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MISSION IN KOSOVO
Department of Human Rights and Rule of Law

PARALLEL STRUCTURES IN KOSOVO

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TABLE OF CONTENTS

GLOSSARY.....	4
INTRODUCTION.....	5
EXECUTIVE SUMMARY	6
RECOMMENDATIONS	8
I. Reduction of demand.....	8
II. Reduction of supply.....	9
III. Measures of policy enforcement	10

Chapter one

PARALLEL SECURITY STRUCTURES.....	11
1.1 Introduction – historical background.....	12
1.2 The Bridge-watchers – current situation.....	13
1.2.1 Organisational structure and funding.....	13
1.2.2 Activities.....	14
1.3 The MUP in north Mitrovicë/Mitrovica – current situation.....	14
1.4 Incorporation of former Bridge-watchers and MUP into the Kosovo Police Service.....	14

Chapter two

PARALLEL COURTS.....	16
2.1 Background.....	17
2.2 Existing courts	17
2.2.1 Mitrovicë/Mitrovica region.....	17
2.2.2 Prishtinë/Priština.....	18
2.2.3 Gjilan/Gnjilane region.....	19
2.2.4 Pejë/Peć and Prizren regions	19
2.3 The effects of parallel court systems	19
2.3.1 Caseload.....	19
2.3.2 Enforcement.....	21
2.4 Analysis.....	21
2.4.1 Present concerns	21
2.4.2 Past judgements of parallel courts	22
2.4.3 Cases pending before the parallel courts	23

Chapter three

PARALLEL ADMINISTRATIVE STRUCTURES	24
PROPERTY ISSUES	24
3.1 Background and issues.....	25
3.2 Parallel administrative structures located in the territory of Kosovo.....	26
3.2.1 Municipal directorates of urbanism.....	26
3.2.2 Municipal cadastre offices.....	26
3.3 Parallel cadastre offices in Serbia proper.....	26
3.4 Legal validity of decisions issued by administrative structures.....	26
3.4.1 Legal validity of decisions issued by pre-UNMIK and UNMIK-recognised administrative structures in Kosovo and the lack of effective remedies.....	26
3.4.1.1 Legal validity of decisions taken before UNMIK was fully operational	27
3.4.1.2 Legal validity of decisions taken by UNMIK-recognised structures	27
3.4.1.3 Confusion regarding remedies.....	28
3.4.2 Legal validity of cadastral records in Serbia proper.....	28

Chapter four

PARALLEL SCHOOLS	30
4.1 The structures	31
4.2 The causes and effects of the parallel structures.....	32
4.2.1 Root causes of parallel structures	32
4.2.1.1 Perceived lack of security.....	32

4.2.1.2 <i>Intransigent attitudes on the part of both the Kosovo Albanian and the Kosovo Serb communities towards tolerance and finding a common ground</i>	32
4.2.1.3 <i>Double salaries offered to Kosovo Serb teachers</i>	33
4.2.2 <i>Effects of the parallel structures</i>	34
4.2.2.1 <i>Differing curricula</i>	34
4.2.2.2 <i>Children caught up as pawns in the political struggle</i>	34
Chapter five	
PARALLEL HEALTHCARE	36
5.1 <i>The structures</i>	37
5.2 <i>The causes and effects of the structures</i>	38
5.2.1 <i>Root causes of the parallel healthcare centres</i>	38
5.2.1.1 <i>Intransigent attitudes on the part of both the Kosovo Serb community and the Kosovo Albanian community towards tolerance and finding a common ground</i>	38
5.2.1.2 <i>Double salaries paid by Serbian Ministry of Health</i>	38
5.2.2 <i>Effects of the parallel healthcare centres</i>	38
Chapter six	
THE SERBIAN MINISTRY OF INTERNAL AFFAIRS	40
ISSUING DRIVING LICENCES AND OTHER DOCUMENTS	40
6.1 <i>Structures</i>	41
6.2 <i>Effect of the structures</i>	41
CONCLUSION	44

GLOSSARY

CCK	Co-ordination Center for Kosovo
DOJ	UNMIK Department of Justice
DSS	Democratic Party of Serbia
FRY	Federal Republic of Yugoslavia
IDPs	Internally Displaced Persons
KCA	Kosovo Cadastral Agency
KCB	Kosovo Consolidated Budget
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPC	Kosovo Penal Code
KPS	Kosovo Police Service
LCO	Local Community Officer
MA	Municipal Assembly
MEST	Ministry of Education, Science, and Technology
MLO	Municipal Legal Officer
MCO	Municipal Cadastre Office
MUP	Serbian Ministry of Internal Affairs (Ministarstvo Unutrašnjih Poslova)
NATO	North Atlantic Treaty Organisation
OLA	Office of The Legal Advisor
ORC	Office of Returns and Communities
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self-Government
SFRY	Socialist Federal Republic of Yugoslavia
SMES	Serbian Ministry of Education and Sports
SMH	Serbian Ministry of Health
SNC	Serbian National Council
SPS	Serbian Socialist Party
SRSG	Special Representative of the Secretary-General
SUP	Secretariat of Internal Affairs (Sekretarijat Unutrašnjih Poslova)
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nation Security Council

INTRODUCTION

After the NATO bombing campaign in 1999, the Kosovo Serbs that remained in Kosovo did not immediately recognise the newly established UNMIK administration. For years security concerns made it difficult for Kosovo Serbs and other minorities to travel outside their enclaves. Those living in the predominantly Kosovo Serb municipalities in the north, rarely travelled through the rest of Kosovo. In these enclaves and in the northern municipalities,¹ the Serbian administration: courts, schools, hospitals, etc, directly answering to Belgrade, has been maintained. After the conflict, new institutions were also created such as a Kosovo Serb policing force in northern Mitrovicë/Mitrovica and the Co-ordination Centre for Kosovo (CCK) based in Belgrade.² UNMIK has never accepted these Serbian controlled structures operating in parallel to the UNMIK administration, except for those activities conducted by the CCK provided for in the Common Document.³

In this report, the general term *parallel structures* is used to define bodies that have been or are operational in Kosovo after 10 June 1999 and that are not mandated for under UN Security Council Resolution 1244. In the majority of cases, these institutions operate under the *de facto* authority of the Serbian government and assume jurisdiction over Kosovo from Serbia proper, or operate in the territory of Kosovo. These parallel structures operate contemporaneously with, or under the same roof as the UNMIK-recognised bodies.⁴

The existence of parallel systems continues to have a substantial impact on society. To prepare a strategy to address the existence of these parallel structures, UNMIK has set up a working group, composed by its four pillars and KFOR, the Office of Returns and Communities, the Office of The Legal Adviser, and others. The working group convened recently in order to compile a list of parallel structures as a first step in preparing the strategy.

This report provides an overview of existing parallel structures in Kosovo. It covers security structures, courts, administrative structures dealing with property issues, schools, healthcare centres and documents issued by the Serbian Ministry of Internal Affairs. The report does not cover every activity of the Serbian government in the territory of Kosovo. For example, the CCK, which is currently strengthening the parallel administrative structures through the appointment of municipal co-ordinators and councils, is excluded from the report. The fact that the activities of these competing structures are a serious threat to the authority and effectiveness of the municipalities and thus should be co-ordinated through the SRSG is however reflected in the recommendations.⁵

The aim of the report is to describe and analyse the effects of having parallel systems operating in the same territory. Numerous problems arise. In criminal law the most serious problem is the risk of double jeopardy. In civil law, the validity of decisions taken by parallel courts, for example in cases of divorce, the payment of alimony or an inheritance dispute, still need to be determined. Kosovan children do not receive the same education because there

¹ When this report is making reference to the northern municipalities, it means Leposavić/Leposaviq, Zvečan/Zveçan, Zubin Potok and the northern part of Mitrovicë/Mitrovica municipality (Mitrovicë/Mitrovica north).

² The CCK was created in the summer of 2001 by a joint decision of the Government of Serbia and the Government of the then Federal Republic of Yugoslavia. The headquarter of the CCK is today in Belgrade and comprises of nine sectors, namely returns; expellees, IDP's and humanitarian aid; preservation of cultural heritage; a legal department; civil administration; reconstruction and economic development; information; department for escorts; and the informatics group (wording of the CCK).

³ UNMIK-FRY Common Document, 5 November, 2001.

⁴ Administrative bodies responsible for property issues, established after 10 June 1999 sometimes recognise UNMIK's mandate but also operate under the *de facto* authority of Belgrade.

⁵ See page nine.

exist two school systems with different curricula. Individuals driving with licences issued by the Serbian authorities have been arrested and convicted for possession of forged documents.

The report is divided into six chapters, each one giving an overview of the current situation and analysing the effects of the specific parallel structure. The OSCE has made specific recommendations on how to try to solve these problems, which can be found after the Executive Summary.

EXECUTIVE SUMMARY

The OSCE has examined parallel structures in the areas of security, courts, property rights, education, health care and issuance of documentation that exist in Kosovo. The purpose of this report is to assess the decisions of and services provided by these structures, and their effects on society.

Since June 1999, there have been two main entities involved in parallel security in north Mitrovicë/Mitrovica, the so-called “Bridge-watchers”, and the police of the Serbian Ministry of Interior Affairs (*Ministarstvo Unutrašnjih Poslova* – MUP). The OSCE has previously reported on activities of the Bridge-watchers, which served as a policing force in north Mitrovicë/Mitrovica, and the MUP.⁶ The Bridge-watchers began to lose political support from Belgrade and from the local population in 2002. Progress has been made in terms of the recruitment of Kosovo Serb MUP officers into the KPS; there are currently 42 Kosovo Serb KPS officers in Mitrovicë/Mitrovica north police station, 19 of whom are former MUP officers.

The OSCE has also previously reported on parallel courts operating in the Mitrovicë/Mitrovica region.⁷ Since then, UNMIK has been working towards the dismantling of the parallel courts through the simultaneous opening of UNMIK courts in the northern municipalities. On 13 January 2003, UNMIK opened municipal and minor offences courts in each of the predominately Kosovo Serb municipalities of Leposavić/Leposaviq and Zubin Potok, though they are still not fully functioning. Despite the existence of these courts, there are still a few parallel courts operating in Kosovo. It also appears that there are courts in Serbia proper assuming jurisdiction over every municipality and district of Kosovo. UNMIK needs to seek the co-operation of Belgrade to dismantle these structures. Moreover, UNMIK has to create a mechanism mandated to determine the legal validity of decisions already taken by parallel courts.

While parallel courts assume jurisdiction over property cases, there are also administrative parallel structures that take decisions with regard to property rights. The OSCE has examined some of the activities of the municipal directorates of urbanism and the municipal cadastre offices in Kosovo that function under the *de facto* authority of Belgrade, as well as the effects of the displaced cadastral records of Kosovan property in Serbia proper.

Two systems of education have arisen in Kosovo partly because of mutual mistrust between Kosovo Serbs and Kosovo Albanians. This mistrust is manifested by a rejection of the educational system of the other because of the perceived detriment it may cause the children, both in terms of the education they receive, and the potential threat to their personal security. All schools located either in Kosovo Serb enclaves or in municipalities where the Kosovo Serb community represents the majority use the curriculum of the Serbian Ministry of Education and Sports (SMES). The SMES provides these schools with textbooks, diplomas and stamps. Teachers and support staff are supervised by the SMES and receive salaries both from SMES and from the PISG/Ministry of Education, Science and Technology (MEST). Today, there is no recognition by the Serb-run schools of certificates or diplomas issued by Kosovan schools, and *vice versa*.

Among other things, mistrust has also led to the development of parallel healthcare systems in Kosovo. Apart from the PISG run healthcare system, the OSCE has identified a number of healthcare facilities that are exclusively run by the Serbian Ministry of Health (SMH). The

⁶ See OSCE Background Report: Parallel Security Structures in North Mitrovicë/Mitrovica, May 2002.

⁷ See OSCE Background Report: Parallel Court Activities in North Mitrovicë/Mitrovica, May 2002.

SMH supervises and pays salaries to the employed staff and covers all other related running costs. There is no co-operation and no information sharing between the two systems.

The Serbian Ministry of Internal Affairs (MUP) has several offices located throughout Kosovo. Their activities include administering passports, drivers' licences, identification cards and vehicle registration plates. Many Kosovans of all ethnicities have relied on these offices, especially those who need to travel to Serbia proper, since UNMIK documents are not generally treated as valid there. Problems have arisen when such individuals use the same documents in Kosovo. Some have been arrested and convicted for forgery, others have been fined for possession of invalid documents.

The OSCE has compiled a set of recommendations to UNMIK on how to best address these issues. The recommendations are listed on the following pages.

