’s reasons for sending his clients back to prison, and therefore was not able to defend the defendant in the appropriate way.

INVIOLABILITY OF HOME PRIVACY, SECRECY OF LETTERS AND OTHER KIND OF CORRESPONDENCE (Article 17 of ICCPR)

In the Provisional Criminal Procedure Code of Kosovo there are no provisions explicitly dealing with confidentiality of the lawyer’s office or his archives containing things pertaining to his client. However, this issue is regulated by the Law on Advocacy and Other Legal Assistance from 1979. Problems are caused by inadequate conditions in interrogation rooms in many prisons and courts. Guards are usually deployed where they can observe but not hear conversations between counsels and their clients. There have been rare exceptions when the policemen were deliberately obtrusive due to poor training. Conversation rooms are the biggest obstacle in having effective and confidential conversations between counsels and persons in custody since there are usually no other isolated rooms for this purpose. Sometimes one has to speak loudly through a small opening in the door, have a conversation in a crowded hallway, or ‘borrow’ a policeman’s, prosecutor’s or judge’s office in order to talk to the defendant, sometimes even in the presence of the official. These conditions are inconducive to a free and open exchange of information and consultation, as envisaged by the provisional Law on Criminal Procedure and international standards.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (Article 18 of ICCPR)

In some cases, during March 2004 conflicts, the accused persons were charged with minor offences, while the facts in the indictment pointed to serious crimes. At the Municipal Court in Uroševac, on July 16th 2004 two men accused of participating in a group that had committed a criminal offence were convicted. There is no doubt the court found that at least one of the accused men threw a Molotov cocktail into an Orthodox Christian church on March 17th 2004. These facts go to say that many serious criminal offences were committed, such as instigation of national, racial, religious or ethnic hatred, conflicts or intolerance as well as/or causing public threat, so the Municipal Court in Priština confirmed the first degree decision on July 24th 2007. The prosecutor should have pressed charges for more serious acts based on the facts stated in the indictment. As a result of this, a number of convicted persons got away with only mild punishment as they were not convicted of the criminal acts they had actually committed.

The freedom of religion is violated in the case of Orthodox Christians by demolishing and burning Orthodox churches, whereas radical Muslims in Kosovo and Metohija are not punished when abusing their faith when committing criminal offences. The American representative for the Balkans, Mr
Robert Gelbard, in 1998 labelled KLA as an obvious terrorist militia. KLA members were coached by fighters from Kuwait, Saudi Arabia but also from Germany, as well as Afghan and Turkish instructors. At the request of an Arab, Mr Abdullah Duhajman, chief of the World Islamic Call Society and close associate of Mr Osama Bin Laden, Albanians Mr Ekrem Avdiju and Mr Kopriva Spent organised a mujahedin brigade (consisting of Arabs, Ethiopians and Albanians). After the brigade was disbanded by the Ministry of the Interior of the Republic of Serbia, they were convicted by Serbian courts in 2000 and the following year the competent authorities of the Federal Republic Yugoslavia gave them amnesty, allegedly under duress of the international community. The name Abdullah Duhajman is indirectly linked to 9-11 and he was convicted to only one year in prison in 1996 in Saudi Arabia because he obviously had some powerful protectors in Afghanistan like his co-fighters in Kosovo and Metohija. After the arrival of the international defence force in Kosovo and Metohija, some terrorist groups continued their activities directed towards Serbian population, international force members and members of Serbian police force and army in the border regions of Preševo and Bujanovac, even across the administrative border from the territory of Kosovo and Metohija. The greatest portion of resources for the mentioned terrorist activities (which is in itself a criminal offence of enabling terrorism from Article 112 of PCC, for which a punishment of up to 15 years of imprisonment is prescribed) comes from the funds of non-governmental organisations which finance the construction and operation of religious facilities and activities controlled by the radical Muslims movements such as Salafis and Wahhabis.

POGROM IN MARCH 2004

As early as 2006, the United Nations Human Rights Committee in its Conclusions on the Implementation of ICCPR in Kosovo and Metohija expressed deep concern about the low level of civil rights protection in Kosovo and Metohija. Of special concern were: limited freedom of movement and inaccessibility to fundamental rights of minority members living in micro-enclaves, including the right to personal ID, use of legal remedies, health and educational services. Due attention was paid to non-punishing of perpetrators of war crimes against humanity, as well as to punishing ethnic-based criminal offences. The Committee emphasises the fact that UNMIK did not carry out an efficient investigation into the crimes committed in March 2004, and the perpetrators were not brought before justice.

Based on the information which OSCE obtained from the UNMIK Department of Justice, from March 2004 to April 2008, 242 persons were convicted (206 of them before the local and 36 before the international prosecutors). Apart from that, 157 persons were convicted at magistrates’ courts. Since December 2005, there have been only 21 new case files (involving 42 accused persons). 19 persons were killed (11 Kosovo Albanians, 8 Kosovo Serbs), more than 900 people were injured (including 65 members of the international police force and 58 members of the Kosovo Police Service), while more than 800 buildings were demolished or damaged (including 35 churches and monasteries). There is inadequate access to the vulnerable communities, so the victims and witnesses are left in the dark about the outcome of their cases, which even more destroys the confidence in the system. Fourteen people were convicted to prison sentences ranging from 6 months to 18 years; others are on parole or had to pay fines. Only one convicted person was pardoned. The final charges against 19 people are lawful. Comparing statistical data is complicated due to differences in ways of filing, but it is clear that in many cases related to serious March crimes there has been no progress in court proceedings.

