



OMBUDSPERSON INSTITUTION in KOSOVO

FIRST ANNUAL REPORT

2000 – 2001

addressed to

Mr. Hans Haekkerup

**Special Representative of the Secretary General of the
United Nations**

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ANNUAL REPORT

Introduction

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

This Annual Report covers both the period leading up to the formal opening of the Institution on 21 November 2000 and the period from that date to 30 June 2001.

Background and history

The Ombudsperson Institution in Kosovo was established by UNMIK Regulation 2000/38 (30 June 2000)(the Regulation) for the purpose of enhancing the protection of human rights in Kosovo. On 11 July 2000, on the recommendation of the Austrian Chairman in Office of the Organisation for Security and Co-operation in Europe (OSCE), the Special Representative of the Secretary General of the United Nations (SRSG) appointed Marek Antoni Nowicki as Ombudsperson. On 15 September 2000, the SRSG appointed the three deputies called for in the Regulation (Mr. Nike Lumezi, Mr. Ljubinko Todorovic and Ms. Donna Gomien).

The Ombudsperson Institution was formally inaugurated on 21 November 2000.

As an Institution dedicated to the promotion and protection of human rights, the Ombudsperson Institution maintains a local staff that comprises approximately 30% members of ethnic minorities.

Nature of the Institution

The Ombudsperson Institution promotes and protects the rights and freedoms of individuals and legal entities and helps to ensure that all persons in Kosovo are able to exercise effectively the rights and freedoms safeguarded by international human rights instruments. The Institution provides means for the review and redress of any act, omission or decision constituting an abuse of authority or a violation of human rights by the interim civil administration (UNMIK) or by any emerging central or local institution. The Ombudsperson investigates complaints from any person or entity in Kosovo and may also conduct *ex officio* investigations. In addition, the Ombudsperson may make recommendations concerning the compatibility of domestic laws and regulations with recognised international standards (see Annex 1).

The Ombudsperson's jurisdiction extends to the entire territory of Kosovo and he may also exercise good offices on behalf of Kosovars outside the territory. He did so on one occasion

during the reporting period (see Annex 2). In order both to publicise this power and to provide access to the Institution for Kosovars outside the territory of Kosovo, the Ombudsperson distributed information and application materials in neighbouring jurisdictions and further abroad.

Starting in autumn 2000, the Ombudsperson engaged in extensive outreach activities through the media and travelled throughout Kosovo in order to make the Institution known to the population and to establish contacts and co-operation with local actors. These initiatives were complemented by a public awareness campaign organised by the OSCE Mission in Kosovo and the Council of Europe, with the financial support of the U.S. Government. During the entire reporting period, the Ombudsperson and other senior staff members participated in regional and international meetings and conferences and established working relationships with ombuds institutions, non-governmental organisations and others with an interest in the future success of the Institution. The local staff of the Institution began receiving intensive training from international experts and other staff members with relevant expertise.

Proceedings before the Ombudsperson

The main work of the Ombudsperson Institution in Kosovo is the receipt and investigation of complaints from individuals about alleged violations of their human rights or abuses of authority by governmental entities. Individuals wishing to file a complaint with the Ombudsperson are provided with guidance and assistance from the local lawyers working for the Institution. In the event that the Ombudsperson Institution cannot address issues raised, Institution staff advise complainants about other options. Since the formal opening of the Institution, approximately 1000 people visited the Institution, with 344 formal applications' being lodged. Most applications concerned property issues (governmental takings of or damage to property, non-payment of salaries, etc.), employment issues (alleged discriminatory recruitment practices, unjust dismissals, etc.), fair trial issues or personal liberty and security issues (see Annex 1).

On formal grounds, the Ombudsperson rejected approximately 60% percent of the applications lodged, a relatively low rejection rate compared to other similar institutions during their start up phases. The policies and procedures for conducting investigations of cases are similar to those of other ombuds institutions, where the views of both the individual and the government are solicited and where attempts are made to resolve problems through mediation rather than through more contentious approaches. The success of this method is dependent, however, on the good faith participation of all parties involved in a case.

The Ombudsperson enjoys good informal co-operation with the UNMIK police. In part, in order to contribute to the development of democratic policing in Kosovo, it is standard practice for the Ombudsperson Institution to inform the UNMIK police about allegations of violations of human rights or abuses of authority by UNMIK police personnel and to ask them to conduct their own internal investigations into the allegations. At the conclusion of their investigation, the UNMIK police authorities normally forward their report to the Ombudsperson who then takes further steps as necessary.