RECOMMENDATIONS

UNMIK has to decide on a coherent policy regarding parallel structures in Kosovo. The OSCE welcomes UNMIK's initiative to create a working group to dismantling the parallel structures. However, all parallel structures cannot be dealt with the same way. Problems in the police and justice system fall directly under UNMIK's responsibility whereas education and healthcare issues have to be dealt with through the respective Ministries.

Many of the following points are recommended to be subject to the anticipated direct talks between Prishtinë/Priština and Belgrade, especially those that suggest enhanced co-operation of the corresponding Ministries in the health and education sectors.

The recommendations have been divided into three categories. The first category of recommendations aspire at reducing the demand for parallel services, i.e. to improve the services offered by UNMIK and the PISG and thus gain public confidence. The second category reduces supply of parallel services by negotiations with the suppliers for cutbacks. The third category of recommendations aim at imposing certain policies/measures that can be enforced. All three components are necessary to reduce, and eventually eliminate the dependence of some communities upon parallel structures in Kosovo. Some recommendations may be placed under more than one category.

I. Reduction of demand

Parallel security structures

- In order to consolidate the substantial reduction in the threat caused by parallel security structures, UNMIK Police and the Kosovo Police Service (KPS) should continue to receive sufficient support from the UNMIK Administration and from Kosovo politicians in both their operational and their recruitment activities in north Mitrovicë/Mitrovica.
- UNMIK Police and the KPS should develop enhanced community outreach and community based policing initiatives in north Mitrovicë/Mitrovica with the aim of increasing local confidence in the police and developing co-operation between the police and the local population.

Parallel courts

- In order to bolster public confidence in the UNMIK courts, in particular in the northern municipalities, the DOJ should consider initiating a public awareness campaign.

Parallel schools

- UNMIK/PISG should make a thorough assessment of the implications that the parallel school system has in Kosovo. The Common Document, which provides that Kosovo Serbs should have equal access to education in their own language from primary school to university, has to be implemented by UNMIK/PISG. To this end, UNMIK/PISG has to budget for conditions in the Kosovan schools, which are accommodating the needs of the Kosovo Serb population. In particular, books and other education material has to be provided in the Serbian language.
- The MEST and the SMES should immediately negotiate a plan to ensure mutual recognition of diplomas and certificates evidencing completion of various levels of education, and to standardise the requirements for the issuance of such diplomas and certificates.

Parallel healthcare

- UNMIK/PISG should make a thorough assessment of the implications that the parallel healthcare system has in Kosovo and take proactive measures to reach out to certain communities to help them overcome their fears of seeking aid from the UNMIK healthcare system.
- UNMIK/PISG needs to reach an immediate agreement with Belgrade regarding a system which ensure that patients and their files can be easily transferred from one system to the other.⁸

II. Reduction of supply

Parallel courts

- The SRSG/UNMIK Pillar I (Police and Justice) should address the issue of implementation of the Joint Declaration by considering whether the security, the transportation and the housing situation of potential Kosovo Serb judges and prosecutors need to be given further consideration in order to encourage them to work in the UNMIK judiciary.
- The DOJ should make an assessment of the number and nature of pending cases before parallel courts in order to create a procedure for transferral to UNMIK courts.

Parallel schools

- In accordance with the Common Document, an agreement has to be reached between Belgrade and Prishtinë/Priština, with the view of creating one education system in Kosovo, which is acceptable to all communities.

Parallel healthcare

- UNMIK/PISG should make an agreement with Belgrade, with the view of creating one consolidated healthcare system in Kosovo, which is open to all communities, under the ultimate leadership of the PISG.

Serbian Ministry of Internal Affairs

- UNMIK should continue to encourage the government of Serbia to sign the Protocol on the Movement of Registered Vehicles and the Issuance of License Plates and Vehicle Registration Documents, which would create a common recognition of vehicle registration plates and documents.

The Co-ordination Centre for Kosovo

- UNMIK should request that Belgrade does not open any CCK office in Kosovo without the prior authorisation by the SRSG. Such authorisation could be granted after ensuring that offices operate within the terms of existing agreements and in compliance with the applicable law in Kosovo.
- UNMIK should demand that the activities of the CCK in Kosovo comply with, and be restricted to, the understanding reflected in the Common Document.⁹

⁸ According to the Ministry of Health, there is some minimal co-operation with regard to transferring files, especially in the case of car accidents and other life-threatening situations.

⁹ These recommendations on the CCK have been formulated and highlighted by UNMIK Pillar II, Civil Administration on several occasions.

III. Measures of policy enforcement

Parallel courts

- Decisions taken by parallel courts in the northern municipalities between 10 June 1999 and 13 January 2003 (the date on which the UNMIK courts opened in Leposavić/Leposaviq and Zubin Potok) should preferably be recognised. Such recognition is only possible if UNMIK creates a transparent procedure for review. Until a decision is reached, individuals will remain uncertain as to their rights and duties.

Parallel administrative structures - property issues

- Decisions regarding property, taken by parallel administrative structures *before* UNMIK was fully operational in the northern municipalities, should preferably be recognised. Such recognition is only possible if UNMIK creates a transparent procedure for review.
- The SRSG should issue a clarification regarding the validity of property-related administrative decisions issued by parallel structures in Serbia.

The Serbian Ministry of Internal Affairs

- UNMIK should be explicit about which activities, if any, of the SUP offices it deems legitimate.
- UNMIK should be more diligent about informing the public of the status and legality of FRY/Serbian documents, and timelines for applying for UNMIK plates. In light of this, the Office of the SRSG needs to ensure that executive decisions are published.

Chapter one

PARALLEL SECURITY STRUCTURES

1.1 Introduction – historical background¹⁰

The two main entities that have been involved in parallel security in northern Mitrovicë/Mitrovica since June 1999 are the so-called Bridge-watchers¹¹ and the Serbian Ministry of Interior Affairs (*Ministarstvo Unutrašnjih Poslova* – MUP) Police.

After the end of the conflict in 1999, several Kosovo Serbs would regularly gather at various crossings of the Ibar River in order to prevent Kosovo Albanians from returning to the northern part of Mitrovicë/Mitrovica. Initially people gathered spontaneously near the bridge without leadership or equipment, but later the group became more organised. The Bridge-watchers, as the group became known, considered themselves to be a security organisation with three main functions: to prevent Kosovo Albanians from entering the north of Mitrovicë/Mitrovica; to gather information on KFOR and UNMIK Police; and to gather information on any Kosovo Albanian living in the north. By the end of 1999 the Bridge-watchers were a structured organisation, co-ordinating their activities with the assistance of radio, and other communications equipment. Its members worked regular shifts and were paid wages.¹² During this time the Citizens' Association of Bridge St. Demetrios (a Serbian NGO) was also established. This organisation was an attempt to create a front for the Bridge-watcher organisation, especially with regard to helping it achieve its political aims.

From late 1999 to late 2001, UNMIK Police (which was generally considered to be a force of occupation by the local community in north Mitrovicë/Mitrovica) was involved in regular clashes with the civilian population, thereby severely limiting their capacity to undertake normal policing activities. Bridge-watchers and the MUP therefore filled the vacuum. In the absence of an effective UNMIK Police force in north Mitrovicë/Mitrovica, the Bridge-watchers (and to a lesser extent the MUP) became, by default, the lead “law enforcement” agency.¹³

After July 2000, deep political cleavages developed within the Bridge-watchers organisation, resulting in the emergence of a number of different factions within the group and consequent internal leadership struggles.

From mid 2002, the Bridge-watchers began to lose political support from Belgrade and from the local population.¹⁴ In the absence, therefore, of adequate funding, a unified organisational structure, and political or popular support, the Bridge-watchers had taken a lower profile and seemed inactive for a few months. During this time, former Bridge-watchers may have, on an individual basis, continued to be involved in incidents that destabilised the security situation

¹⁰ In May 2002, the OSCE issued a background report on Parallel Security Structures in North Mitrovicë/Mitrovica (the 2002 Report). The 2002 Report outlined the historical development of these parallel structures, provided information on the effect of those structures on the establishment of the rule of law, and made a number of recommendations for specific actions to be taken in order to address the issue. This current report is intended to provide an update to the 2002 report, although, for information purposes, some of the historical overview contained in the 2002 report is repeated.

¹¹ UNMIK has requested that the Bridge-watchers be referred to as “Bridge-gang” so as to not legitimise their existence. As this report refers to events that have happened in the past (when the group was commonly known as Bridge-watchers) the OSCE still refers to them by that name.

¹² Bridge-watchers were paid from both voluntary donations and out of the budget for the hospital in Mitrovicë/Mitrovica north (which falls under the Serbian Ministry of Health).

¹³ The Bridge-watchers are known, for example, to have arrested people and handed them over to the authorities in Serbia proper for trial.

¹⁴ It appears that Belgrade withdrew political support from the Bridge-watchers partly as a result of the decision of the Serb National Council (SNC) to boycott the municipal elections. The SNC is a movement created in Kosovo shortly before the NATO bombing campaign. The SNC opposed the then ruling Serbian Socialist Party (SPS) and sought to work across political boundaries to defend Serbian interests in Kosovo. The SNC was associated with the Bridge-watchers through the SNC's leader at the time, who provided political support to the Bridge-watchers.

in north Mitrovicë/Mitrovica,¹⁵ but such incidents no longer seemed to be led or co-ordinated by the Bridge-watchers as an organised group. However, after a relatively calm period, on 2 August 2003 approximately 30 Kosovo Albanians gathered on the north side of the bridge and struck up an argument with four Kosovo Serbs. Within minutes approximately 150 Kosovo Serbs gathered on the north side in the immediate vicinity of the bridge. The Bridge was closed for some time before the situation was calmed down. This incident demonstrated that the Kosovo Serbs in Mitrovicë/Mitrovica are still vigilant and well enough organised to quickly assemble large numbers of people at the north end of the bridge when they consider it necessary. It remains to be seen whether this could be seen as a reappearing of the Bridge-watchers in the north of Mitrovicë/ Mitrovica.

As for the presence of the MUP officers, the MUP operating in northern Kosovo have always maintained a low public profile and their role has never been entirely clear. In the past year, MUP officers in northern Kosovo have kept an even lower profile. Some MUP officers have become members of the Kosovo Police Service (KPS).

The following section lays out the current organisation and activities of non-UNMIK security structures in the northern municipalities.

1.2 The Bridge-watchers – current situation

1.2.1 Organisational structure and funding

Since May 2002, the organisational structure, the operational activities, and the number of the Bridge-watchers have changed substantially.¹⁶

It appears that the Serbian authorities ceased making payments to the Bridge-watchers in January 2003.¹⁷ According to a member of the Advisory Board,¹⁸ more than one half of the former Bridge-watchers are currently unemployed and require financial support. It is unclear as to whether these members still receive financial support collected from local shopkeepers and businesses. According to the same source, corroborated by another local source, this kind of fund-raising has ceased.

Approximately 20-30 of the remaining members of the original group remain on the security staff of the hospital in north Mitrovicë/Mitrovica. There are also members of the original group who only appear on the payroll and do not report for work. Neither UNMIK Police, nor

¹⁵ On 8 May 2003, a group of 50 Kosovo Serbs and 10 Kosovo Albanians provoked each other on both sides of the main bridge. KFOR intervened and calmed the situation down. On 30 May 2003, due to traffic congestion in the “Little Bosnia” area of north Mitrovicë/Mitrovica caused by a truck belonging to an international NGO unloading house reconstruction materials, a Kosovo Serb motorist became aggressive and assaulted an UNMIK Police officer. As a result the police arrested the motorist. Following the arrest, a group of Kosovo Serbs gathered at the scene and stoned the police officers and the Kosovo Albanian workers. Three police officers and one Albanian sustained minor injuries and the windows of the truck were broken.

¹⁶ For the organisation before May 2002, see the OSCE Background Report: Parallel Security Structures in North Mitrovicë/Mitrovica, May 2002, page 4.

¹⁷ The withdrawal of funding coincided with the withdrawal of political support referred to in footnote 14 above. It also coincided with the alleged “agreement” to recruit former Bridge-watchers and former Kosovo Serb MUP Officers into the KPS.

¹⁸ In northern Mitrovicë/Mitrovica, UNMIK has appointed an eight-member Advisory Board, whose aim is to help communicate the concerns of residents in north Mitrovicë/Mitrovica to the UNMIK Administration.

KFOR, nor the Kosovo Ministry of Health have any control over this facility or its activities.¹⁹

In addition, local sources state that an additional source of financial support for the Bridge-watchers may derive from the humanitarian assistance that is given to the Citizen's Association of St. Demetrios by authorities in Belgrade. However, UNMIK Police sources believe that this funding was only on a very small scale and has now ceased.