Despite the fact that courts are obliged to conduct trials in a reasonable period of time (Article 14, Paragraph 3, Point (c) of ICCPR) which has been emphasised in the OSCE reports, the following points

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have been noticed: (a) undue delay when it comes to the police sending reports on ‘new’ cases; (b) delays in initiating general hearings after an indictment has been confirmed; and (c) unreasonable court delays caused by courts themselves in reaching first degree verdicts. According to June 2008 OSCE report, the UNMIK police force sent case files referring to the March 2004 conflicts to Prosecutors’ offices only in November 2007 without any legal justification (e.g. 11 criminal charges to the District Prosecutor’s Office in Prizren for a criminal offence of provoking general danger, 3 minor offence reports for violating public peace and order in Gnjilane); according to legal classification, these files have come under the statute of limitations. Moreover, in a few cases OSCE noticed that judges scheduled trials way outside the deadline prescribed by the PCPC. As a result, there were unjustifiable delays in cases which postponed the possible conviction of persons involved in the March 2004 conflicts. OSCE monitored case for which courts sent in a written copy of the verdict as late as 18 months after the reaching of the verdict, regardless of the fact that the three persons sentenced to prison spent that time in custody. OSCE also noticed that some of the complaints filed against cases linked to March 2004 conflicts, are often, with no reason, delayed. In some cases delays happen because the Prosecutor’s Office holds in the files. On May 11th 2006, the International Council in the District Court in Priština acquitted the accused person on two grounds for murder, and four grounds for attempted murder, where the victims were Kosovo Serbs on March 17th 2004. Acting on the complaint of the international prosecutor, the Kosovo Supreme Court sent the case to the Kosovo Public Prosecutor’s Office on August 18th 2006 in order to get his opinion. However, until this day (about 20 months later) there has been no response. Such delays cannot be put down to the complexity of cases or behaviour of the accused, so there is no justification for them.

OSCE noticed that courts usually do not take into account the ethnic motive (when it was not an element of the criminal offence) as an aggravating circumstance in cases related to March riots. At the District Court in Lipljane a case was documented, in which three men were convicted for participating in the group who committed a criminal act and who were found guilty by the court in June 2007 and sentenced to prison from four to six months; the court took into account as an extenuating circumstance ‘the general situation created on March 18th 2004’.

According to estimates of the UNMIK police, 50,000 people participated in the riots so there is an unbelievably small number of indictments that were lodged against the perpetrators.

The general conclusion in terms of sanctioning persons responsible for the March 2004 unrest is that neither UNMIK administration nor the local administration and judiciary took necessary measures against the perpetrators of criminal offences, i.e. Albanian extremists, which served as a clear signal that should another event like that happen, the perpetrators would get away relatively unpunished.

Here we state one more time the instructions of the UNMIK Department for Justice dating August 2004 which were issued to presidents of courts in Kosovo and Metohija that they should not act upon complaints for compensation for damage inflicted to demolished property, many of which refer to the property destroyed in March 2004 riots.

There are also records on the participation of Kosovo police force in groups committing violent acts and demolishing property, especially in the area of municipalities Kosovo Polje, Obilić and Lipljane. Neither the UNMIK police nor Kosovo Police Service conducted disciplinary procedures regarding these crimes, nor was there any record on prosecuting the members of Kosovo Police Service involved in the March riots.

WAR CRIMES
Despite millions of Euros invested in its financing, the electronic register is still not functional, which aggravates the state of incomplete cases and almost disables supervision and allocation of funds. According to Human Rights Watch 2008 Report, the consequence of such a state of affairs is an increasing number of incomplete cases with more than 36,000 unresolved criminal cases, out of which there are several hundred unresolved cases on war crimes. Trials for war crimes in Kosovo and Metohija are not open to the general public, while organizations operating in this field (e.g. NGOs) are allowed to follow war crimes proceedings. War crimes proceedings are the exclusive responsibility of international judges and prosecutors with or without the involvement of the Hague Tribunal. There are several hundreds of war crimes cases and other criminal acts against humanity and international law which are blocked by the lack of will on the part of the local population to testify as the witness protection in criminal proceedings is not properly regulated. The OSCE followed the case of murder of the key witness of the prosecution and the assault at an anonymous witness in Prizren in October 2005 in the criminal proceedings for a war crime before the District Court in Gnjilane. Unknown persons dug out from the grave a corpse of a victim (former witness) and burnt it, after which threatening ANA flyers were disseminated in Orahovac region. This case was taken over by an international prosecutor and although the identity of the main suspects was well known (one of them being a former member of KLA (Kosovo Liberation Army)), neither anybody was arrested nor the investigation progressed. There is still an insufficient number of international judges and prosecutors responsible for cases of war crimes and crimes against humanity (in December 2007 there were 13 judges and 8 prosecutors). There were certain war crimes cases when the verdict was reversed before the Supreme Court of Kosovo and returned to the first-instance court to be resolved once again, but a new first-instance sentence was not passed for more than five years. The UNMIK Department of Justice makes a case for this situation declaring they expect European Security and Defence Commission mission to be formed. The consequences of the prolonged ruling is not only that the Article 14, Paragraph 3, Point (c) of ICCPR is violated but the injured parties and their relatives are also not able to exercise their right to indemnity guaranteed by international documents. International prosecutors still have the last word in deciding which body should deal with the case and they are basically not obliged to follow the recommendations of the local prosecutor. International prosecutors may take over the case from the local prosecutor at their own initiative, as well as when local prosecutors ask them to. Fundamental tension between the trust in local prosecutors when they deal with sensitive cases on the one side and witnesses’ data protection on the other remains unsettled. According to the Amnesty International Report until April 2007, there were 27 criminal proceedings conducted for war crimes, genocide and crimes against humanity (out of 25 available cases, 17 are against Serbs). From 2002 to 2007, only 6 new proceedings were initiated in this field. Numerous cases of sexual violence during the conflict were not dealt with by UNMIK judiciary. There was only one registered charge for rape as a war crime/crime against humanity (Jokić case) which ended with the acquittal. Another case was noted of a Serb woman who gave a statement to the police claiming that she and another woman were raped and tortured on June 16th 1999 by the men she believed were the members of KLA, and she corroborated her allegations with medical documents. However, the indictment has not been issued so far.