Whereas the Ombudsperson does not have jurisdiction to investigate complaints against KFOR, a large number of individuals have lodged applications with the Ombudsperson about

alleged violations of human rights or abuses of authority by KFOR or KFOR personnel. The Ombudsperson maintains copies of these applications and forwards the originals to KFOR for their consideration. In most instances, KFOR forwards the cases to the relevant national contingents and informs the Ombudsperson accordingly. On 5 January 2001, Hungarian KFOR in Pristina organised a meeting of representatives of KFOR from the different national battalions, who were briefed by the Ombudsperson about the Institution and its role in Kosovo.

The Ombudsperson has the competence to open investigations into possible violations of human rights or abuses of authority on his own initiative (i.e. on an *ex officio* basis). The Ombudsperson opened fifteen *ex officio* investigations between 21 November 2000 and 30 June 2001. As the primary difference between an *ex officio* investigation and an investigation conducted in connection with an individual application is the genesis of the case, the statistical data provided in the case summary at Annex 1 covers both types of investigations.

Even prior to investigating a case, the Ombudsperson has the power to ask governmental authorities to act or to refrain from acting in circumstances where irreparable prejudice to the rights of a complainant may otherwise result. The Ombudsperson normally asks for authorities to take such 'interim measures' only for the duration of the Ombudsperson's investigation of the case. The requests do not constitute findings of violations of human rights or abuses of authority. From 21 November 2000 to 30 June 2001, the Ombudsperson made five requests for governmental authorities to take interim measures. He considers that two of these requests were successful, one was partly successful and two were not successful (see Annex 1).

Starting in May 2001, the Ombudsperson introduced regular 'Open Days'. These Open Days, which are held every other Thursday, provide an opportunity for members of the public to meet directly with the Ombudsperson in order to discuss their cases or raise other matters of concern. During the five Open Days that were held in May and June 2001, approximately seventy persons met with the Ombudsperson.

Requests for political interventions

The Regulation prohibits the Ombudsperson from investigating complaints against KFOR, or against the Federal Republic of Yugoslavia, Serbia, or other governmental entities or authorities outside of Kosovo. At the same time, the conduct of such actors may negatively affect the human rights of individuals within Kosovo. In such circumstances, the only avenue open to the Ombudsperson is to solicit the political support of persons with the power to influence the conduct of those actors. During the period covered by this Report, the Ombudsperson made four such requests by letter, one to the United Nations High Commissioner for Human Rights, one to the Secretary General of NATO, and two to the Special Representative of the Secretary General of the United Nations (see Annex 2). And in connection with Special Report No. 1, the Ombudsperson recommended that the SRSG encourage KFOR to establish equitable policies and accessible procedures for individuals with claims against KFOR (see Annex 1).

Co-operation with other European and international institutions

In accordance with the allocation of responsibilities envisioned under UN Security Council Resolution 1244, the OSCE Mission in Kosovo (OMIK) was assigned the responsibility for establishing the Ombudsperson Institution. OMIK was instrumental in helping to create the basic infrastructure and to facilitate the work of the Institution during the early phases of its operations. For example, OMIK placed Ombudsperson Liaison Officers in OMIK regional offices to assist the Ombudsperson Institution in publicising its activities, to forward complaints from individuals who otherwise would have difficulties reaching the Institution, to arrange field visits of the Ombudsperson and to provide similar types of support.

The Ombudsperson Institution in Kosovo has established good co-operation with institutions across Europe, many of whom have provided technical assistance and training. In particular, European inter-governmental organisations and ombuds institutions from other European countries provided intensive assistance to the Ombudsperson Institution during October 2000 to ensure that the Institution could begin its work from a strong foundation. During this month, the Institution, the Council of Europe and the OSCE organised a workshop in Pristina to assist in developing a system for the handling and management of cases and in drafting the Rules of Procedure for the Institution. The workshop gathered many experts including representatives of Ombudsman offices in Greece and Sweden. The Council of Europe also provided an expert from the Swedish Ombudsman's Office who made recommendations regarding policies and procedures and who helped the Institution develop further its capacity to manage cases. The Office for Democratic Institutions and Human Rights of the OSCE (ODIHR) also provided several days of training on international law and human rights for the staff of the Ombudsperson Institution.

In February 2001, representatives of the Office of the Greek Ombudsman returned to the Institution to provide more in-depth training for the local lawyers on the staff. Also in February, the two local deputies participated in a round table of ombuds institutions in Southeast Europe co-hosted by the Croatian Ombudsman and the Council of Europe.

In March 2001, The Council of Europe invited the Ombudsperson to Strasbourg for a series of consultations, culminating in his presentation to the Rapporteurs Group for Democratic Stability (GRE- DS) of the Committee of Ministers. The Kosovo Open Society Foundation funded one local deputy and the local head of investigations to attend the formal opening of the Office of the Ombudsman in Albania.