1.2.2 Activities

In general, the current loosely affiliated group of 50 – 80 former Bridge-watchers no longer responds to criminal complaints or undertakes other policing activities. Certain locations in northern Mitrovicë/Mitrovica are still frequented by groups of former Bridge-watchers, however they appear to have limited visible impact. There is for example, almost no Bridge-watcher presence by the main bridge between north and south Mitrovicë/Mitrovica. According to UNMIK Police, the remnants of the group may, nonetheless, seek to take advantage of any security incident in order to gain political and personal capital.²⁰

1.3 The MUP in north Mitrovicë/Mitrovica – current situation

MUP officers are well organised and continue to maintain offices in Zvečan/Zvečan, Zubin Potok and north Mitrovicë/Mitrovica. They keep a low profile, but nonetheless continue to undertake administrative tasks such as processing applications for passports and Serbian driving licences. It seems that MUP officers are no longer transporting suspects across the administrative boundary line between Kosovo and Serbia proper in order to hand them over to the police.

1.4 Incorporation of former Bridge-watchers and MUP into the Kosovo Police Service²¹

Progress has been made in the recruitment of Kosovo Serb MUP officers into the KPS since May 2002 when the OSCE released its last report on parallel security structures in north Mitrovicë/Mitrovica.²² In the second quarter of 2002, many former Bridge-watchers submitted applications to join the Kosovo Police Service (KPS).²³ However, only three applications were successful. Some Bridge-watchers subsequently claimed that the selection process was biased and unfair.

¹⁹ The OSCE has been informed that there are more persons on the payroll of the hospital in Mitrovicë/Mitrovica north than are currently officially employed. See chapter five, parallel healthcare, page 36.

²⁰ See the introduction on page 12 for incidents that have occurred lately. It should also be noted that on 14 August 2003, during an extraordinary session, the Zvečan/Zvečan Municipal Assembly took the decision to assemble a “special committee for self-protection and defence from Albanian terrorists and extremist attacks.” The task of the committee, it is said, “is to take action on political, advisory, organizational and other measures in protecting the Serb population in Zvečan Municipality and wider, including the authorized international institutions and government bodies of Serbia and Montenegro i.e. Republic of Serbia, as well as measures of self protection of citizens of Zvečan Municipality in case that the above mentioned institutions cannot provide safety for the people.” (Decision 01 no 016-1/-03)

²¹ The UNMIK-FRY Common Document of 5 November 2001 firmly reiterates the commitment to continue to develop and strengthen the Kosovo Police Service so that all communities can confide in a professional, multiethnic and inclusive police force, with the primary objective to serve and protect the rights of all the people of Kosovo, and further commits to prioritise the recruitment of more Kosovo Serbs, especially from the northern part of Kosovo.⁷

²² See footnote ten.

²³ According to UNMIK Police in Mitrovicë/Mitrovica region, the first group of Serb applicants accepted for initial testing consisted of approximately 120 former MUP officers and former Bridge-watchers. The second group consisted of approximately 70 persons (from various backgrounds).

According to the Kosovo Police Service School (KPSS), the selection process for this group of potential KPS officer was slightly different from the normal selection procedure due to the particular nature of the group. The aim of this recruitment was to incorporate high ranking or influential Kosovo Serbs with police or security experience into the KPS so that more Kosovo Serbs would have confidence in the KPS (which by the end of 1999 was composed of approximately 45% former members of the Kosovo Liberation Army). The Belgrade authorities approved the process. Lists of candidates were vetted by agencies outside the KPS. Persons whose applications were turned down by the KPS recruitment office were those who fell short of the minimum professional standards required. The criteria used to select cadets include age, education, residency, a physical and psychological examination, and a background check.

In view of the continuing unemployment in north Mitrovicë/Mitrovica, former Bridge-watchers and Kosovo Serb MUP Officers are still said to be willing to enter the selection process in order to join the KPS.²⁴

According to the Mitrovicë/Mitrovica Regional KPS Co-ordinator, there are currently 42 Kosovo Serb KPS officers, 19 of whom are former MUP, in Mitrovicë/Mitrovica North police station. Eight of those serving in Leposavić/Leposaviq police station are former MUP officers. However, on 29 May 2003, four former MUP KPS officers resigned their positions in Mitrovicë/Mitrovica. According to the police this percentage of resignations is not unusual when taking all the practical factors of a police officer's career into consideration (such as pension rights that remain with the Serbian Ministry of Interior, and the low salary offered by the KPS).²⁵

²⁴ There are no clear available statistics as to how many former Bridge-watchers or former MUP officers have applied to the KPS. The available figures are also confusing because both Kosovo Serb and Kosovo Albanian applicants may have had previous military or police experience under the former Yugoslav regime. Kosovo Albanians with police experience over the age of 35 may have been MUP officers themselves.

²⁵ The OSCE has been informed that the resignations were motivated by frustration with the KPS for not having recruited sufficient former MUP officers. According to the KPS, the resignations were also prompted by the opposition to the UNMIK Police Policy on the enforcement of the regulations on vehicle registration and driving licences (for more information about the driving licence issue, see chapter six, the Serbian Ministry of Internal Affairs, page 40).

Chapter two

PARALLEL COURTS

2.1 Background

In May 2002, the OSCE reported about the existence of Serb-run courts that were operating in the Mitrovicë/Mitrovica region, outside of the UNMIK interim administrative structure.²⁶ At that time, the OSCE reported about functioning minor offences and/or municipal courts in Mitrovicë/Mitrovica, Leposavić/Leposaviq, Zubin Potok and Zvečan/Zveçan. According to figures received at that time, there were a total of 34 judges working in these northern parallel court structures. The district court for these municipal courts was based in Kraljevo, Serbia proper.²⁷ The OSCE has also in the past reported about the existence of Serbian courts outside the territory of Kosovo, which claim jurisdiction over Kosovo.²⁸

According to the OSCE's information it appears that there are currently Serbian courts covering every municipality and district of Kosovo. Most of these courts are now located in Serbia proper. In other words, after the conflict of 1999 these courts were pulled back into Serbia proper, but they still claim jurisdictional competence over the territory of Kosovo.

UNMIK has been working towards the dismantling of the parallel courts through the concomitant opening of UNMIK courts in the northern municipalities. In this context, on 9 July 2002, a Joint Declaration²⁹ was signed between the Minister of Justice of the Republic of Serbia and UNMIK Deputy SRSJ for Police and Justice, to further facilitate the recruitment of Kosovo Serb prosecutors and judges into the UNMIK courts. Following the application process, UNMIK opened municipal and minor offences courts in each of the predominately Serb municipalities of Leposavić/Leposaviq and Zubin Potok. Four municipal court judges and three minor offences court judges of Serb ethnicity were sworn into office by the SRSJ, with the effective date of appointment of 13 January 2003. The majority of the judges, as well as their support staff, had previously worked in the parallel system, and the newly established courts were opened in the buildings of the parallel courts, with the understanding that the parallel courts were to be dismantled. A minor offences court and a department of the Ferizaj/Uroševac municipal court in Štrpce/Shtërpçë were also opened. One judge has been appointed to the minor offences court in Štrpce/Shtërpçë and three candidates are currently under consideration by the Kosovo Assembly for the municipal court as well as the minor offences court. The newly established UNMIK courts are still not fully operational.

2.2 Existing courts

2.2.1 Mitrovicë/Mitrovica region

Despite the establishment of the UNMIK courts in Leposavić/Leposaviq and Zubin Potok, parallel courts are still active. The parallel municipal court of Mitrovicë/Mitrovica, a minor offences court in Zvečan/Zveçan, and an office of the parallel municipal court of Mitrovicë/Mitrovica located in Zubin Potok are still functioning. There is also a parallel office of the Mitrovicë/Mitrovica District Public Prosecutor functioning in Zvečan/Zveçan, with at least two prosecutors assigned.

In March 2003, the OSCE met with the president of the parallel municipal court of Mitrovicë/Mitrovica in Zvečan/Zveçan, as well as with the president and three other judges from the parallel district court of Mitrovicë/Mitrovica dislocated in Kraljevo, Serbia proper. The president of the district court stated that the Serbian courts in the northern Kosovo

²⁶ See OSCE Background Report on Parallel Court Activities in North Mitrovicë/Mitrovica, 13 May 2002, p. 2.

²⁷ *Id.*

²⁸ See OSCE and UNHCR Ninth Assessment of the Situation of Ethnic Minorities in Kosovo, May 2002, p. 17.

²⁹ "Joint Declaration on Recruitment of Judges and Prosecutors of Serb Ethnicity into the Multi-ethnic Justice System in Kosovo."

municipalities are still connected to the Serbian Ministry of Justice in Belgrade. He stated that the courts are frequently used not only by Kosovo Serbs, but also by Kosovo Albanians who use the courts' services in order, for instance, to receive Serbian documents for travel purposes. He confirmed that the seat of the Serbian district court of Mitrovicë/Mitrovica is in Krajlevo.

The parallel municipal court of Mitrovicë/Mitrovica is also operating a sub-office in Zubin Potok. This office is located in the Zubin Potok municipal building on the same floor as the new UNMIK court offices. On the door of the offices a sign is placed, which reads: "Certification of contracts, Authorisations; Tuesday and Friday 9 – 11 am; Municipal Court of Mitrovica Sub-Office Zubin Potok." The OSCE visited the office and met with two individuals. The individuals confirmed that the office operates within the Serbian court system, and is a branch of the "courts of Kosovska Mitrovica." The individuals said that they are not authorised to give any other statement; only the court president can give official statements. But they did state that they would only leave the offices if requested in writing by the Serbian Ministry of Justice.

In addition to the parallel municipal court of Mitrovicë/Mitrovica, a parallel minor offences court in Zvečan/Zveçan also exists. According to information obtained by the OSCE, the court seldom hears cases due to the fact that the police from Serbia proper no longer patrols the streets.³⁰ On 6 February 2003, a meeting took place between UNMIK representatives and the president of the parallel minor offences court in Zvečan/Zveçan. The meeting was called at the request of the court staff, in order to initiate a proposal for opening a minor offences court under UNMIK's authority in Zvečan/Zveçan. At this meeting the president expressed her willingness to apply for a position. The proposal was rejected by the Municipal Assembly on 11 July 2003.

The OSCE has been informed that the former president of the parallel municipal court in Leposavić/Leposaviq, was recently attempting to re-open the parallel municipal court. One secretary and one court clerk from the newly established UNMIK municipal court in Leposavić/Leposaviq resigned upon the news and were immediately re-employed by the parallel municipal court. The attempt to re-open the parallel municipal court was however stopped by the intervention of the DOJ and the Legal Officer of the Leposavić/Leposaviq Municipality.

2.2.2 Prishtinë/Priština

The OSCE is aware of one parallel court acting within the territory of Prishtinë/Priština region: a municipal court located in Lepina/Lepinë, a village in the municipality of Lipjan/Lipljan. On 5 May 2003, the OSCE met with a Kosovo Serb judge who is in charge of the court. According to the judge, the jurisdiction of this court is the municipality of Lipjan/Lipljan. The court processes an average of 20 cases per month. Most of the cases are property or inheritance related.³¹ The judge explained that Kosovo Serbs are at times forced to rely on the parallel court because the government of Serbia does not recognise UNMIK decisions. For instance, if a case involves money being sought from the Serbian government, it is more efficient to file a claim with a Serbian court. The judge mentioned three cases where Kosovo Albanians also have relied on the Serbian court because of such reasons and that appeals from decisions of the court of Lepina/Lepinë are filed with the district court in Nis, Serbia proper. On 11 May, the OSCE met with the president of the UNMIK municipal

³⁰ For information see chapter one, parallel security structures, page 11.

³¹ For an in-depth analysis of decisions regarding property rights issued by parallel administrative bodies, see chapter three, page 24.

court in Lipjan/Lipljan who confirmed the existence of the parallel Serbian court in Lepina/Lepinë.³²

Recently the press has also focused on the issue of the parallel court in Lepina/Lepinë. The daily newspaper Zëri wrote the following in an article on 12 May:

“In the village Lepi of Lipjan Municipality (Prishtina region) functions a parallel court run by two Serbian judges [...]. The Municipal Assembly in Lipjan informed UNMIK authorities about the work of this court but so far UNMIK has done nothing to stop it, although it is not in accordance with UNMIK Resolution 1244. Lipjan Municipal Court does not accept as valid any of the documents issued by this parallel court and it appeals to its citizens that they must not use the services of this court, as that is only a waste of their time and money.” [sic]

2.2.3 Gjilan/Gnjilane region

Immediately after the conflict, the Serb municipal court in Gjilan/Gnjilane was removed to Vranje, while the municipal court in Štrpce/Shtërpçë was removed to Leskovac, both in Serbia proper. However, in Štrpce/Shtërpçë itself, an administrative office of the parallel court of Štrpce/Shtërpçë in Leskovac remains. This office basically acts as a liaison office – from this office claims are taken to Serbia proper for adjudication. The administrative office of the parallel court continues to use the stamp of “Republika Srbija”.