Although since as early as 2006 all courts (except the Municipal Court in Peć) have had equipment for simultaneous interpretation, the defence was not ensured the right to use its own language in criminal proceedings because written statements are not translated and the statements of witnesses are noted only as the summary. There were certain cases when the translation of a written verdict was not submitted until the deadline for appeal expired, which is contrary to Article 14, Paragraph 3, Point (f) of ICCPR.

These are some of the problems detected in the work of international panels of district courts where criminal proceedings related to war crimes, crimes against humanity and genocide were/are conducted:
- Trials in absence although forbidden by UNMIK provisions (Ademi and Ajeti cases), contrary to Article 14, Paragraph 3, Point (d) of ICCPR
- Hearing of anonymous witnesses (Gasi case), contrary to Article 14, Paragraph 3, Point e of ICCPR
- Reconstruction without the presence of the defendant and defender (Stojanović case), contrary to Article 14, Paragraph 3, Point (d) of ICCPR
- Conducting an investigation without the presence of the defendant (Jokić case), contrary to Article 14, Paragraph 3, Point (d) of ICCPR
- International humanitarian law documents are rarely referred to (in most cases)
- All international judges and prosecutors are subject to UNMIK administration. Although they are involved in the operation of the judiciary in Kosovo and Metohija primarily as a model to local judges, they have little influence. They are employed on a contractual basis (usually for a year) which may be prolonged, and thus they depend on the UNMIK Department of Justice, which selects certain judges for certain cases. This seriously jeopardizes the principle of judicial independence prescribed by Article 14, Paragraph 1 of ICCPR.

MISDEMEANOUR PROCEEDINGS – NOTICED VIOLATIONS OF HUMAN RIGHTS RECOGNISED BY THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

1. Lack of charges or incorrect definition thereof in requests for instigating misdemeanour proceedings

   According to international standards of human rights, any person charged with misdemeanour shall be informed promptly and in detail, in a language which the person understands, of the nature and cause of the charge brought against the person. According to the UN Human Rights Council, information given to a person charged with misdemeanours shall also indicate “both the law and alleged facts on which the charge is based”. In some instances, there is a lack of cooperation between the police and the misdemeanour court, which could reflect negatively on proceedings before a misdemeanour judge. For example, the police often fail to correct errors in their requests for initiating misdemeanour proceedings, after such requests have returned to them by misdemeanour judges. Furthermore, members of the police occasionally fail to answer the summons or to enforce court orders. On May 3rd 2006, the KPS in Istok municipality filed a request for initiating misdemeanour proceedings against two persons who had allegedly disturbed public peace and order. The request did not specify which misdemeanour had been committed by the defendant. Nevertheless, a judge examined the accused at a hearing held on 16 May 2006 and imposed a EUR 50 fine against both of them.

2. Failing to state reasons for judgments (Article 14, Paragraph 1 of ICCPR)

   Statement of reasons is an important part of a decision as it enables the defendant to exercise the right to appeal and it is related to the right to public hearing, in line with international and domestic human rights instruments. The misdemeanour court in Peć passed a judgement against the defendant on March 17th 2006 and imposed a EUR 80 fine against him, after finding him guilty for a number of traffic misdemeanours. However, the judge obviously copied the statement of reasons from another judgement related to a person, facts and legal grounds different from those contained within the ordering part of the judgement passed.

3. Failing to individualise penalties (Article 14, Paragraph 1 of ICCPR)
In the process of deciding on a penalty, courts should individualise each penalty and clarify extenuating and aggravating circumstances for each accused person. Individualised penalties imposed against each accused person help judges in giving more correct statements of reasons for their decisions. On June 9th 2006, the KPS in Priština filed a request to a misdemeanour judge for initiating misdemeanour proceedings against nine persons, members of the ‘Self-determination’ movement. The proceeding was initiated for the reason that the accused had blocked the main entrance into the UNMIK headquarters, during the protest organised earlier that day. This allegedly hindered the free movement of the employees within the building. At the conclusion of the trial, the court found all ten persons guilty and convicted them to 10 days of imprisonment. However, in stating the reasons for the penalty, the court referred to a joint activity of the accused, without taking into consideration the actions and degree of responsibility of each accused person. Cases reviewed by the OSCE indicate that the misdemeanour courts incorrectly imposed collective punishments against the accused, without determining the individual degree of responsibility, thereby violating both domestic law and international standards of fair trial.