In May 2001, the Spanish Ombudsman and the Catalan Ombudsman hosted a study visit for the two local deputy ombudspersons and the local head of investigations. A delegation from the Office of the United Nations High Commissioner for Human Rights also visited the Institution with a view to enhancing future co-operation. The Council of Europe provided an expert in office administration and management who helped the Ombudsperson Institution to establish effective practices in these areas.

In addition to the above, the Ombudsperson called upon cognate organisations in other European countries to pursue certain matters. At the end of April 2001, the Ombudsperson contacted the Russian Ombudsman to ask him to encourage the Russian Foreign Ministry to provide necessary services to Russian civilians facing criminal charges in Kosovo. In June 2001, the Ombudsperson contacted the Spanish Ombudsman to see if he could obtain

information about the Spanish Government's intentions with regard to providing urgent medical care to a resident of Kosovo who had been seriously injured in a car accident involving Spanish KFOR.

During the reporting period, the Ombudsperson also made formal presentations on the mandate and work of the Institution to international organisations. In October 2000, he made a presentation to the OSCE Human Dimension Implementation Meeting in Warsaw and in November 2000, to the General Assembly of International Helsinki Federation for Human Rights in Prague.

Relations with the media

From the time of his appointment, the Ombudsperson established good working relations with all the most important media in Kosovo and with certain key media in Serbia proper. The media helped the Institution to promote public awareness about important issues relating to the protection of human rights in Kosovo, as well as educating the public about the role of the Institution to that end. Media interest in the Institution was high, with over 200 reports or articles appearing during the reporting period. In January 2001, the Rules of Procedure of the Ombudsperson Institution were published in their entirety in *Koha Ditore*, one of the leading newspapers in Kosovo.

Funding

To date, the Ombudsperson Institution has been financed by the United States Government and the Permanent Council of the OSCE. The Swiss Government also provided funds for three senior local staff positions.

The Kosovo Open Society Foundation provided funding for some official travel undertaken by local staff and for some training activities.

Under the Regulation, the Institution may solicit contributions to its budget from both domestic sources (the Kosovo Consolidated Budget) and from international donors.

Problems faced

During the first seven months of its existence, the Ombudsperson Institution faced a number of obstacles to fulfilling its mandate.

Staff recruitment and retention: International organisations operating in Kosovo pay higher salaries to their local staff than the Ombudsperson Institution can. For example, a senior local professional staff member employed by OMIK in a field office position (i.e. not in Pristina), is paid almost 40% more than a local lawyer employed by the Ombudsperson in Pristina. Similar discrepancies across the board created a situation in which it was extremely difficult for the Institution to recruit and retain qualified local staff. At the close of the reporting

period, vacancies for senior interpreters and IT personnel posted at the beginning of 2001 remained unfilled, negatively affecting the capacity of the Institution. The risk is high that key staff will stay with the Institution for relatively short periods of time, leaving to take up posts in international organisations that pay significantly higher salaries.

Access to the Ombudsperson Institution for persons living outside Pristina: Throughout the reporting period, the Ombudsperson Institution was concerned about the difficulty of individuals living outside Pristina to have adequate access to the Institution, a concern that remains a serious one. The problem is particularly severe with respect to members of ethnic minorities, who often live in isolated communities without communications facilities and who face risks to personal security should they venture out of those communities. Although the Ombudsperson Institution had hoped to establish offices in the regions with the most significant minority populations, it was not possible to do so due to lack of funding.

In order to respond more effectively to the problem of access of minorities to the Institution, the Ombudsperson Institution introduced several practices to help facilitate this access, for example, hiring one lawyer who lives and works in northern Mitrovica. The Institution's Pristina-based local lawyers also conducted regular visits to minority areas near Pristina.

From October 2000, the Ombudsperson together with his Deputies travelled to different regions in Kosovo in order to meet with members of minority communities, to visit 'enclaves' and otherwise to promote reconciliation. In any area where there is a detention facility, the trip also encompassed a visit to that facility, including discussions with both the authorities in charge of the facility and detainees themselves. Visits were also held to a number of municipalities, for the purpose of presenting the institution to local and international partners and discussing difficulties confronting the communities there. Places visited include Mitrovica/ Mitrovica, Peje/Pec, Prizren, Gjilan/Gnjilane, Rahovec/Orahovac, Zvecan, Lipjan/Lipljan, Decan/Decani, Kamenice/Kamenica, and Viti/Vitina. After the inauguration of locally elected municipal assemblies in autumn 2000, the Ombudsperson engaged in outreach and informational activities to inform these new democratic institutions of the role and functions of the Ombudsperson Institution and to discuss with them problems faced within their communities and the nature of their co-operation with the international administration. Approximately one week after the Ombudsperson visited a specific area, one or more of the Institution's local lawyers conducted follow-up visits to the same area, in order to assist individuals wishing to lodge applications with the Institution or pursue other matters of interest.