2.2.4 Pejë/Peć and Prizren regions

No parallel courts have been reported in the regions of Prizren and Pejë/Peć, though there are apparently courts dislocated in Serbia proper. For example, there is a municipal court of Pejë/Peć dislocated in Leskovac, and a municipal court of Prizren dislocated in Krusevku. Cases are primarily related to inheritance and property.³³ The president of the Municipal Court of Pejë/Peć has confirmed that they do not treat decisions from the parallel courts as valid.

2.3 The effects of parallel court systems

2.3.1 Caseload

Since 1999, the vast majority of activities undertaken by parallel municipal courts in the northern municipalities have been of an administrative nature, involving the issuance of authorisations, criminal records, stamps or certifications of documents, and so forth. The OSCE has noticed that parallel courts have tended to be relied on when decisions need to be recognised in Serbia proper; for example, cases involving inheritance. The OSCE has not been allowed access to all of the records of cases heard by parallel courts. However, the president of the parallel district court of “Kosovska Mitrovica” did report that, between June 1999 and January 2003, the parallel municipal courts in the Mitrovicë/Mitrovica region, and the parallel district court of Kraljevo, have together heard the following numbers and types of cases.³⁴

³² The president stated that two Kosovo Serb judges were appointed to the municipal court of Lipjan/Lipljan, but they never came to work. The president was of the belief that the decision of the Kosovo Serb judges not to join the municipal court was not due to financial considerations but rather the political pressure from Belgrade. The president stated that the Kosovo Serb colleagues are always welcome to join the court and commence with their work.

³³ See chapter three, parallel administrative structures – property issues, page 24, for more information.

³⁴ Around 95% of the cases have been decided at the municipal court level. Exact figures for those cases that went to appeal were not accessible. The data does not include cases from minor offences courts.

Litigation:	723
Criminal proceedings:	352
Investigative proceedings: ³⁵	126
Inheritance proceedings:	628
Miscellaneous: ³⁶	1983
Executions:	176
Certification of documents (Apostille): ³⁷	216
Certification of documents (General): ³⁸	1011
Entreaties: ³⁹	59

The president of the parallel district court of Mitrovicë/Mitrovica, in a meeting on 8 May, reported that the parallel courts have ceased to hear criminal matters. Judges from the UNMIK municipal court in Leposavić/Leposaviq also later confirmed this information. Previously, in a meeting on 11 March, the president of the parallel district court did describe one case pending at the parallel district court in Kraljevo, involving an issue of double jeopardy. The indictment accuses the defendant of attempted murder. According to the president's information, an UNMIK court had previously convicted the accused of severe bodily harm, on the basis of the same, or substantially the same facts.

The OSCE has been informed of a similar case in which the defendant was acquitted by the parallel district court in Kraljevo, for murder, having served over nine months in pre-trial custody in Serbia proper. Upon his return to Kosovo, an investigation was conducted by the UNMIK Mitrovicë/Mitrovica district court. The suspect was detained for approximately four months on a charge of grave bodily injury resulting in the death of the victim, on the basis of the same, or substantially the same facts. After the completion of the investigation, the international public prosecutor withdrew the case in February 2003, due to the lack of sufficient evidence. The suspect was then released from pre-trial custody. Subsequently, the injured party, the daughter of the deceased, took up private prosecution of the accused by filing an indictment against him for the criminal act of grave bodily injury. The case is currently pending.

The OSCE has also been able to gather information about pending cases before the former parallel municipal court of Leposavić/Leposaviq. According to the acting president, the number of pending cases before the court is as follows.

Number of cases still pending, received by the court prior to June 1999:

Civil proceedings:	15
Criminal proceedings:	13
Criminal-inquiry proceedings:	15
Inheritance proceedings:	5
Execution proceedings:	30
Out-of-court proceedings:	4

³⁵ The number of 'Investigative Proceedings' refers to cases that led to criminal proceedings as well as to those terminated before entering that stage.

³⁶ The category of 'Miscellaneous' consists of cases finished through friendly settlement, out of court proceedings and so forth.

³⁷ Courts issue apostille stamps to authenticate/certify documents from foreign courts.

³⁸ 'Certification of Documents' involves all other certification required by law, for instance stamping of contracts, issuance of a statement of criminal records, etc.

³⁹ 'Entreaties' refers to request for legal support from other courts, either from within Serbia and Montenegro or from abroad.

Number of pending cases received by the court between June 1999 – 13 January 2003:⁴⁰

Civil proceedings:	87
Criminal proceedings:	527
Inquiry proceedings:	24
Inheritance proceedings:	32
Execution proceedings:	26
Out-of-court proceedings:	6

These pending cases were left at the court building in Leposavić/Leposaviq by the parallel authorities. The UNMIK Department of Justice (DOJ) is currently evaluating whether and how these cases can be transferred to the UNMIK court system.

2.3.2 Enforcement

The means of enforcement of parallel court judgements are limited to what is available in the still existing parallel court and administrative structures. Open enforcement is rendered almost impossible by UNMIK Police presence. However, the parallel administrative structures apparently do provide certain possibilities for enforcement. For instance, if monetary compensation is in question a decision can still be enforced through the parallel “Bureau for Accounting and Payments (Zavod za obracun i placanje),” seated in Zvečan/Zveçan. This is the replacement of the former “Social Accounting Authority (Sluzba drustvenog knjigovodstva)” from former Yugoslavian socialist times. The OSCE is not aware of the effectiveness of this mechanism.

There still exist cadastral offices in Leposavić/Leposaviq, Zvečan/Zveçan and Zubin Potok which remain under Serbian authority, and which would normally enforce decisions related to property disputes. The OSCE has been informed by the Director of the Cadastral Office of Kosovo (with an office in the Cadastral Office of Leposavić/Leposaviq) that no changes have been made in the cadastral register since June 1999. The Serb cadastral offices within Kosovo are accepting requests for changes, including court decisions for altering property title, but they will not perform any changes until further decisions on the work of the cadastral register are made. At present these cadastral offices only issue property statements, such as possession lists, upon request.⁴¹

2.4 Analysis

2.4.1 Present concerns

A major aim of the Common Document, and subsequently the Joint Declaration⁴² was to encourage Kosovo Serb judges and prosecutors to apply for positions in the UNMIK judicial system. In this regard, UNMIK has been partially successful. Courts have been opened in Zubin Potok and Leposavić/Leposaviq, and a total of 11 Kosovo Serb judges now work for the UNMIK courts. On the other hand, the Serbian Ministry of Justice had been fulfilling its obligations with respect to the Joint Declaration in a less than enthusiastic manner, and this had left all potential candidates in an uncomfortable position. The Serbian Ministry of Justice has been sending mixed messages. It has not been clear, for example, whether Serbian judges and prosecutors will continue to receive social benefits from the Serbian government. It did submit a proposed legal instrument to the Serbian Parliament declaring the temporary suspension of the jurisdiction of the Serbian judicial system in Kosovo for the time of UNMIK interim administration, but this proposal was later withdrawn. At the time of writing

⁴⁰ 13 January 2003 is the date on which the UNMIK municipal court of Leposavić/Leposaviq officially opened.

⁴¹ For more information, see chapter three, parallel administrative structures –property issues, page 24.

⁴² Joint Declaration on Recruitment of Judges and Prosecutors of Serb Ethnicity into the Multi-ethnic Justice System in Kosovo, 9 July 2002.

this report, the OSCE learned that the Ministry of Justice has again submitted recommendations to the Serbian government that it temporarily suspend its jurisdiction in Kosovo and absorb much of its staff into the existing courts that cover only Serbia proper. It remains to be seen whether these recommendations will turn into practice.

Serbian judges and prosecutors are hesitant to apply for positions within UNMIK as the Serbian authorities still offer better working conditions. For instance, UNMIK offers lower salaries and fewer benefits. For the time being, most Kosovo Serbs seem to prefer to live and work in Serbia.

Despite the opening of the UNMIK courts in the northern municipalities, there is still uncertainty amongst the population regarding which court to approach. Kosovo Serbs as well as occasionally Kosovo Albanians are still relying on parallel courts for some matters. An example is administrative issues. In some cases UNMIK courts are not able to certify particular statements, such as a criminal record statement of a person prior to June 1999, as the relevant files are in the possession of the Serbian judiciary. Applicants in need of such a statement, for example for visa purposes will normally approach these Serbian courts directly rather than asking an UNMIK court to send a request to Belgrade. To avoid uncertainty, many individuals tend to apply for the same documents at the parallel and UNMIK courts.

The newly established UNMIK minor offences and municipal courts in Leposavić/Leposaviq and Zubin Potok have little capacity. In both municipalities there is presently one judge in each of the courts. Only a few cases are processed, and regarding criminal matters no trial panel can be constituted. Thus, cases are still referred to the courts in Mitrovicë/Mitrovica. The limited functioning of the UNMIK courts in Leposavić/Leposaviq was used by the former president of the parallel court as an argument to justify the re-opening of the parallel municipal court. Given the fact that UNMIK courts were opened nine months ago and are still not properly functioning, this argument was endorsed by the population according to information given to the OSCE.⁴³

2.4.2 Past judgements of parallel courts

One issue that will need to be addressed by UNMIK is the status of cases that were decided by the parallel courts when they were most active – between the years 1999 and 2002. During that time, UNMIK had only limited control over the municipalities in northern Kosovo. Although the UNMIK courts in Mitrovicë/Mitrovica did have official jurisdiction over these territories, a lot of cases were dealt with by the parallel courts. UNMIK has not yet taken a decision on how to assess the legality of judgements and actions taken by the parallel courts during the time they were functioning. Moreover, UNMIK has not yet determined a procedure on whether and how to transfer cases that were opened by the parallel courts to the UNMIK system. As the situation stands it remains unclear if, for example, property transactions verified by a parallel court, possess legal value; or whether a parallel court-certified mortgage for a loan is still in force. The same applies to a decision on divorce or payment of alimony by a parallel court. Eventually a decision as to whether a couple is still married, or if the payment of alimony should cease, is needed.

There are two potential solutions: creation of appropriate mechanisms to evaluate the legal validity of the decisions and actions of the parallel courts and to transfer pending cases; or, a determination that decisions of these parallel courts are not legally valid. Indeed, if UNMIK does not address these problems the latter could be the result in any event, since UNMIK and the local judiciary have often indicated that parallel court activities are not valid.

⁴³ See page 18 regarding the attempt to re-open the parallel municipal court in Leposavić/Leposaviq.

Non-recognition of judgements by parallel courts can be justified on the ground that the parallel structures are illegal due to UN Security Council Resolution 1244 (1999) and therefore, all of their decisions and actions are consequently illegal. Such a solution, however, may not be ideal and could create social problems. For example, some might take advantage of the uncertainty and stop paying alimony, or stop paying off loans, or attempt to seize transferred property. Secondly, such a solution may ignore the fact that Kosovo Serbs living in the northern municipalities have relied upon the parallel courts to protect their interests. The operations of the courts in these municipalities, moreover, were left unhindered between the years 1999 and 2003, with the UNMIK courts in the north then not constituted. Residents of these municipalities therefore were left with no apparent option other than the parallel courts. The policy of the government of Serbia to maintain these courts reinforced this impression. Rendering decisions of the parallel court null and void will effect those who reasonably presumed that the decisions of these courts had legal force in Kosovo.

Total non-recognition of decisions of parallel courts can create problems as demonstrated by the following examples. In 2001, an individual appealed against a pre-1999 ruling of the municipal court of Mitrovicë/Mitrovica at the parallel district court of Mitrovicë/Mitrovica, dislocated in Kraljevo, Serbia proper, on the amount of compensation awarded under expropriation procedures. In 2002, concerned about the legal validity of the decision rendered by the parallel district court of “Kosovska Mitrovica,” the individual approached the president of the UNMIK district court of Mitrovicë/Mitrovica, who advised the appellant either to re-initiate first instance proceedings at the UNMIK municipal court of Mitrovicë/Mitrovica, or to await the dismantling of the parallel district court of “Kosovska Mitrovica” and the transfer of pending cases to the UNMIK district court of Mitrovicë/Mitrovica. Another individual had a purchase contract of a socially owned apartment verified by the parallel municipal court of Mitrovicë/Mitrovica in September 2000. In 2002, the apartment owner sold the apartment to a third party but the UNMIK municipal court of Mitrovicë/Mitrovica refused to verify the contract on sale, on the grounds that the purchase contract verified by the parallel municipal court of Mitrovicë/Mitrovica was not legally valid. The municipal court official advised the individual to approach the Municipal Legal Officer (MLO) of Mitrovicë/Mitrovica for a determination on the legal validity of the 2000 purchase contract. The MLO informed the individual that he was not competent to make this determination.