4. Violation of the non bis in idem principle in relation to previous decisions of the misdemeanour courts (Article 14, Paragraph 7 of ICCPR)

Certain provisions of the Law on Misdemeanors include some aspects of the non bis in idem principle. For example, the law stipulates that a person who was found guilty within the criminal proceedings, or within the proceedings for economic offences, by a final judgement, with an offence which includes elements of misdemeanour, shall not be punished for misdemeanour. Furthermore, the proceedings shall be discontinued if “during the misdemeanour proceedings the accused was found guilty within the criminal proceedings, with the same offence which includes elements of misdemeanour”. The Municipal Court in Peć held a hearing on September 15th 2005 against two persons accused of allegedly committing an attack against officials performing their duty. The accused pleaded guilty and a suspended sentence was pronounced. However, the misdemeanour judge in Peć held a hearing against the same defendants on November 19th 2004 and fined them on the basis of the same facts.

- The Stojanović Brothers Case -

Court ruling of the Municipal Misdemeanor Court in Kosovska Kamenica UP.I No 1271/2008 as of May 30th 2008 declared brothers Mr Momčilo and Mr Milorad Stojanović from Kusac, Gnjilane municipality, guilty of wearing t-shirts with inscriptions ‘Kosovo is Serbia’ on the front side and ‘Support Serbia’ on the back side. The Kosovo Police Service noticed them wearing those t-shirts at the administrative crossing ‘Gate 5’, on May 29th 2008. Both were fined by EUR 250 and forced to pay the fine on the spot.

Wearing of the said t-shirts was qualified by the court as offence stipulated by Article 18, Paragraph 1, Point 2 of the Law on Public Peace and Order (“Official Gazette of the Socialist Autonomous Province of Kosovo” number 13/81). According to the statement of reasons of the judgement, the appellants offended national feelings and public morals of the majority of Kosovo’s citizens, by wearing inscriptions ‘Kosovo is Serbia’ and ‘Support Serbia’.

The aforementioned qualification of the court was given without any factual or legal arguments whatsoever. By wearing the said inscriptions the appellants were expressing their own opinions and views as members of the Serb ethnic community and citizens of the Republic of Serbia, without intention to offend anyone or to disturb public peace and order. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates...
everyone’s right to freedom of expression. This right includes freedom to hold opinions and impart information without interference by public authority and regardless of frontiers. Incidentally, Article 1 of UNMIK Regulation 1999/24 envisaged direct implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the territory of Kosovo.

Incomplete statement of reasons of the judgment failed to refer to any details on the manner in which the public morals or national feelings of the citizens had been offended, that is in which way the wearing of the said inscriptions by the Stojanović brothers had offended members of the majority population. Not a single evidence or argument for passing the misdemeanor judgment was mentioned. Being members of the Serb ethnic community and residents of Kosovo and Metohija, the Stojanović brothers are entitled to express their convictions, according to internationally recognized human rights. The Stojanović brothers did not offend Albanians, nor they provoked any unrest which could disturb public peace and order, nor this had been proved and determined in the course of the misdemeanor proceeding.

- Tučep Case –

Typical is the case of Mr Tomislav Zuvić, Mr Branimir Golac and Mr Radomir Džolić from the village of Tučep, near Istok, whose car was stoned by two Albanian nationals, to the point of breaking the windows. After being arrested by the KPS, Mr Jakup Tahiukaj, one of the Albanians, stated that he was provoked by the Serbs who had showed him the three-finger hand gesture through the car window. The Municipal Misdemeanor Court in Istok convicted the Albanian attacker to 60 days in prison, but also fined each of the Serb victims with EUR 150. The fine was justified by asserting that the Serbs disturbed public peace and order by showing the hand gesture.

PROHIBITION OF DISCRIMINATION (ARTICLE 26 OF ICCPR)

- Discrimination in the Procedures for the Protection of Property -

With the aim of restituting the usurped Serb residential property in Kosovo and Metohija, the Housing and Property Directorate (HPD) was established by UNMIK. It was set up for deciding on the claims for restitution of property, by passing notices of eviction of usurpers and enforcement thereof. This was regulated by Regulations 1199/23 and 2000/60. In the period between years 2000 and 2005, this Directorate received 29,000 claims. In the course of its work, the HPD made numerous mistakes against the Serbs, as it did not deal only with restitution of houses and flats taken by force from Serb nationals (C category claims), but its primary task had been the restitution of the property allegedly taken by force from Albanian nationals by Serb authorities, in the period 1989-1999 (A category claims). HPD also dealt with handing over the possession of the flats and houses to Albanians, which they allegedly bought from the Serbs by way of purchase contracts, which they had been unable to register and to inscribe their property, due to discriminatory regulations of the Republic of Serbia on the prohibition of trade in immovable property in Kosovo.

In the year 2006, UNMIK established a new organisation – the Kosovo Property Agency (KPA) – competent not only for the restitution of usurped houses and flats, but also for the restitution of usurped commercial real property, agricultural and building land. KPA also undertook the enforcement of
decisions brought by HPD. The HPD commission continued its work in the cases in which decisions had not been reached. Those decisions are still being rendered within the procedure established by HPD.