Future prospects

The Constitutional Legal Framework for Kosovo entrenches the Ombudsperson Institution in the legal order of the province, a positive development that ensures at least nominal continuity of the Institution. In addition to providing the Institution with a permanent place in Kosovo, it also permits the Institution to ask a Special Chamber of the Supreme Court to decide whether a decision of a Provisional Institution of Self-Government infringes upon the independence and responsibilities of the Ombudsperson Institution.

The future credibility of the Institution will depend on the high level of professional engagement and expertise of its local staff. It is therefore crucial to continue to provide both

extensive and in-depth training and competitive remuneration and working conditions for all local staff members.

The Ombudsperson Institution remains seriously concerned about the inadequate access to the Institution of members of minority communities and others living outside Pristina, now and even more so during the transitional period foreseen in the Constitutional Framework. Under the circumstances, the establishment and maintenance of a viable field presence of the Ombudsperson Institution is a high priority.

The financial basis to ensure the achievement of these two goals is by no means assured.

Marek Antoni Nowicki
Ombudsperson

Annex 1**Summary of Cases
21 November 2000 to 30 June 2001**

Since the opening of the Ombudsperson Institution, approximately 1000 people have visited the Institution to obtain advice and/or to file applications.

PROVISIONALLY REGISTERED CASES: 344

ETHNICITY OF APPLICANTS:

Albanian:	228
Serbian:	112
Other:	32 (9 Bosniak; 9 Roma; 9 Turkish; 1 Montenegrin)
No ethnicity listed:	4

RESPONDENT PARTIES

UNMIK:	148
KFOR:	62
Municipal Authorities:	62
Other:	58

CASES DECLARED INADMISSIBLE: 148

Ombudsperson cannot investigate complaints against the respondent party: 56
(46 KFOR; 4 Serbia; 3 NGO; 2 Germany; 1 private person)

Applicant has failed to exhaust other remedies: 56

Facts or final decision occurred prior to 30 June 2000 (date Ombudsperson Institution was established): 26

manifestly ill-founded (no case to answer): 9

subject matter not in the jurisdiction of the Ombudsperson: 1

Cases discontinued during proceedings (resolved or closed on grounds other than admissibility): 28

(12 persons re-employed by their pre-conflict employer; 10 persons received payments for salary earned during a several month period; 3 persons granted social welfare for current or previous periods of eligibility; 2 persons accepted into educational programmes; 1 contract for sale of property validated).

CASES FOUND ADMISSIBLE/ INVESTIGATIONS OPENED: 10

EX OFFICIO INVESTIGATIONS OPENED: 15

FINAL REPORTS ISSUED IN INVESTIGATIONS: 2

SUBJECT MATTER OF CASES:

Property-related rights: 141 (48 taking of property/no compensation; 38 damage to property/ no compensation; 22 non-payment of salary; 17 access to home or other property; 5 non-payment of pensions; 3 non-removal of illegal occupant from property; 8 other)

Employment-related issues: 92 (35 failure to obtain employment through competitive employment process; 26 dismissals from employment; 12 failure to be offered pre-conflict job; 19 other).

Fair hearing rights: 38 (21 right to a court (13 no possibility to raise case before a competent court; 6 failure of authorities to executive court order or judgment; 2 court not independent and impartial); 8 criminal procedural

issues (1 evidence did not support conviction; 1 ineffective assistance of counsel; 1 length of proceedings; 2 inequality of arms in production of evidence; 3 other); 3 length of civil proceedings; 6 fair trial (other)).

Right to liberty: 30 (5 no arrest warrant; 5 no means to challenge lawfulness of detention; 4 not brought promptly before a judicial authority; 4 not released at time prescribed by judge; 2 no detention order; 1 no information about charges; 1 detained too long; 1 not released at time prescribed by law; 2 no means to obtain compensation for unlawful detention; 5 other)

Impunity: 30 (5 failure to adequately investigate alleged inhuman or degrading treatment or violations of the right to life; 25 failure to investigate crimes affecting the right to security, right to respect for private life, etc.)

Abuses of authority: 20 (11 failure of administrative authorities to respond to proper request; 5 arbitrary or discriminatory administrative decisions; 4 other)

Right to social benefits and/or an adequate standard of living: 17

Right to respect for the home: 12

Freedom from inhuman or degrading treatment: 10

Discrimination/ Equal Protection: 10

Other: 23 (issues not included in above categories and raised fewer than five times)

REQUESTS FOR INTERIM MEASURES

30 November 2000: request that the Public Utilities Department refrain from disconnecting individuals from utilities, pending Ombudsperson investigation into operation of exemption scheme. (**Partly successful:** PUD established a Working Group to address the procedures for reviewing requests for exemptions, but the focus is primarily on future actions to consider exemptions of members of ethnic minorities, rather than addressing alleged defects in the original exemption scheme).