2.4.3 Cases pending before the parallel courts

UNMIK has not yet taken a decision regarding transfer of pending cases from parallel courts to UNMIK courts. Resubmitting cases to the relevant UNMIK court should be simple enough, but there might be issues as to when the time for calculating statute of limitations begins. Moreover, if the case is transferred to the UNMIK court, it will have to be decided how to deal with the court record for that case, whether the case should start all over or whether the procedures taken between June 1999 and January 2003 will be treated as valid. Moreover, a decision will also have to be made on how to deal with cases that have been pending since before June 1999. The need to address these issues is most urgent as the re-opening of the municipal parallel municipal court in Leposavić/Leposaviq shows.

Chapter three

**PARALLEL ADMINISTRATIVE STRUCTURES
PROPERTY ISSUES**

3.1 Background and issues

The municipal authorities in Kosovo are competent for regulating the use and control of property within municipal boundaries in accordance with the applicable law. The OSCE has identified a number of administrative structures competent for property matters within Kosovo that function under the authority of Belgrade, notwithstanding the establishment of the UNMIK Civil Administration. These administrative structures are particularly prominent in Zvečan/Zveçan, Zubin Potok and Leposavić/Leposaviq municipalities. The OSCE has also identified parallel cadastre offices located in Serbia proper.

The situation in the northern municipalities has to be examined in the light of the developments in the region. First, not all UNMIK regional and municipal administrators in the Mitrovicë/Mitrovica region were appointed until September 1999. Second, only in October 2000 did UNMIK complete the appointment of the Municipal Assembly in Mitrovicë/Mitrovica; in November 2000, this appointment was completed in Zvečan/Zveçan; in December 2000 in Zubin Potok; and in January 2001 the Municipal Assembly in Leposavić/Leposaviq was appointed.

Once the municipal assemblies were appointed, and thus started to act under the framework of UNMIK Regulation 2000/45,⁴⁴ the same directorates of urbanism and cadastre offices, which used to be functioning under Serbian control, were officially recognised as UNMIK bodies. However, the connection to Belgrade was not disrupted, with the result that these UNMIK-recognised administrative bodies cite Serbian law⁴⁵ as the legal basis for their decisions and use the Republic of Serbia stamp.

The extent of Belgrade's influence in the northern municipalities can be illustrated by a couple of examples from the Municipal Assembly in Leposavić/Leposaviq. Firstly, the Municipal Assembly issued a document in March 2003 listing illegally constructed objects and establishing the conditions for legalisation of these objects. The document bore the stamp of the Republic of Serbia and referred to former Socialist Federal Republic of Yugoslavia (SFRY) laws enacted in the 1990's.⁴⁶ Secondly, at one of its recent sessions, the Municipal Assembly openly discussed the implementation of legislation on regulation of illegal construction, enacted by the Republic of Serbia. Although the UNMIK Municipal Legal Officer was present at the Municipal Assembly session he did not intervene to contest the applicability of the legislation.⁴⁷ The president of the Municipal Assembly subsequently stated that the Municipal Assembly would apply both the legal frameworks of UNMIK and of the Republic of Serbia.⁴⁸

Another problem with regard to property rights in Kosovo is that many cadastral records relating to Kosovo properties were relocated to Serbia proper after the conflict. Subsequently, there is confusion today regarding the validity in Kosovo of possession lists (cadastral records) issued in Serbia.

⁴⁴ On Self-Government of Municipalities in Kosovo.

⁴⁵ "Serbian law" here means law that is not applicable in Kosovo. Please note that Serbian law still can be applicable in Kosovo according to UNMIK Regulation 1999/24 On the Law Applicable in Kosovo.

⁴⁶ Municipal Assembly Decision no. 353-3, dated 11 March 2003. The decision states that once the specified deadlines for legalisation expire, the illegal constructions would be removed at the expense of the property owners.

⁴⁷ At the same session, the Deputy President and the Chief Executive Officer (CEO) were called "traitors" by members of the public for going against "directives" received from the Co-ordination Centre for Kosovo (CCK) and the government of Serbia and Montenegro to retroactively legalise all illegally constructed buildings.

⁴⁸ See footnote 45.

Infringement of individuals' property rights has resulted from the functioning of administrative structures in the context described above. To remedy this, the legal validity of decisions issued by such administrative bodies before and after UNMIK was fully established in the northern municipalities has to be determined.

3.2 Parallel administrative structures located in the territory of Kosovo

3.2.1 Municipal directorates of urbanism

The OSCE has identified a number of decisions on property matters issued by municipal directorates of urbanism in Zvečan/Zveçan, Zubin Potok and Leposavić/Leposaviq municipalities between 1999 and 2003 bearing the stamp of the Republic of Serbia, in Cyrillic. The OSCE has also identified decisions issued by municipal directorates of urbanism in Zubin Potok bearing both the stamps of UNMIK and the Republic of Serbia and signed by the UNMIK Municipal Representative and the Director of the municipal directorate of urbanism in Zubin Potok.⁴⁹

3.2.2 Municipal cadastre offices

In Leposavić/Leposaviq, Zubin Potok and Zvečan/Zveçan municipalities, the UNMIK-recognised Municipal Cadastre Offices (MCO) still function under the authority of the Republic of Serbia Geodetic Administration. The OSCE has identified documentation issued by these MCO's that is particularly confusing as to its validity. For example, the MCO in Zubin Potok issued a possession list in February 2002, headed Republic of Serbia Geodetic Administration, yet bearing an UNMIK stamp. The fact that these UNMIK-recognised administrative structures are still influenced by Belgrade creates legal uncertainty. The OSCE has identified complaints from members of minority communities in areas where Kosovo Serbs are the majority community concerning the issuance of documentation headed Republic of Serbia Geodetic Administration by the MCOs in these municipalities.⁵⁰

3.3 Parallel cadastre offices in Serbia proper

After June 1999, the majority of cadastral records relating to properties in the territory of Kosovo were removed to Serbia proper. The Kosovo Cadastral Agency (KCA) has informed the OSCE that a draft Protocol for the return of displaced cadastral records from Serbia proper has been informally agreed upon by KCA and the Geodetic Administration of the Republic of Serbia. However, the signing of the draft Protocol is on hold due to the current stalemate in UNMIK-Belgrade dialogue.

According to the KCA, the cadastral office in Kruševac, Serbia proper has cadastral records covering all municipalities in Kosovo. It appears that other cadastre offices in Serbia proper also may have records on property in Kosovo. The KCA also mentioned that a parallel cadastre office might be located in Niš. Yet, UNMIK has not determined the legal validity of the possession lists obtained from Serbia proper, nor addressed the issue of whether such possession lists should be deemed legally valid.

3.4 Legal validity of decisions issued by administrative structures

3.4.1 Legal validity of decisions issued by pre-UNMIK and UNMIK-recognised administrative structures in Kosovo and the lack of effective remedies

The OSCE has previously examined the issue of the legal validity of decisions issued by administrative structures before and after UNMIK was fully operational in the northern

⁴⁹ For example, decision no. 08-354-467, dated 11 November 2002.

⁵⁰ In September 2003, the Leposavić/Leposaviq UNMIK Municipal Legal Officer informed the OSCE about such a complaint from a Kosovo Roma individual. Similar complaints have been filed by Kosovo Albanians living in the municipality of Zubin Potok, where Kosovo Serbs are in the majority.

municipalities.⁵¹ The problem is illustrated by two cases from Leposavić/Leposaviq. The inconsistent approach by different UNMIK officials regarding the recognition of decisions issued by these structures as well as the lack of effective remedies for individuals whose property rights have been infringed is also highlighted.

3.4.1.1 Legal validity of decisions taken before UNMIK was fully operational

In the first case from Leposavić/Leposaviq, an individual applied for and was issued with, in December 2000, the requisite permits by the municipal authorities to use land to operate a petrol station.⁵² The OSCE understands that the UNMIK Municipal Administrator in Leposavić/Leposaviq was appointed in September 1999, however UNMIK was not fully operational by December 2000.⁵³ In March 2003, the UNMIK Municipal Representative and the UNMIK Legal Officer of the Leposavić/Leposaviq municipality indicated to the OSCE that UNMIK Customs Service is seeking demolition of the petrol station through the UNMIK municipal administration, on the grounds that UNMIK does not recognise the permits issued by the municipal authorities in December 2000 as valid.

The OSCE notes the legal uncertainty concerning the validity of the administrative decision issued before UNMIK was fully operational in the northern municipalities. The OSCE is concerned that the rights of individuals who, at the time, had reasonable grounds for believing that they approached a legitimate structure, are being infringed as pre-UNMIK decisions are treated as invalid.

3.4.1.2 Legal validity of decisions taken by UNMIK-recognised structures

In the second case in Leposavić/Leposaviq, inspectors of the UNMIK-recognised municipal directorate of urbanism in Leposavić/Leposaviq, functioning under the continued influence of Belgrade, issued decisions in November 2002 authorising the demolition of kiosks that had been erected without a construction permit.⁵⁴ These decisions bore the stamp of the Republic of Serbia and the kiosk owners were therefore faced with legal uncertainty as to the validity of the decisions. Additionally, the appeals procedure for challenging decisions issued by the UNMIK-recognised municipal directorate of urbanism in Leposavić/Leposaviq was unclear and not in accordance with the applicable law.⁵⁵

Concerning the validity of possession lists issued by UNMIK-recognised MCOs functioning under the authority of Belgrade, the uncertainty of UNMIK officials about their validity as evidence of property title was indicated when the UNMIK Regional Court Administrator in Mitrovicë/Mitrovica consulted the OSCE on the validity of this documentation.⁵⁶ Additionally, the UNMIK Local Community Officer (LCO) in Zubin Potok has received complaints from Kosovo Albanians in the village of Çabër/Čabra, Zubin Potok municipality, about possession lists issued by the MCO in Zubin Potok, headed Republic of Serbia Geodetic Administration.

⁵¹ The Department of Human Rights and Rule of Law, Weekly Report, 7-13 April 2003.

⁵² Construction permit issued by the Leposavić/Leposaviq municipal department of urbanism, dated 12 December 2000.

⁵³ The appointment of the Municipal Administrator in Leposavić/ Leposaviq is reported in the OSCE Regional Centre Mitrovicë/Mitrovica report, dated 28 September 1999.

⁵⁴ Decision nos. 354/15 to 20.

⁵⁵ The decisions issued by the municipal department of urbanism in Leposavić/Leposaviq provided that the kiosk “owners” had 10 days to appeal against the decisions to the “appeals board.” The identification of this second instance “appeals board” is unclear and the deadline for initiating appeal procedures is not in accordance with applicable law.

⁵⁶ Under the evidentiary rules of the Housing and Property Directorate and the Housing and Property Claims Commission (HPD/HPCC), cadastral records only constitute supporting evidence, due to the level of inaccuracy of cadastral records.

The question of whether an UNMIK-recognised administrative body should review decisions issued by pre-UNMIK administrative structures (i.e. decisions rendered on the basis of SFRY laws and bearing the stamp of the republic of Serbia), to make a legally enforceable determination, still has not been clarified.

3.4.1.3 Confusion regarding remedies

It is crucial that individuals have the right to appeal decisions affecting their property rights to a body with jurisdiction to determine the legal validity of decisions issued by the above-mentioned administrative structures. The OSCE has identified instances where municipal authorities are uncertain as to the appropriate higher administrative review body. The current Director of the UNMIK-recognised municipal directorate of urbanism in Leposavić/Leposaviq informed the OSCE that, in his opinion, the relevant ministry in Belgrade is competent to receive appeals against decisions issued by the municipal directorate of urbanism. In clear contradiction, in the Zubin Potok municipality, the director of the municipal directorate of urbanism informed the OSCE that, in his opinion, given the lack of clarity concerning the competent higher administrative review body, a decision issued by an UNMIK-recognised administrative structure citing SFRY laws and bearing the stamp of the Republic of Serbia should be reviewed by the Ombudsperson of Kosovo.⁵⁷

The OSCE has previously reported on the operational confusion and the lack of awareness amongst municipal authorities concerning the higher administrative body competent to review the validity of first instance administrative decisions issued by regular UNMIK-recognised bodies (not functioning under the influence of Belgrade).⁵⁸ An attempt to clarify the situation has been made by charging the Directorate of Administrative Affairs with the responsibility to co-ordinate the management of second instance administrative review of municipal decisions. The Directorate processes and distributes all second instance complaints to the appropriate transferred or reserved body for review and determination.

In practice, there is no review of administrative decisions issued by the municipal directorates of urbanism in Zubin Potok, Zvečan/Zvečan and Leposavić/Leposaviq by a higher administrative body. Officials in the municipal directorates of urbanism in Zvečan/Zvečan and Leposavić/Leposaviq have informed the OSCE that the higher administrative body competent to review such decisions is the relevant Ministry in Belgrade.