In a large number of cases, claims for the restitution of same flats have been filed both by Serbs, who acquired flats from their employers, in the capacity of tenancy rights holders, and later purchased them (C category of claims) and by Albanians who worked in the same companies as the Serbs and lost the same flats on the rank list of candidates for acquiring the flats, due to alleged discrimination against Albanians. In majority of cases, the HPD rendered positive decisions on the claims of Albanians and rejected the claims of the Serbs, despite the fact that in most cases the flats were bought by Serbs, who became their owners. At the same time, Serbs are not entitled to file any complaints against the final (second instance) decisions, while in the cases in which Serb claims for the restitution of usurped flats were accepted, HPD had advised Albanians to request legal protection before the municipal courts, despite the fact that such possibility had not been envisaged by the Regulation 2000/06, which regulates the HPD procedure. Until the court proceeding is finished, Serbs are not entitled to dispose of the flats and/or to sell them. This makes their position much more difficult, since their interest is to sell the flats as soon as possible, as the flats are most often located in areas without any economic or safety conditions for the survival of the Serbs. By selling the flats, they would obtain the money needed for solving the accommodation problems in the areas in which they are currently residing.

HPD does not recognise decisions on the disputed flats passed by the courts of the Republic of Serbia in the period between the years 1989 and 1999. The reason for this is in HPD’s interpretation that all decisions of state bodies brought in that period were discriminatory against Albanians.

In a great number of cases in which Serb claims were adopted, keys of the apartments handed over to them and Albanian usurper evicted, flats were immediately repossessed by Albanians, who subsequently change the locks, because those flats are located in the areas inaccessible to the Serbs, such as Priština. On the requests of the Serbs for the eviction of the usurpers, the Agency responds that it settled the matter by handing down the keys and that this is now the matter for the Kosovo police, which most often ignores the Serb requests.

Typical are cases of illegal building by Albanians on usurped Serb immovable property. Old Serb houses are being pulled down and Albanians build huge houses or business premises on their foundations. Municipal building inspectorate fails to react to such cases, despite the fact that unresolved property issues and court proceedings or procedures before the Kosovo Property Agency are underway. Municipal building inspectorates and Kosovo Police Service do not respond to requests of real owners. Often the people who build are municipal officials and members of the Kosovo Police Service.

Discrimination has been carried out in the work of the new Kosovo Property Agency as well. It has continued the work of the HPD in the year 2006 and established the deadline for filing the claims by December 3rd 2007. Therefore, the HPD rejects any claims related to the restitution of usurped property, filed after that date. The KPA refuses to accept new claims for the restitution of property although in 90% of the cases applicants are displaced persons who reside away from the Kosovo and Metohija territory and thus have not been informed of the deadline for filing the claims. Conditioning the deciding on the claims for the restitution of property, as one of the basic human rights, within the deadline imposed by the Special Representative in Administrative Instruction 2007/9, is the most severe form of human rights violation.

- Discrimination within the Process of Privatisation of Kosovo and Metohija Companies -
UN Security Council Resolution 1244 permitted UNMIK only to run economy in Kosovo and Metohija, with the aim of economic survival, but not to dispose with it and to go beyond its own rights. However, the fourth economic pillar of UNMIK, which is in fact comprised of members of EU administration, initiated the procedure of property transformation of public and socially owned companies in Kosovo and Metohija. For that purpose, a special Kosovo Creditors’ Agency (KCA) was established. This Agency puts up for sale socially owned companies and their property on a large scale. Sales of public companies are expected, as well. In the course of these transactions, real owners of the companies are often disregarded. Actually, in many cases those companies are branch offices of companies with headquarters in Central Serbia or Vojvodina.

It was envisaged that 20% of the assets gained by those transactions will be offered to the workers. However, this right is enjoyed only by Albanian workers who were included in the companies’ lists, in the period of the sale. Serb workers have been expelled from their places of residence and companies and are thus unable to exercise their rights arising from employment in the companies in which they worked. The KPA Regulation 2003/13 entitled such workers to exercise their rights for receiving assets gained by company sales within appellate procedure before KPA and in court proceedings before the Special Chamber of the Supreme Court of Kosovo. However, those workers are displaced persons in difficult material conditions, who live away from the territory of Kosovo and Metohija, and are thus unable to obtain information on the procedure for privatization of their companies, nor to undertake prolonged court proceedings. Legal remedy and/or the right to appeal against a decision delivered by the Supreme Court of Kosovo has not been envisaged either, which is yet another violation of the European Convention on Human Rights and Fundamental Freedoms.

Serb workers have been expelled from their workplaces in most of the places in Kosovo and Metohija by way of most severe terror inflicted on them by Albanian extremists (members of Kosovo Liberation Army) and are thus unable to exercise their labour related rights. Their workplaces have been overtaken by new Albanian workers, who lack the necessary qualifications in most of the cases.

**FREEDOM OF RELIGION (ARTICLES 18 AND 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS)**

- **Position of the Serbian Orthodox Church –**

The position of the Serbian Orthodox Church is still very difficult in Kosovo and Metohija, whose large number of churches, monasteries and other places of worship has been destroyed or significantly damaged since June 1999.

After the bombing of Serbia by NATO in 1999, signing of the military-technical treaty and the 1244 Resolution, Kosovo and Metohija was violently and ‘temporarily’ taken away from Serbia and placed under the UN administration and/or UNMIK.