19 February 2001: request that the UNMIK Head of the Department of Judicial Affairs release from detention an individual who had been detained unlawfully and to inform him about the applicable law and procedures for pursuing compensation for that unlawful detention (**Unsuccessful:** the individual was neither released nor informed of his right to compensation. As of 30 June 2001, the individual remains in detention).

6 March 2001: request that the UNMIK Head of the Regional Department of Culture, Education and Sport in Mitrovica act to protect Serbian and other minority language materials in the Mitrovica City Library (**Successful:** UNMIK instituted investigation and protective measures for minority language literature in the library operating in the ethnic majority area). (See also summary of final case report at p. 28)

4 May 2001: request that the SRSG act to suspend a decision of the Glogovc Municipal Assembly to demolish several dozen residences and businesses in Glogovc until final decisions are taken by second instance administrative authorities and/or the competent courts (**Successful:** On 7 May, the SRSG issued an administrative decision suspending implementation of the decision pending the outcome of appeals procedures being pursued by the individuals affected).

7 May 2001: request that the SRSG suspend implementation of a decision of the UNMIK Business Registration Unit not to grant a business license to a business employing 300 people (**Unsuccessful:** request refused).

OMBUDSPERSON INSTITUTION in KOSOVO

Summary

SPECIAL REPORT No. 1

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

addressed to

Mr. Hans Haekkerup, Special Representative of the Secretary General of the United Nations

26 April 2001

Pursuant to his authority under Sections 4.3 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson has issued the above Special Report.

The Ombudsperson found that UNMIK Regulation 2000/47 is incompatible with recognised international standards with respect to the scope of the grant of immunity to KFOR and UNMIK in their institutional capacities. He also found that the Regulation is not 'in accordance with law' in the sense of the European Convention on Human Rights, in part due to its inaccessibility to the public, its unclear provisions and its failure to protect individuals in Kosovo against arbitrary conduct by KFOR or UNMIK or their respective personnel.

The Ombudsperson also found that UNMIK Regulation 2000/47 is incompatible with the following provisions of the European Convention on Human Rights: Article 6, in that individuals have no judicial forum meeting the requirements of that Article in which to raise civil claims against KFOR or UNMIK or their respective personnel; Article 1 of Protocol No. 1, in that KFOR and UNMIK can occupy or damage property without compensating individual property owners; Article 8, in that KFOR and UNMIK can deprive individuals of access to their homes; and Article 15, in that KFOR and UNMIK have limited these and other human rights beyond what is strictly necessary, even if the situation in Kosovo can be considered to constitute a 'public emergency threatening the life of the nation'.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, no later than **29 June 2001**, should amend UNMIK Regulation 2000/47 to limit the immunity of KFOR and UNMIK in their institutional capacities, promulgate a new Regulation guaranteeing individuals in Kosovo effective access to a proper tribunal for the determination of civil claims against KFOR and UNMIK, and ensure the effective dissemination of both Regulations in all languages widely used in Kosovo. The Ombudsperson also recommended that the Special Representative of the Secretary General take appropriate steps to encourage KFOR to establish and implement a consistent policy regarding the payment of compensation to individuals whose properties KFOR has occupied or damaged.

RESPONSE: On June 28 2001, the Special Representative of the Secretary General informed the Ombudsperson that the matters raised in this report were 'under active consideration' by his office and that consultations were being held with the United Nations headquarters and others with a view to issuing a substantive response to the Report.

As of 29 June 2001, reports in the local print media indicated that KFOR may have been in the process of establishing channels through which individuals may lodge claims against KFOR.

OMBUDSPERSON INSTITUTION IN KOSOVO

Summary

SPECIAL REPORT NO. 2

On Certain Aspects of UNMIK Regulation No. 2000/59
Amending UNMIK Regulation No. 1999/24
on the Law Applicable in Kosovo (27 October 2000)

addressed to

Mr. Hans Haekkerup
Special Representative of the Secretary General of the United Nations

30 May 2001

Pursuant to his authority under Section 1.1 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson has issued the above Special Report.

The Ombudsperson found that UNMIK Regulation 2000/59 Amending UNMIK Regulation 1999/24 on the Applicable Law in Kosovo does not conform with United Nations Security Council Resolution 1244 (10 June 1999) in that it does not adequately entrench international human rights standards in the legal system of Kosovo. Resolution 1244 establishes UNMIK as a surrogate state, one of whose main responsibilities is to protect and promote human rights. The Ombudsperson found that the SRSG, as the head of this surrogate state, has an affirmative obligation to exercise his legislative and executive authority to ensure that international human rights standards are fully integrated and respected in Kosovo. The Ombudsperson found that neither this Regulation nor any other UNMIK Regulation establishes international human rights instruments as binding domestic law in Kosovo.