Additionally, it is unclear what remedies are available and what applicable administrative procedures should be followed where individuals were issued decisions by pre-UNMIK administrative bodies.

3.4.2 Legal validity of cadastral records in Serbia proper

Regarding the existence of parallel cadastre offices located in Serbia proper, a primary concern is the legal validity in Kosovo of possession lists issued by these offices between 1999 and up to date. For example, a cadastre office located in Vranje, allegedly issues possession lists relating to properties located in the Gjilan/Gnjilane region. According to the president of the Municipal Assembly in Kamenicë/Kamenica, these possession lists bear the stamp of the Republic of Serbia and state the place of issuance as Kamenicë/Kamenica.⁵⁹ The president of the Municipal Assembly in Kamenicë/Kamenica informed the OSCE that the municipal administrative bodies in Kosovo do not recognise possession lists issued by cadastre offices in Serbia proper as legally valid. However, there is uncertainty amongst reconstruction agencies as to whether possession lists issued by cadastre offices in Serbia

⁵⁷ The Ombudsperson Institution does not represent an effective remedy as its decisions are not enforceable.

⁵⁸ See the OSCE's report Property Rights in Kosovo (2002-2003), page 58.

⁵⁹ The OSCE has yet to verify the accuracy of the statements of the president of the Municipal Assembly in Kamenicë/Kamenica.

proper are acceptable evidence of property rights in the allocation of reconstruction assistance to beneficiaries.

The effect of transfers of property located in Kosovo verified in courts in Serbia proper further complicates this issue. According to the KCA, even if a Serbian court has verified the transfer of property located in Kosovo, there have been no changes to the cadastral records in Serbia proper since June 1999; i.e. there has been no administrative enforcement of Serbian court-verified property transfers in cadastral records displaced in Serbia proper since June 1999. Hence, the question arises whether the *de facto* property right holder pursuant to an unregistered Serbian court-verified transfer would be treated as a *bona fide* property right holder under applicable law in Kosovo.

Chapter four

PARALLEL SCHOOLS

4.1 The structures

Before the conflict, the Kosovo Albanian population had their own schools, which were run in parallel to the Serbian school system. After the conflict, the roles have shifted and today it is the Serbian system that is parallel to the Kosovo Albanian. Because Kosovo Serb parents perceive that mixed primary schools within their municipality are unsafe and unsuitable for their children, primary schools have been established in some cases in private homes and other substandard facilities, as was the case for the Kosovo Albanian population before the conflict.

All primary and secondary schools located either in Kosovo Serb enclaves or in municipalities where the Kosovo Serb community represents the majority use the curriculum of the Serbian Ministry of Education and Sports (SMES). The SMES provides these schools with textbooks, diplomas and stamps. Both teachers and support staff are supervised by the SMES and receive salaries both from the latter and from the PISG/Ministry of Education, Science and Technology (MEST).⁶⁰

In Mitrovicë/Mitrovica region, all primary and secondary schools located in the municipalities of Zubin Potok, Leposavić/Leposaviq, Zvečan/Zveçan and in northern part of Mitrovicë/Mitrovica are under direct authority of the SMES. The same applies to primary and secondary schools located in Banja/Banjë (Skenderaj/Srbica municipality), Gracë/Grace, Gobjulë/Gobjulja and Prilluzhë/Priluzhje (Vushtrri/Vučitrn municipality).

In Prishtinë/Priština region primary and secondary parallel schools have been identified in the municipalities of Fushë Kosovë/Kosovo Polje, Prishtinë/Priština (only in rural north and south areas), Lipjan/Lipljan and Obiliq/Obiliç.

In Gjilan/Gnjilane region the following primary and secondary schools under parallel structures have been identified: seven primary and six secondary schools in Gjilan/Gnjilane municipality; four primary and one secondary schools in Viti/Vitina municipality; one primary school in Novobërdë/Novo Brdo; 11 primary and two secondary schools in Kamenicë/Kamenica municipality. In Štrpce/Shtërpçë municipality all primary schools (apart from the one attended by the Kosovo Albanian community) and the high school are under direct supervision of the SMES.⁶¹

In Prizren region the only municipality in the region that has an existing parallel structure is Rahovec/Orahovac, with two primary schools and one secondary school.

In Pejë/Peć region the primary school located in Osojane/Osojan (Istog/Istok municipality) and the primary and secondary school in Gorazhdevc/Gorazdevac (Pejë/Peć municipality) are all supervised by the SMES.

The Serbian University in northern Mitrovicë/Mitrovica has been operating under Serbian rule since the end of the conflict. All universities that function in Kosovo since 2001 were legalised when the Law on Higher Education was promulgated by the SRSG on 12 May 2003.⁶² Despite this legalisation, two Kosovo Serb students from the University of

⁶⁰ See par. 4.2.1.3 below for further details on double salaries received by Kosovo Serb teachers.

⁶¹ The high school has two directors: one nominated by the SMES and the second by the Kosovo Ministry of Education, Science and Technology (MEST). Both of them claim that there is a good co-operation and both of them work under the Serbian schedule. The SMES and the MEST pay the salary of the director nominated by Belgrade, meanwhile, the director nominated by the MEST is paid only from the KCB. The first director is reporting to the SMES and the second to the MEST.

⁶² UNMIK Regulation 2003/14 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Higher Education in Kosovo. The Regulation provides that “pending the required action by the Assembly of Kosovo to ensure that the Law on Higher Education in Kosovo adequately covers the

Mitrovicë/Mitrovica were allegedly refused participation in the University of Mitrovicë/Mitrovica Summer School Programme. According to a member of the selection panel, the Kosovo Serb students did not have the grades required and had presented false documentation (their documents stated University of Prishtinë/Priština instead of University of Mitrovicë/Mitrovica).⁶³

4.2 The causes and effects of the parallel structures

The OSCE has examined what obstacles exist in Kosovo and Serbia proper, which inhibit the dismantling of the above-mentioned parallel administrative structures in education and the consolidation of all structures in a single unified educational system.

4.2.1 Root causes of parallel structures

4.2.1.1 Perceived lack of security

The lack of security continues to be a major factor in the Kosovo Serbian community's contention that they cannot foresee integrated schools in the near future. The OSCE concluded in March 2003 that serious security incidents against members of the Kosovo Serb and other minority communities had diminished substantially over the last year.⁶⁴ However, the security situation has deteriorated over the past months and the fear of intimidation, harassment and provocation continue to be a part of daily life for Kosovo Serbs.

Because of the perception that mixed schools within their municipalities are not safe, Kosovo Serb students often travel out of their municipalities in order to attend secondary schools within Kosovo Serb enclaves. Further, because of a lack of safe school transport for minority students on a daily basis, many of these students must travel to other municipalities at the beginning of the week, and seek lodging in that municipality. The OSCE has previously documented the shortcomings of the MEST to ensure safe school bus transport from enclaves for minority students on a consistent basis.⁶⁵

4.2.1.2 Intransigent attitudes on the part of both the Kosovo Albanian and the Kosovo Serb communities towards tolerance and finding a common ground

During the post-conflict period, there has not been any sign of genuine tolerance or attempts to find a common ground between the Kosovo Albanian and Kosovo Serb communities regarding consolidation of the educational system. For example, members of the Kosovo Serb community in the Pejë/Peć municipality, when asked if it might be useful in the future for their children to learn the Albanian language, simply answer that they do not need to learn the Albanian language since they live in Serbia. Further, in cases where the MEST has tried to encourage Kosovo Serbs to apply for positions as school directors through advertisements in Serbian language media, only a few applications have been received, notwithstanding the low levels of employment within the Kosovo Serb communities.⁶⁶

right of all Communities to higher education, the Law shall be provisionally supplemented with a new section 10.8 reflecting the recommendation in the Decision of the Special Panel, which reads: 'All providers of higher education that were authorized to operate in the academic year 2001-2002 will be licensed under this Law and in conformity with international non-discrimination principles, while working to meet the standards set forth by the law.'

⁶³ See also the Council for the Defence of Human Rights and Freedoms, press release, 23 July 2003 and an article in the daily newspaper Koha Ditore, 23 July, 2003.

⁶⁴ See joint OSCE-UNHCR Tenth Assessment of the Situation of Ethnic Minorities in Kosovo, March 2003, p. 12

⁶⁵ See the Department of Human Rights and Rule of Law, Weekly Report, 5 –11 May 2003.

⁶⁶ To encourage potential candidates from minority groups to apply for jobs, the MEST places advertisements in the minority language media outlets and seek the services of UNMIK Local Community Officers for wider outreach.

Despite the fact that minority protection is often stated by the international community in Kosovo as a prerequisite to the final political settlement, neither the MEST nor educational authorities in the municipalities have enunciated a comprehensive plan which would provide for the integration of members of minority communities in general, or members of the Kosovo Serb community in particular, into the MEST educational system.

Issues as the right to learn one's mother tongue, the right to study certain subjects in one's mother tongue and the teaching of history are subjects which have not yet been approached by Kosovo Serb and Kosovo Albanian educators at all levels of education. Educational authorities have informed the OSCE that there is a concern with the history textbooks, which are used in Kosovo Albanian schools because of the version of history that they depict.⁶⁷

Finally, while there have been efforts by Kosovo Albanian and Kosovo Serb educators on the local level to initiate discussions on how they might combine their efforts in order to consolidate the parallel educational systems, these efforts consistently break down because of the intransigent and uncompromising attitudes of senior educational officials. For example, in Gjilan/Gnjilane, educational officials from both the Kosovo Albanian and Kosovo Serbian community continually stressed that while they have tried to co-operate, they fail to reach agreement because they are bound by instructions from the MEST and the SMES. The officials stressed the importance of co-operation between the MEST and the SMES on issues such as salaries, curriculum, and the division of the responsibility for education generally.

4.2.1.3 Double salaries offered to Kosovo Serb teachers

The salary paid by the SMES to Kosovo Serb teachers working in Kosovo is approximately twice the average salary that teachers receive in Serbia proper. The SMES states that the purpose of the higher salaries is to compensate Kosovo Serb teachers for working in Kosovo and to encourage them to stay in their positions. Kosovo Serb teachers also receive salaries from the MEST. The effect is that a Kosovo Albanian teacher working under the MEST earns 200 Euro per month, while a Kosovo Serb teacher working under both the SMES and the MEST can earn as much as 500 Euro per month. On the other hand, if a Kosovo Serb teacher is known to have a contract with the MEST, the SMES can subsequently reduce the Kosovo teacher's salary with as much as 50%.⁶⁸

The OSCE received several individual complaints from Kosovo Serb teachers in Mitrovicë/Mitrovica, following a decision of the school directors to remove them from the lists submitted to UNMIK for payment of salaries due under contracts signed with the MEST. When the OSCE contacted the UNMIK Regional Officer for Education, he explained that the MEST pays salaries to those teachers on the list submitted by the school directors but the MEST does not deal with such issues as whether a person should be on the list. The MEST must rely on the SMES to confirm whether the list of persons to be paid under MEST contracts is accurate. Teachers complain though, that they are arbitrarily removed from the lists by SMES, for example, as a punishment for misconduct.

⁶⁷ For example, the Turkish community in Mitrovicë/Mitrovica had complained that a current history book used in schools in Mitrovicë/Mitrovica south treated the Turkish community disrespectfully because it pictured a horse stepping on the Turkish flag. Measures have been taken by the PISG/MEST and newly printed text books for school year 2003 have rectified the situation.

⁶⁸ For example, a Kosovo Serb teacher receives a salary of 300 Euros from the SMES (double the salary of a teacher in Serbia). In addition, a salary is paid by the MEST (according to the so-called B type contract which pays a salary of approximately 140 Euros, and which foresees a smaller income as compared to salaries paid to Kosovo Albanian teachers under A type contracts which pay a salary of approximately 200 Euros). Subsequently the 300 Euro salary paid by SMES can be reduced by the SMES by as much as 150 Euros if the Kosovo Serb teacher would sign a B-type contract with the MEST. The end result is that Kosovo Serb teachers are paid approximately 290 Euros per month under both contracts while the Kosovo Albanian teachers are paid approximately 200 Euros per month.

The MEST has concluded that there is an excess of teachers and administrators in Kosovo Serb schools and while it has not reduced the number of persons which it will pay for services rendered in the educational process, it has imposed a general ban on the recruitment of Kosovo Serb teachers and non-teaching staff.⁶⁹

4.2.2 Effects of the parallel structures

4.2.2.1 Differing curricula

Because the SMES and the MEST do not have an agreement on a curriculum for Kosovo, students are faced with differing curricula depending on which system they choose to attend. These differences can determine whether students can exercise their right to learn their mother tongue, to be educated in certain subjects in their mother tongue, and to study the history and culture of their ethnic group. In particular Kosovo Serb parents are concerned that their children will be forced to learn what is in their view slanted versions of history and geography in mixed schools run by the MEST.