Nine years have passed since UNMIK’s arrival and four years since pogrom in March over the Serbian people and their cultural heritage. The destruction, setting on fire and damaging of 117 churches, monasteries and an innumerable number of graveyards occurred in the second half of 1999 in the presence of several thousand soldiers of international forces and UNMIK. This cannot be forgotten and decreased in importance as the previous destruction, in spite of the repeated and thus far unprecedented and globally unseen destruction of other and same monasteries, churches, cultural monuments, graveyards
and other constructions reminiscent of Serbia and orthodox religion which took place on March 17th-18th, 2004. The total of 34 facilities and places owned by the Serbian Orthodox Church were destroyed, burnt down or damaged in the two-day March pogrom alone, which are under the auspices of the Bishopric of Raška and Prizren and Kosovo and Metohija. Churches and monasteries sustained the most significant damage. Of the said number, 18 edifices are cultural monuments of the Serbian cultural heritage in Kosovo and Metohija, while 60 out of the total number of destroyed edifices (monasteries and churches) are cultural monuments of the Serbian cultural heritage. The numbers are unfathomable in any context. It is incomprehensible that in this century the largest and unparalleled persecution takes place in Kosovo and Metohija, as well as the usurpation of land, civilization and cultural genocide over the Serbian people and their heritage. The term ‘crime against cultural heritage’ in Kosovo and Metohija was included in the Resolution 26, at the XXXI General Conference of UNESCO.

The events of March 17th resulted in new persecution, displacement and pogrom over the population and cultural monuments in Kosovo and Metohija. By expelling the Serbian population and ‘erasing’ their cultural heritage being evidence of the creation of the state of the Serbian people, Albanians from Kosovo and Metohija are attempting to recreate and falsify history. The destruction thereof surpassed the destruction of 1999 (postwar). Two monuments were burnt down then (St. Archangel Monastery, Tsar Dušan mausoleum and the unique town church of Bogorodica Ljeviška) which were categorized in the Report of the UNESCO Mission in Kosovo 2003 as monuments of universal value (of the total of six such monuments in Kosovo and Metohija).

Almost all churches and numerous monasteries sustained damage (for example, churches of Prizren, in particular churches of Bogorodica Ljeviška and Sv. Spas, Sv. Andrija Prvozvani of Podujevo, Bogorodičino Vavedenje of Belo Polje, Sv. Ilija of Vučitrn, etc) or were fully destroyed (for example, monasteries: Zočište of Orahovac, Sveta Trojica of Mušitište, Devič of Srbica, Dolac of Klina, Sv. Marko of Koriša, Sveti Arhandeli of Gornje Nerodimlje, Sv. Arhandela Mihaila of Buzovik, etc. and churches: Sv. Dorde of Prizren, Rečani and Siga, Bogorodica Odigitrija of Mušutište, Bogorodičina Crkva of Suva Reka, Saborna Crkva of Sveta Trojica of Đakovica, Rođenje Presvete Bogorodice of Softovići, Sv. Nikole of Priština, Prizren, Slovinj, Đurakovac, Štimlje, Popovljanski, Kijevo, Đonje Nerodimlje, Sicevo, Bistražin, Ljubižda and Čabići, Sv. Petke of Drsnik, Uspenje Presvete Borodice of Šajkovci, etc), and even eradication-disappearance of traces – church foundations (for example: Uspenja Bogorodice Church and rectory in Đakovica). In addition to the destruction of monasteries, churches, graveyards and other places, more than 10,000 icons were destroyed, as well as ecclesiastical, artistic and liturgical objects. It is interesting that, while Albanian hordes were setting the edifices on fire and placed bombs, the invaluable movable orthodox wealth was pilfered from many churches and treasuries, which is being sold away in the global illegal market of antiquities and pieces of art, old manuscripts and other rarities.

Immediately following the NATO bombing and entering of international peace core in Kosovo and Metohija, the British journalist Mr Tim Judah made photographs in mid-June 1999 of Albanians looting the church of Sveti Ilija in Vučitrn. He informed Bishop Artemije thereof and handed in a few icons that he had managed to save. The Bishopric of Raška and Prizren was informed that church bells had also been stolen from the destroyed Serbian church in Đakovica in spite of the protection by UNMIK police, while a German KFOR corporal tasked with protecting the property of the Serbian Orthodox church in Prizren stole a valuable icon – a diptych (a liturgical book) 300 years old and a number of smaller church items, for which reason was sentenced to probation of a year in Germany.

In the South of Europe - Greece, according to a report of their police, “four smugglers of Serbian religious and artistic items” were arrested in Thessalonica. The leader of the group and his wife were caught with 17 stolen books from the 19th century, stolen engravings and icons from the 18th century and some valuables from the Roman time, and smugglers confessed to having bought the items in Albania from local dealers and that they originated from Kosovo and Metohija. These are only some of the numerous examples.
No Albanian authority reacted, condemned the crimes or spoke in public of the incidents. It may be deduced that some political forces or formations in Kosovo and Metohija performed the crime against the cultural heritage of the Serbian people on purpose and/or heritage which does stand evidence of the creation of its state, church and culture.

Following March 17th 2004, international community severely condemned the pogrom, and Kosovo Government was pressured into reconstructing an insignificant number of destroyed houses which were re-inhabited by a small number of people – expelled Serbs and Roma. However, no rebuilding and reconstruction of churches and monasteries has been initiated, or cultural monuments of the Serbian cultural heritage, while the rebuilding and reconstruction of damaged mosques and minarets has already been completed.