The Ombudsperson recommended that the Special Representative of the Secretary General of the United Nations, no later than **27 July 2001**, should amend UNMIK Regulation 2000/59 to clarify the primacy of international human rights legal instruments in the legal order of Kosovo.

OMBUDSPERSON INSTITUTION IN KOSOVO

Summary**SPECIAL REPORT No. 3**

On the Conformity of Deprivations of Liberty under 'Executive Orders'
with Recognised International Standards

addressed to

Mr. Hans Haekkerup
Special Representative of the Secretary General of the United Nations

29 June 2001

Pursuant to his authority under Sections 1.1 and 4.1 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson has issued the above Special Report.

The Ombudsperson found that deprivations of liberty imposed under 'Executive Orders' or any other form of executive instruction, decree or decision issued by the Special Representative of the Secretary General of the United Nations (SRSG) do not conform with recognised international standards. He found that any such deprivation of liberty cannot be considered to be lawful in the sense of para. 1 of Article 5 of the European Convention on Human Rights, that the absence of judicial control over deprivations of liberty imposed under Executive Orders constitutes a violation of paras. 3 and 4 of Article 5 of the Convention and that the lack of an enforceable right to compensation for unlawful deprivations of liberty constitutes a violation of para. 5 of Article 5.

The Ombudsperson recommended that the SRSG **immediately** cease the practice of issuing Executive Orders imposing on any individual in Kosovo a deprivation of liberty. The Ombudsperson further recommended that the SRSG, no later than **20 July 2001**, convene one or more panels composed of international judges to review, on an urgent basis, the lawfulness of detentions of individuals currently deprived of their liberty under Executive Orders, such review to conform with the requirements of Article 5 of the European Convention on Human Rights. The Ombudsperson also recommended that the SRSG should undertake to comply with decisions on deprivations of liberty taken by the judicial panels convened in accordance with the recommendations.

The Ombudsperson also recommended that the SRSG, no later than **31 August 2001**, promulgate a Regulation setting forth the legal bases for compensation claims for unlawful deprivations of liberty and proper judicial proceedings in this respect and, on the date of its entry into force, disseminate it through all appropriate channels in all languages widely used in Kosovo. The Ombudsperson further recommended that the new Regulation should be distributed to all persons who have been deprived of their liberty under Executive Orders issued by the SRSG and to all judges, judicial officers or others exercising judicial authority in Kosovo.

OMBUDSPERSON INSTITUTION in KOSOVO

Summary

REPORT

Ex officio Case No. 03/01

Regarding the denial of a Kosovo wide broadcasting license to
Radio "Kosova e Lirë"

27 April 2001

Pursuant to his authority under Section 4.4 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 18 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson has published the above case report.

The Ombudsperson evaluated the procedures and mechanisms governing licensing decisions taken in connection with the December 2000 competition for Kosovo wide radio broadcasting licenses to determine whether they met the procedural requirements of Article 10 of the European Convention on Human Rights, which governs freedom of expression.

The Ombudsperson noted that Radio "Kosova e Lirë" was well informed about the criteria and procedures governing the granting of Kosovo wide broadcasting licenses, had ample opportunity both to participate in the competition and to otherwise influence the decision-making process, and had chosen not to pursue available channels of appeal against the negative decision on its application. The Ombudsperson also found that there was no evidence supporting any finding of bias or unfairness on the part of the Licensing Board or the Temporary Media Commissioner responsible for the conduct of the licensing process.

The Ombudsperson concluded that there was no contravention of the procedural requirements called for under Article 10 of the European Convention on Human Rights. There was thus neither a violation of human rights nor an abuse of authority in the sense of Section 3.1 of UNMIK Regulation No. 2000/38.

OMBUDSPERSON INSTITUTION in KOSOVO

Summary

REPORT

Registration No. 159/01

Regarding the alleged destruction of cultural property
in the care and custody of the Mitrovica City Library

18 May 2001

Pursuant to his authority under Section 4.4 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and Rule 18 of the Rules of Procedure of the Ombudsperson Institution, the Ombudsperson issued the above report.

The Ombudsperson found that it was not possible to establish the facts regarding the removal and/or the destruction of Serbian books, documents or other cultural property from the Mitrovica City Library, given that no inventory of the library collection had been conducted for many years, that the library building was open and unattended for approximately one month in the summer of 1999 and that other obstacles to making an accurate determination of the state of the collection existed. In these circumstances, the Ombudsperson found that he could draw no conclusion about whether a violation of human rights or an abuse of authority had occurred.