Kosovo Albanian diplomas and education certificates from primary and secondary schools are not recognised by the SMES. For example, in northern Mitrovicë/Mitrovica the Kosovo Serb Co-ordinator for Education asked for assistance from the OSCE regarding a group of Bosniak students from Prizren who sought to continue with secondary education in north Mitrovicë/Mitrovica. At this stage they cannot do so. The students would be required by the SMES to produce a Serbian certification of the student's primary education. The SMES argues that if it accepts the MEST's curricula in Kosovo, Kosovo Serb students who are IDPs and refugees will not return to Kosovo. Moreover, the SMES states that it maintains its own curriculum in order to guarantee that Kosovo Serb and other minority students from Kosovo will be qualified to seek higher education in Serbia proper.

4.2.2.2 Children caught up as pawns in the political struggle

Because the SMES cannot efficiently supervise schools in Kosovo, the quality of education can be affected. For example, in Kamenicë/Kamenica during the current school year the SMES requested that the director of a Kosovo Serb school be changed. A job vacancy notice was posted and a few persons applied. However, the out-going school director cancelled the recruitment process, and continues to work as school director. In another example, a Kosovo Serb teacher who teaches the Russian language, and who was being paid to teach two classes, one at Level I and one at Level II, joined the two classes together. He thus taught one class in which students were of different levels of proficiency and of different age groups, while accepting a salary for teaching two classes.

The quality of the education is also affected by the lack of training for Kosovo Serb teachers. Although, on the request of the SMES, UNMIK has facilitated non-controversial teacher/director training programmes for Kosovo Serbs through the assistance of UNICEF and the Kosovo Education Development Project, a Canadian agency. Continuing professional training is offered to Kosovo Albanian teachers by the MEST.

As a result of what has become a tradition of ethnic hatred, children have become pawns in the continuing post-conflict political struggle between ethnic groups. If these groups cannot find a common ground or at least peaceful co-existence with one another, it will be their children who ultimately pay the price. Further, when dealing with these issues, both the

⁶⁹ In Gračanica/Graçanicë, Kosovo Serb school directors are appointing teachers without consulting with the MEST or following procedures required by the MEST. The names of the appointed staff is then sent to the education officer in the Municipal Community Office in Gračanica/Graçanicë so that the new teachers can be included in the UNMIK payroll of the municipal education department. However, the answer from the department is often negative as the department was not consulted before the decision and procedures were not followed.

authorities and the parents pay little attention to the fact that the right to an education is the right of the child, not the parents.

Chapter five

PARALLEL HEALTHCARE

5.1 The structures

Because Kosovo Serbs experienced limited freedom of movement after the conflict in Kosovo and because of mutual mistrust between Kosovo Albanians and Kosovo Serbs, a parallel healthcare system developed. Apart from the PISG-run healthcare system, the OSCE has identified a number of healthcare facilities that are exclusively run by the Serbian Ministry of Health (SMH). The SMH supervises and pays salaries to the employed staff and covers some related running costs. The OSCE has also identified healthcare facilities, which are partly financed by the SMH and partly by the PISG/Ministry of Health. An overview of these “half-parallel” structures, as well as the SMH-run facilities follows.

In Mitrovicë/Mitrovica region, all healthcare facilities located in Zubin Potok, Laposavić/Leposaviq, Zvečan/Zvečan and north Mitrovicë/Mitrovica are under the direct authority of the SMH. The same applies to the health house located in Priluzhje/Prilluzhë (the biggest Kosovo Serb enclave in Vushtrri/Vučitrn municipality), the two ambulantas located in Gojbulë/Gojbulja (Vushtrri/Vučitrn municipality) and Gracë/Grace and the ambulanta located in Suvo Grlo/Suvogërl (Skenderaj/Srbica municipality) serving the two villages of Banja/Banjë and Suvo Grlo/Suvogërl.

Throughout Prishtinë/Priština region, the following primary and secondary healthcare structures are under the authority of the SMH: In Prishtinë/Priština municipality the health house in Gračanica/Gračanicë and ambulantas located in Donja Brnjica/Bërrnica e Ultë, Čaglavica/Çagllavica, Sushicë/Susica, Llapje Sellë/Laplje Selo and Preoce/Preoc. In Fushë Kosovë/Kosovo Polje municipality the health house located in Bresje/Bresje, which is also supporting and managing the ambulanta of Batushë/Batuse and the small ambulanta in the YU Programme building in Prishtinë/Priština. In Lipjan/Lipljan municipality, the health house in Donja Gušterica/Gushterica e Ultë, which also co-ordinates and support ambulantas in Lipjan/Lipljan town, Gushterica e Epërme/Gornja Gušterica, Rubovc/Rabovce, Suvidoll/Suvi Do, Lepinë/Lepina, Grackë/Gracko, Dobrotin/Dobrotin and Novonasilje/Novonasiljë. In Obiliq/Obilić municipality, the ambulanta in Plemetin/Plemetina and the two ambulantas in Obiliq/Obilić town and in Čerkvena Vodice/Crkvena Vodica.

Gjilan/Gnjilane is the only region where half-parallel structures are commonly present. All healthcare staff, though receiving salaries from both the SMH and the PISG/Ministry of Health, are supervised by the SMH. In the four Kosovo Serb health houses located in Gjilan/Gnjilane municipality (Pasjan/Pasjane, Budriga e Ultë/Donja Budriga, Kusicë e Epërim/Gornje Kusce, Koretishte/Koretište) both doctors and nurses receive double salaries. In Viti/Vitina municipality the two Kosovo Serb health houses are under the supervision of the SMH. The health care sector in Štrpce/Shtërpçë municipality employs a total of 294 workers. The SMH pays their salaries. 114 of these workers also receive salaries from the PISG/Ministry of Health. In Kamenicë/Kamenica municipality doctors and nurses working in the Kosovo Serb health house and in ambulantas (located in Ropotova e Madhe/Veliko Ropotovo, Kamenicë/Kamenica Korminjani i Epërm/Gornje Korminjane, Domorovc/Domorovce, Kolloleq/Kololec, Boscë/Bosce, Hajnovc/Ajnovce and Bozevce/Bozhevc) receive double salaries.

In Prizren region, no parallel or half-parallel healthcare structures have been identified by the OSCE. However, some members of the Kosovo Serb community, apart from cases of emergency, feel more comfortable travelling either to Mitrovicë/Mitrovica or Gračanica/Gračanicë rather than using existing healthcare facilities within the region.

In Pejë/Pec region, the medical staff working in the health house in Gorazhdevc/Gorazdevac (Pejë/Pec municipality) receive their salary both from the SMH and the PISG/Ministry of Health. The two ministries jointly execute the supervisory function. In Osojan/Osojane (Istog/Istok municipality), five nurses and one doctor provide primary health care to the

population. One of the nurses is on the PISG/Ministry of Health's pay roll, while the doctor and the four remaining nurses are paid by the SMH.

5.2 The causes and effects of the structures

The OSCE has examined the obstacles in Kosovo and Serbia proper, which hinder the dismantling of parallel administrative structures in healthcare and the consolidation of such structures into a single unified structure.

5.2.1 Root causes of the parallel healthcare centres

5.2.1.1 Intransigent attitudes on the part of both the Kosovo Serb community and the Kosovo Albanian community towards tolerance and finding a common ground

There is a widespread perception amongst Kosovo Serbs that Kosovo Albanian healthcare professionals do not have the same level of professional skills as Kosovo Serb healthcare professionals. Similar concerns are expressed by the Kosovo Albanian community regarding Kosovo Serb healthcare professionals. Moreover some Kosovo Serbs believe that they could be the victims of poor treatment by Kosovo Albanian healthcare staff as a form of retribution for the past, and *vice versa*.

According to the PISG/Ministry of Health there is no genuine spirit of tolerance and no willingness to find a common ground between the Kosovo Albanian and Kosovo Serb communities regarding healthcare.⁷⁰ This failure to communicate and to resolve the problem is a sign of the depth of the conflict between the Kosovo Albanian and Kosovo Serb communities and can be detrimental as healthcare often is a matter of life and death.⁷¹

5.2.1.2 Double salaries paid by Serbian Ministry of Health

As in the parallel educational structures, the payment of double salaries⁷² by the SMH to its employees in Kosovo serves to reinforce parallel administrative structures. The SMH cites the same reasons for the double salaries as are cited by the Serbian Ministry of Education and Sports regarding education, i.e. the need to pay healthcare staff a higher salary to motivate them to continue to work in Kosovo. While this problem is not so pronounced as it is in the case of education, it can still be a problem between the PISG/Ministry of Health and the SMH employees.⁷³ Also the SMH asserts that it is important to keep more healthcare staff than might seem to be necessary because of the lack of employment opportunities for Kosovo Serb healthcare workers in other healthcare facilities in Kosovo.

5.2.2 Effects of the parallel healthcare centres

Healthcare facilities, which are run by the SMH, are not supervised from Belgrade on a day-to-day basis. This can lead to misuse of financial resources, which are granted by the SMH to

⁷⁰ For example, the agreement between the SMH and the Kosovo Ministry of Health on a plan for a proposed health house in Lipjan/Lipljan to serve both Kosovo Serbs and Kosovo Albanians as well as other minorities failed partly because the PISG/Ministry of Health proposed 24 positions to the Kosovo Serbs, when they previously had 96 Kosovo Serb healthcare staff members on its payroll. The PISG/Ministry of Health attempts to adapt the healthcare system in Kosovo to a market economy is not always well met by Belgrade. See more on page 39.

⁷¹ For example, in Gorazhdevc/Gorazdevac, there is just one doctor, one dentist and four nurses to cover the medical and dental needs of the village. If the villagers are in need of secondary or tertiary healthcare they do not refer to the regional hospital in Pejë/Pec but prefer to use the hospital in northern Mitrovicë/Mitrovica or those in Serbia proper.

⁷² In this case the words "double salary" refer to the practice of the SMH paying twice the amount of salary to a healthcare worker in Kosovo as they would pay a healthcare worker of equal qualifications in Serbia proper.

⁷³ For example, the Director of Health (an SMH employee) in Fushë Kosovë/Kosovo Polje stated that a specialist working for the Kosovo Serb run Bresje/Bresje health house can be paid up to 760 Euro per month while a specialist in Fushë Kosovë/Kosovo Polje who is paid by the PISG earns 210 Euro a month.

a particular healthcare facility.⁷⁴ The lack of supervision can furthermore result in substandard facilities being employed, as in the case of the SMH-run ambulantas, which are established in private houses within enclaves.

Another problem is that professional medical staff in Kosovo Albanian and Kosovo Serb healthcare facilities have little or no opportunity to exchange information and expertise on matters relating to healthcare. For example, doctors in each system do not have the opportunity to conveniently consult with one another and share professional information on matters relating to diagnosis and treatment.

Kosovo Serb healthcare employees do not always have easy access to Serbia proper to be able to attend continuing medical education, which may be offered by the SMH. Nor can staff in Kosovo Albanian run facilities attend any continuing professional education, which is offered by the SMH either in or outside of Kosovo. According to the PISG/Ministry of Health, the Ministry has tried to facilitate joint continuing professional education but the SMH has not formally approved such co-operation. Sometimes, the Kosovo Ministry of Health has offered to pay all expenses for travel, meals and accommodation in the case of international medical education conferences, but there were still no Kosovo Serb doctors who participated.⁷⁵

While the SMH hospitals and health houses typically have large staff, UNMIK facilities seek to conform more closely with principles of a market economy to establish cost-effective means of determining how many staff should be employed at a given institution and at what levels. Further, UNMIK attempts to apply affirmative action measures to ensure a multi-ethnic balance within the staff at each facility. The combination of downsizing and the application of measures to balance the ethnic representation in the Serb-run healthcare facilities, though, can lead to disparate results. In particular, it can lead to indirect discrimination towards Kosovo Serb healthcare employees who lose their jobs but who do not have equal access to employment in other healthcare facilities in Kosovo due to their limited freedom of movement.⁷⁶ But partially offsetting this, it should be noted that, in certain cases, positions which are set aside for Kosovo Serbs are not filled as was the case in Fushë Kosovë/Kosovo Polje where 53 positions had been opened by UNMIK in the local health house but only four applications were received.

⁷⁴ For example, the hospital in Mitrovicë/Mitrovica north had more people on their security staff payroll than were actually employed by the hospital. See page 13-14.

⁷⁵ None of the doctors and nurses in the four SMH-run health houses in Gjilan/Gnjilane attend courses or meetings for members of the health sector held by PISG/ Ministry of Health.