Violence of March 17th 2004 in Kosovo and Metohija has in a dramatic way revived the issue of preservation, reconstruction and protection of cultural monuments. Following these events, the reconstruction of destroyed and protection of other cultural monuments has become more prominent in the sense of the engagement of the international community, taking into account that there were no results in terms of reconstruction and protection before these events. Serbian cultural heritage in Kosovo and Metohija still lies in ruins, as well as numerous churches, facilities and graveyards which were desecrated and ploughed over, as some churches as well. Despite all the abovementioned, nothing has been done, in spite of the promises given by the international community and UNMIK that the rebuilding, reconstruction and protection of the Serbian cultural heritage in Kosovo and Metohija would be initiated as soon as possible. Furthermore, in some individual cases no access was allowed, not to mention rebuilding and reconstruction of destroyed cultural monuments and other facilities.

- **Status of the Assets of the Serbian Orthodox Church in Kosovo and Metohija**

As an example of institutional usurpation of assets, we are giving an example of the Serbian Orthodox Church and/or the church of Đakovica. The Church of Sveta Trojica in Đakovica was destroyed by Albanian extremists in 1999. The municipality of Đakovica started constructing a town park at the land of the destroyed church in spite of the fact that the land is registered in the Cadastre to the name of the Serbian Orthodox Church. Bishop Teodosije of Lipljani filed a protest note to UNMIK and the Council of Europe with regard to the case.

The municipality of Đečani refused to implement the executive decision of Head of UNMIK Joachim Ruker adopted on May 17th 2008 which stipulated the return of 24 ha of land which had been taken away by the communist authorities after the Second World War. The Government of the Republic of Serbia adopted a Decision in 1996 on returning the land to the monastery. After the year 1999, municipal authorities of Đečani still treated the land as socially-owned and erased the monastery as an owner from the cadastre. At insistence of Bishop Teodosije, Ruker adopted the Decision on May 17th 2008 that the land be returned to the monastery and ordered the municipal authorities to re-inscribe the monastery as the owner into the cadastre. At insistence of Bishop Teodosije, Ruker adopted the Decision on May 17th 2008 that the land be returned to the monastery and ordered the municipal authorities to re-inscribe the monastery as the owner into the cadastre. The Municipal Assembly of Đečane declaratively refused to implement the UNMIK decision and decided to discontinue all contacts with the local UNMIK staff. Bishop Teodosije notified the UN Headquarters in New York thereof.

**JUVENILES IN CRIMINAL PROCEEDINGS – NOTED VIOLATIONS OF STANDARDS IN TERMS OF HUMAN RIGHTS ACCORDING TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

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International standards relating to fair trial according to the International Covenant on Civil and Political Rights - ICCPR (Articles 9 and 14) are applicable to the criminal proceedings against juveniles. The Convention on Child Rights of 1989 contains rules similar to those contained in ICCPR for activities of juveniles accused of having committed a criminal offence.

1. Court authority not established pursuant to law (Article 14, Paragraph 1 of ICCPR)

The right to a fair trial entails the right to inquest before the court established pursuant to law. Authorities should put special emphasis on ensuring availability of efficient procedures to children and their representatives, taking into account child needs. The Juvenile Criminal Code stipulates that the juvenile court council shall adjudicate in cases against minors and that the juvenile court council and the judge shall try adults for offences committed against children. The juvenile court council shall comprise jurors of both sexes, whereas the judge, as a professional judge competent for the criminal subject matter dealing with children, shall decide upon requests for placing juveniles under custody. Provisions of the new Juvenile Criminal Code, relating to competencies and responsibilities of juvenile judges and court council, are supposed to provide the accused juveniles and victims of serious criminal offences with special protection measures in the criminal proceedings, as is prescribed by valid international standards. Despite the provisions of national legislation and international standards relating to human rights, violations of rules referring to the composition of the juvenile court council have been noted. For example, inquest against a defendant for committing the criminal offence of sexual assault against a twelve-year-old girl was held in the District Court of Mitrovica on May 18th 2006, although such inquest should be held before the juvenile judge and the juvenile court council as prescribed by the Juvenile Criminal Code. The Supreme Court of Kosovo repealed the decision of the District Court of Gnjilane which found the defendant guilty of having committed the criminal offence of sexual abuse of a person under 16 and returned the case for re-trial due to the inappropriate composition of the court council. Irrespective, the court council (which did not meet the requirements of the Juvenile Criminal Code) repeated the inquest on April 6th 2006. In a case before the District Court of Peć, an inquest was held against two juveniles on April 13th 2006 before two jurors of the same sex, who had allegedly committed the criminal offences of inflicting minor physical injuries, petty theft and theft. The Juvenile Criminal Code was violated by both jurors being of the same sex. In a case held before the District Court of Pristina, a prosecutor inquired a minor accused of having attempted homicide of the man who had allegedly raped her. Although this represented a violation of Article 64, Paragraph 1 of the Juvenile Criminal Code, the pre-inquest judge (who was not a juvenile judge) decided upon a month of custody on December 9th 2004. The abovementioned examples represent violations of national procedural law relating to the competencies and composition of the juvenile court council and juvenile judges. Furthermore, there were violations during these cases in terms of international legal standards referring to the right of a fair trial. Finally, courts did not respect the principle of best interest of a child, violating the Convention of Child Rights and/or Article 14, Paragraph 4 of the ICCPR.