At the same time, the Ombudsperson expressed his support of recommendations made in two reports prepared by delegations of independent experts who were charged by UNMIK with addressing the issues raised in the complaint. In this light, the Ombudsperson recommended that, no later than **15 June 2001**, UNMIK should establish an independent commission to assist the Mitrovica City Library in conducting an inventory and improving the management of the collection. The Ombudsperson also recommended that the Regional Co-ordinator should inform the Ombudsperson of the action taken in regard to these recommendations.

RESPONSE: On 15 June 2001, the UNMIK Regional Co-ordinator on Culture informed the Ombudsperson about two initiatives taken:

- 1) efforts were under way to recruit appropriately qualified local staff for the Mitrovica City Library
- 2) UNMIK was engaged in discussions with the French Government about the possibility of appointing a qualified professional librarian to assist in improving the management of the Library

The UNMIK Regional Co-ordinator on Culture also noted that UNMIK will continue its oversight of the Mitrovica City Library

Annex 2

Texts of letters requesting that political action be taken

2 February 2001

The Honorable Mary Robinson
United Nations High Commissioner for Human Rights
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

The Honorable Mary Robinson,

Herewith I would like to draw your attention to the predicament of hundred and forty three people, among whom several minors, from the village of Djakovica in Kosovo who were arrested in their hometown in 1999 during the fighting in Kosovo that year. They were subsequently transferred to Nis, a place outside the province they lived in and held there in pre-trial detention. On 22 May 2000 the District Court of Peje/Pec, meeting in Nis, sentenced all hundred and forty three residents to imprisonment varying, if I am well informed, from sever till thirteen years. Their names are listed in annexe A.

This case has deeply shocked the relatives of the hundred and forty three, the other residents of Kosovo and many people outside the province because of the large number of people arrested, the time of their arrest, the pre-trial detention and trials outside the province, the content of the indictment (acts of terrorism) against all, the long sentences, the lack of openness and information and the difficulty in making and maintaining contact with them. All this resulting in the belief that the judiciary were biased and that there was never a chance of a fair trial for them.

As this case has been given much attention in the media in the recent past and is subject to diplomatic consultations, you most certainly have been informed fully already if not even been involved in the process of pushing for a just and fast solution.

A request to look into the aforesaid arrest and detention is coming from Mr. Gentilhomme, living in Strasbourg, brother in law of one of the arrested Djakovica citizens. His request was submitted to me through the good offices of the Commissioner for Human Rights of the Council of Europe in Strasbourg, Mr. Gil Robles.

Because this complaint does formally not fall within my jurisdiction I would urgently request you, for the sake of all people involved, the convicted, their relatives and many other residents of Kosovo, for the sake of human rights and even for the sake of this credibility of justice and the judiciary in general, to do everything possible to bring this case to a fair and just solution as soon as possible.

Please accept the assurances of my highest consideration.

Sincerely yours,

Marek Antoni Nowicki
Ombudsperson

cc: Mr. Philippe Gentilhomme
The Commissioner for Human Rights of the Council of Europe
The Special Representative of the Secretary-General of the United Nations in Kosovo
The Head of Mission in Kosovo of the Organisation for Security and Co-operation in Europe

RESPONSE: No response to this letter was received.

7 March 2001

Mr. Hans Haekkerup
Special Representative of the Secretary General

Dear Mr. Haekkerup,

Since the opening of the Ombudsperson Institution, I have received several formal applications, a general petition and a number of informal complaints regarding the difficulties suffered by many elderly people in Kosovo who find it impossible to obtain their pensions.

These persons accrued pension rights (which constitute property rights in international human rights law), through regular contributions to the state pension fund(s) of the former Yugoslavia and/or the Federal Republic of Yugoslavia. These funds, to the best of my understanding, are administered by the pension authorities in Belgrade.

As you know, I do not have jurisdiction to review cases against Serbia or FRY. I also recognise that UNMIK has no legal obligation to pay pensions to persons who have accrued pension rights through other institutions. At the same time, however, I consider the situation of elderly persons who are dependent on their pensions to spend their final years in dignity but who, in some instances, have been reduced to the edge of survival to be a serious concern meriting a high level of engagement by the international presence here in Kosovo.

I note from your recent interviews with the press that one of your priorities during your tenure as SRSR will be to improve relations with the authorities in Belgrade. In this light, I hope that you will exercise your political leadership on an urgent basis to come to an arrangement with the relevant authorities in Belgrade to ensure that all individuals in Kosovo receive all pension payments due to them. I also hope that you will consider establishing channels for these payments to be made under the auspices of the interim civilian administration.