⁷⁶ Such downsizing policies do not always meet the approval of Serbian-run facilities. In the case of the Bresje/Bresje health house, for example, the PISG/Ministry of Health attempted to encourage a reduction of the 187 Kosovo Serb staff members to achieve a more multi-ethnic representation. This did not meet their approval. Subsequently they were not included in the municipal payroll. However, the staff members still receive salaries from the SMH which are considerably higher than those supplied by the PISG.

Chapter six

**THE SERBIAN MINISTRY OF INTERNAL AFFAIRS
ISSUING DRIVING LICENCES AND OTHER DOCUMENTS**

6.1 Structures

Located throughout Kosovo are several offices of the Serbian Ministry of Internal Affairs (MUP).⁷⁷ Specifically, these are offices of the MUP secretariat, the SUP.⁷⁸ Their operations include administering passports, driver's licences, identification cards and vehicle registration plates. Many Kosovans of all ethnicities have relied on these offices, especially those who need to travel to Serbia proper, since UNMIK documents are generally not treated as valid there.

The OSCE has learned of several SUP offices that are located in Kosovo. In the Mitrovicë/Mitrovica region there are reported to be SUP offices in Zvečan/Zvečan as well as in Mitrovicë/Mitrovica. In Prishtinë/Priština region, the locations of the SUP offices can be found in the following areas: Gračanica/Gračanicë; Fushë Kosovë/Kosovo Polje; Donja Gusterica/Gushtericë e Ultë (Lipjan/Lipljan municipality); Plementina/Plementin; and in the vicinity of the former Norwegian KFOR base outside of Prishtinë/Priština. In Štrpce/Shtërpçë there is also an office, which until recently was located in the municipal building.

The OSCE has been unable to determine whether all Serbian structures in the aforementioned locations have permanent offices and regular working hours, nor has it been possible to determine precisely their exact competencies. So far it can be said that the office in the vicinity of the former Norwegian KFOR base outside of Prishtinë/Priština issues passports; the office in Gračanica/Gračanicë issues identity cards, driving licenses, birth certificates, and other documents. The office in Fushë Kosovë/Kosovo Polje can be considered as a sub-office of the one in Gračanica/Gračanicë.

There are also SUP offices located in Serbia proper, which are designated to serve individuals from the Kosovo municipalities. For example, there is a SUP office for Prishtinë/Priština located in Niš; a SUP office for Štrpce/Shtërpçë in Bujanovac/Bujanovc; and a SUP office for Mitrovicë/Mitrovica in Kraljevo.

6.2 Effect of the structures

Many individuals continue to approach SUP offices throughout Kosovo to obtain Serbian documents. UNMIK began issuing driving licenses in Kosovo in 2002, as well as free vehicle registration plates for Kosovo Serbs. Though the process of issuance of driving licenses and free plates took a considerable amount of time, it has clearly been a positive development. However, this only addresses part of the problem. Since UNMIK licenses and vehicle registration plates and documents are not recognised in Serbia proper, Kosovans who need to travel to Serbia will still need to apply for such documents from the Serbian authorities. In other words, they will need two sets of licenses and registration plates: one recognised in Serbia proper and one recognised in Kosovo.

The OSCE has learned that when driving licenses are issued to Kosovo residents in Serbia proper, Serbian officials commonly indicate in the license that it is being issued from a SUP office in Kosovo. For example, an individual from Prishtinë/Priština might obtain a license in Niš, but the Serbian authority would write "SUP Priština" on the license rather than "SUP Niš." According to the OSCE's understanding, the reason for this is that the government of Serbia designates separate SUP offices for various Kosovo municipalities, even though most of these offices are located in Serbia proper.

Police do commonly stop and arrest persons in possession of licenses, issued by parallel structures in Kosovo or in Serbia proper after 10 June 1999. Possessors of such a license

⁷⁷ Ministarstvo unutrašnjih poslova.

⁷⁸ Sekretarijat unutrašnjih poslova.

found driving in Kosovo are often charged with possession of an invalid document according to the Law on Basis of Traffic Safety.⁷⁹ UNMIK Regulation 2001/29 On Documents Permitting the Operation of Vehicles in Kosovo and Other Related Matters, states that a person shall be permitted to operate a vehicle in Kosovo if he/she is the holder of “a valid driver’s license issued by the competent authorities of the Federal Republic of Yugoslavia.”⁸⁰ This has been interpreted by the legal community to limit validity to competent authorities of FRY located *outside* of Kosovo.⁸¹ The situation is complicated by the fact that it is not always possible to determine whether a document is being issued inside or outside Kosovo by looking at the document itself.

However, the OSCE has come across several cases where the possessor of such a document has been prosecuted and convicted of using a forged document. Such convictions have been executed even though the concerned individual appears to be acting in good faith and without any intention to deceive. The forgery/falsification of documents is a criminal act according to Article 203 of the *Criminal Code of Socialist Autonomous Province of Kosovo*, which states:

“(1) whoever forges a document or modifies a real (original) document with the aim that such document be used as a real (original) document, or whoever uses the forged or modified document as a real (original) one, or possesses such a document with the intent to use it as a real (original) one, shall be punished up to three (3) years in prison.”

Paragraph (3) of Article 203 increases the sentence to a period of three (3) months to five (5) years for forgery/falsification of certain documents such as a public document (which includes driving licences).

It has been the OSCE’s position that prosecuting these individuals for possession of forged documents is clearly wrong, since such documents are not “modifications of original documents.” The UNMIK Department of Justice (DOJ) has also taken this position, and the problem has been recently addressed in Justice Circular 2003/1 (19 March 2003) On the Validity of Driving Licences Issued by the Authorities of the Federal Republic of Yugoslavia. The Circular clarifies the position of UNMIK as to the validity of driving licenses issued by authorities of the Republic of Serbia or the Federal Republic of Yugoslavia and what constitutes forgery. According to the Circular, “A licence issued by FRY or Serbian authorities, even if regarded as invalid by UNMIK, is not a forgery, and it is improper to charge or convict any person with an offence contrary to Article 203 for obtaining or using such a license.”⁸²

From the OSCE’s understanding, the problem of improper charging of forgery is to some extent being curtailed. Recently, the Supreme Court of Kosovo annulled a case from the district court of Gjilan/Gnjilane and referred it back to the first instance court for retrial. The reason was that the municipal and district court had convicted the defendant for forgery on the ground that his driver’s license was allegedly issued by the Ministry of Internal Affairs in Vranje. The Supreme Court concluded that evidence for forgery has to be produced and that the judgement should be based on the law and Justice Circular 2003/1.⁸³

⁷⁹ Official Gazette of SFRY 50/88, Article 183.1.

⁸⁰ Section 1.1 (b).

⁸¹ See Section 5.

⁸² Section 6 clarifies that a license cannot be regarded as forged in Kosovo on the mere ground that it has been issued by the FRY or Serbian authorities. However, licenses can still be forged according to other criteria stipulated in the section.

⁸³ Supreme Court of Kosovo, Pk.nr. 24/2003, 27 June 2003.

Pursuant to the Common Document,⁸⁴ a draft Protocol was prepared in 2002 between UNMIK and the Federal Republic of Yugoslavia, On the Movement of Registered Vehicles and the Issuance of License Plates and Vehicle Registration Documents. The Protocol was intended to facilitate the freedom of movement for Serbian and Montenegrin citizens coming to Kosovo and *vice versa*, by common recognition of vehicle registration plates and documents. The Protocol was never signed but progress has been made recently. On 16 July 2003, a meeting was held between UNMIK Pillar I (Police and Justice) and the Co-ordination Centre for Kosovo. The parties agreed to the text of a new draft Protocol regarding free movement of all vehicles with UNMIK and Serbia and Montenegro license plates, incorporating amendments to include the mutual recognition of driving licenses. The draft protocol is pending approval by the Serbian Government. Until registration plates and driving licenses issued by UNMIK are recognised by Serb officials, freedom of movement will be drastically impaired, and Kosovans seeking to legally travel to Serbia proper will need two sets of driving licenses and plates.

In any event, UNMIK must inform the public about the validity of certain Serbian documents. It appears that the public is often misinformed and relies on statements in the press to know what is the legal value of their documents. For example, the determination of the validity of FRY vehicle registration documents is set forth in part by executive decision. Most recently, Executive Decision 2003/13 On the Registration of Privately Operated Vehicles in Kosovo by Habitual Residents of Kosovo allows for exemptions from established fees for the initial registration of privately operated vehicles in Kosovo if such a vehicle is already registered by FRY authorities. This is a positive development, as it expands the category of individuals who are exempt from paying such fees. However, executive decisions such as this are not published in the Official Gazette of Kosovo, and the information contained therein is virtually inaccessible to the public.

⁸⁴ See footnote 21.

CONCLUSION

As outlined in this report, parallel structures continue to exist in several areas of the public sector. The existence of parallel systems can be detrimental to the rule of law. The decisions of and services provided by the Serbian-run structures have a direct impact on the rights and lives of individuals living in Kosovo. For instance, some Kosovans risk having their property demolished because UNMIK does not recognise a construction permit issued by a parallel authority. Kosovans are wrongfully charged with possession of forged documents when using a driving licence issued by a Serbian authority in Kosovo.

Parallel structures are a highly politicised issue. By continuing to finance these structures the government of Serbia continues to exert control over parts of Kosovo. Arguably, the rights and interests of individuals are affected by UNMIK's continuing refusal to recognise decisions taken by parallel structures. This impasse can only be solved by a political agreement between UNMIK and the Serbian authorities.

Attempts, however, have been made by both parties to overcome some of the difficulties. The signing of the "Joint Declaration on Recruitment of Judges and Prosecutors of Serb Ethnicity into the Multi-ethnic Justice System in Kosovo" by the Minister of Justice of the Republic of Serbia and the UNMIK Deputy SRSG for Police and Justice is an achievement. The Joint Declaration facilitated the recruitment of Kosovo Serb prosecutors and judges into the UNMIK courts in the northern municipalities. It can and should serve as a model for other spheres of public life, where measures need to be taken to dismantle parallel institutions.

A more pragmatic approach is needed by UNMIK which might have to recognise the fact that some Kosovans, in the past, did not have any other reasonable choice than to approach Serb-run structures. Recourse to an UNMIK court or administrative body would have meant, among other things, risking their personal security. Determining that decisions taken by Serbian courts and administrative bodies are null and void could negatively affect interests of those who presumed, perhaps quite reasonably, that these decisions had legal force in Kosovo. UNMIK should therefore consider regarding these decisions as legally valid.

UNMIK needs to make a determination as to the legal validity of decisions and judgements issued by parallel structures. This decision needs to be made public so that individuals who have relied on parallel structures know with certainty what their current legal rights or duties are. If these decisions were to be treated as valid, then timelines and cut-off dates would also have to be made clear. For example, the OSCE suggests that 13 January 2003 is used as a cut off date for recognition of decision of the parallel courts in the northern municipalities, as this was the date when the UNMIK courts in Zubin Potok and Leposavić/Leposaviq officially opened.

Moreover, UNMIK should consider the fact that individuals who need to travel to Serbia proper cannot do so unless they can present documents issued by Serbian authorities. The practice of arresting and convicting people for possession of forged documents simply because they are issued by Serbian authorities operating in Kosovo must cease. To this end, judges and prosecutors must consider the UNMIK policy set forth in Justice Circular 2003/1 and the recent judgement from the Supreme Court on the issue. The most pragmatic solution to this problem would be for UNMIK to tolerate all Serbian documents, regardless of the place of issuance. At the same time, UNMIK should slowly reduce the presence of unrecognised Serbian administrative structures within the territory of Kosovo. In any event, UNMIK must be more transparent and inform the public of the status of Serbian documents.

The Common Document⁸⁵ provides that Kosovo Serbs should have access to education in their own language, from primary school to university. The PISG/the Ministry of Education, Science and Technology (MEST) has to create conditions in the Kosovan schools that accommodate the needs of all communities, including Kosovo Serbs. In particular, books and other education material have to be provided in the official languages in Kosovo. The MEST and the Serbian Ministry of Education and Sports should mutually recognise the diplomas and certificates of their students. When dealing with these issues, the authorities should pay attention to the fact that the right to an education is the right of the child, not the right of the parents.

The Serb-run hospitals and other health care facilities have proven necessary for the provision of services to some communities who fear seeking aid from the Kosovo-run health care facilities. The PISG/Ministry of Health has to allocate the resources and take proactive measures to reach out to these communities to help them overcome their fears. Moreover, the Ministry of Health should consult with the Serbian Ministry of Health with a view to improve healthcare services for all communities in Kosovo and integrate Kosovo Serb medical staff into the Kosovo health care structures.

Whatever means and methods UNMIK would utilise in order to solve the problem of parallel structures, it must endeavour not to alienate the structures, the persons working within them, or those who have benefited from them in good faith.

⁸⁵ UNMIK-FRY Common Document, 5 November, 2001.