2. Postponement in criminal proceedings against juveniles (Article 14, Paragraph 3, Point (c) of ICCPR)

Although national law often introduces time limitations for court proceedings, the violation of internal procedural requirements does not necessarily result in the violation of the Article 14, Paragraph 3, Point (c) of ICCPR. International standards relating to juveniles and the right to trial within a reasonable time is stricter, since the minor may find it difficult, if not impossible, to link the proceedings and the justification of the offence with the accusation over a period of time. The Juvenile Criminal Code introduces stricter time limitations, wherefore if a juvenile judge fails to make a decision on repealing a motion or forwarding the case to another court, the main inquest is scheduled to be held within eight days as of the acceptance of the motion. In spite of these provisions, it has been perceived that courts did not
respect the deadlines for scheduling the main inquest. For example, when it comes to a case held before the Municipal Court of Peć on March 17th 2006, the prosecutor filed a motion to deciding on rehabilitation measures for two minors who had allegedly committed criminal offences of inflicting minor physical injuries, robbery and theft. Although the main inquest should have been scheduled within eight days as of filing the motion, the inquest began as late as April 13th 2006. In another case held on March 14, 2005, the public prosecutor of the District Court of Mitrovica filed a motion for sentencing a juvenile for having attempted homicide of a person who had allegedly raped her. However, the main inquest began as late as May 8th 2006, which is more than 13 months after the submission of the motion by the prosecutor. Shortly, the abovementioned cases indicate that courts in Kosovo and Metohija, failing to respect deadlines for scheduling inquest in criminal proceedings including juveniles, have violated national law, international standards relating to fair trial envisaged in Article 14, Paragraphs 1 and 3 of ICCPR and specific protection measures targeting children envisaged by the Convention on Child Rights and Article 14, Paragraph 4 of ICCPR.

3. Duration of detention (Article 9 of ICCPR)

Deprivation of liberty represents a specific problem for juveniles, wherefore international law on human rights attempts to limit the situations in which children are placed in detention. Pursuant to the Juvenile Criminal Code, a minor may not be held in custody for longer than three months, irrespective of the stage of the proceedings. Misinterpreted application of Articles 279-297 of the Provisional Criminal Proceedings Code resulted in judges and prosecutors incorrectly concluding that the Juvenile Criminal Code allows for the custody of minors longer than three months. However, the Juvenile Criminal Code should be interpreted as lex specialis with regard to the Provisional Criminal Proceedings Code, and more specific provisions of the Juvenile Criminal Code are superior to the Provisional Criminal Proceedings Code. In spite of these limitations, OSCE followed up on the cases in which court decided on court custody for minors in a period longer than three months. In a case tried before the District Court of Priština on November 28th 2005, custody was decided for a fifteen-year-old over the allegation to have committed a criminal offence of manslaughter and unauthorized possession or usage of weapons. On October 24th 2006, the court (after having illegally remained in custody for over a year) prolonged custody for two additional months, until December 24th 2006. In another case tried before the same court, the accused minor was tried for a criminal offence of sexual abuse of persons below sixteen years of age, due to having alleged sexual intercourse with a nine-year-old child. The pre-inquest judge decided upon custody for the accused on May 20th 2006, which lasted through September 20th 2006 (the total of four months of custody), when the court found him guilty and sentenced him for imprisonment of between a year and six months (calculated time spent in custody). In the abovementioned cases, OSCE perceived that the defense attorney did not file an objection to the legality of custody, which is a measure envisaged by PCPC. It may be concluded that defense attorney and prosecutors may help improve the respect of laws and international standards relating to human rights by expanding their knowledge on internal law and international standards relating human rights and facing up to the perceived violations more actively.

4. Illegal proceedings against minors before misdemeanor courts (Article 15 of ICCPR)

According to the valid law, minors may be prosecuted for committing misdemeanors. The defendant in a misdemeanor proceedings have the right to international standards of fair trial relating to criminal proceedings. The Law on Misdemeanors in Kosovo stipulates that no misdemeanor proceeding may be conducted against a juvenile who did not turn fourteen (who was a child) at the time of performing the misdemeanor. The OSCE supervised the case in which an inquest was held before the misdemeanor judge in Prizren on June 19th 2006, against a minor accused of having committed offence punishable with imprisonment of up to two months, which the minor had committed when he was thirteen – on November 30th 2005. In another case before the same court, on the same date, an inquest was held
against a minor accused of having allegedly committed on September 20th 2005 when he was younger than 14. Even more disconcerting is the fact that the motion for instigating misdemeanor proceeding referred to the law repealed in 2003. The abovementioned cases illustrate the misdemeanor courts’ violation of the national legislation and international standards relating to human rights (in particular the principle of best interest of a child pursuant to the Convention on Child Rights and Article 14, Paragraph 4 of ICCPR) by trying juveniles for offences they committed when they were younger than 14 or according to laws no longer applicable in the territory of Kosovo.

- **Usage of Language (Article 27 of ICCPR)**

The rights of non-Albanian population are constantly violated in terms of using their own language in cultural life and education. Particularly vulnerable are the Gorani, Bosniak and Roma population. In places inhabited by Gorani population of the municipality of Dragaš, the curricula in schools under the jurisdiction of the Ministry of Science and Education constantly suppresses the usage of the Gorani mother tongue.

There are no lessons in the language of the Gorani population and/or Serbian at Priština University (under the jurisdiction of the Ministry of Science and Education).