Needless to say, I am at your disposal to discuss these matters further. In any event, I would appreciate your keeping me informed about any progress that is made in resolving this serious issue.

Yours sincerely,

Marek Antoni Nowicki
Ombudsperson

RESPONSE: No response to this letter was received.

20 April 2001

Mr. Hans Haekkerup
Special Representative of the Secretary General
of the United Nations
UNMIK

Dear Mr. Haekkerup,

With reference to my letter to you of 7 March 2001 regarding difficulties faced by pensioners of Albanian ethnicity in receiving in Kosovo pension payments due to them, I would be interested to know if you have been able to make any progress on this difficult issue.

I have enclosed a copy of my original letter for your information and convenience.

Yours sincerely,

Marek Antoni Nowicki
Ombudsperson

enc.

RESPONSE: No response to this letter was received.

21 May 2001

Lord George Robertson
Secretary General
North Atlantic Treaty Organisation
Blvd. Leopold III
1110 Brussels
Belgium

e-mail: natodoc@hq.nato.int

Dear Lord Robertson,

Since the opening of the Ombudsperson Institution in Kosovo at the end of November, 2000, I have met with several residents of Kosovo whose family members were killed during the 1999 NATO action, in incidents that NATO acknowledged at the time as having been mistakes (for example, the bombing of the bridge at Lhuzane and of the central post office in Pristina).

The people who have come to me have attempted to find the proper international channels through which to request redress for their losses and otherwise to address outstanding issues in this connection. To date, they have been unable to obtain any information about whom to address or what procedural mechanisms exist through which they can reach a resolution of their grievances. No institution in Kosovo or elsewhere has responded to the most basic humanitarian concerns.

Although I am fully cognizant of the fact that I have no formal jurisdiction over NATO or any of its member states, I hope that you will give positive consideration to this request that NATO and/or its members provide some means through which the civilians who have suffered such tragic losses receive appropriate attention, including the provision of some form of compensation. In this regard, the Ombudsperson Institution in Kosovo is prepared to serve as a contact point or in any other similar capacity.

I appreciate your attention and consideration of this request and look forward to your positive response.

Yours sincerely,

Marek Antoni Nowicki
Ombudsperson

cc: Foreign Ministers of NATO member states
Mr. Javier Solana, EU High Representative for the Common Foreign and Security Policy
Mr. Hans Haekkerup, Special Representative of the Secretary General of the United Nations

RESPONSE: No response to this letter was received.

Annex 3

Regulation on the Establishment of the Ombudsperson Institution in Kosovo

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations Unies au
Kosovo

UNMIK/REG/2000/38
30 June 2000

REGULATION NO. 2000/38

**ON THE ESTABLISHMENT OF THE OMBUDSPERSON INSTITUTION IN
KOSOVO**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

For the purpose of enhancing the protection of human rights in Kosovo,

Hereby promulgates the following:

Section 1: The establishment of the Ombudsperson institution in Kosovo

1.1 The Ombudsperson shall promote and protect the rights and freedoms of individuals and legal entities and ensure that all persons in Kosovo are able to exercise effectively the human rights and fundamental freedoms safeguarded by international human rights standards, in particular the European Convention on Human Rights and its Protocols and the International Covenant on Civil and Political Rights.

1.2 The Ombudsperson shall provide accessible and timely mechanisms for the review and redress of actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution.

Section 2: Nature of the Ombudsperson

2.1 The Ombudsperson shall act independently. No person or entity may interfere with his or her functions.

2.2 Services offered by the Ombudsperson shall be free of charge.

Section 3: Jurisdiction

3.1 The Ombudsperson shall have jurisdiction to receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution. The Ombudsperson shall give particular priority to

allegations of especially severe or systematic violations and those founded on discrimination. In this section, 'actions' include acts, omissions and decisions.

3.2 The jurisdiction of the Ombudsperson shall extend to the territory of Kosovo. The Ombudsperson may also offer his or her good offices with regard to cases involving Kosovars outside the territory of Kosovo.

3.3 The Ombudsperson shall have jurisdiction over cases which occur after the coming into force of this regulation and cases arising from facts which occurred prior to this date where these facts give rise to a continuing violation of one or more human rights.

3.4 In order to deal with cases involving the international security presence, the Ombudsperson may enter into an agreement with the Commander of the Kosovo Forces (COMKFOR).

3.5 The Ombudsperson shall not have jurisdiction to deal with disputes between the international administration and its staff.

Section 4: Functions and Powers

4.1 The Ombudsperson may receive complaints, monitor, investigate, offer good offices, take preventive steps, make recommendations and advise on matters relating to his or her functions.

4.2 The Ombudsperson may promote reconciliation between ethnic groups.

4.3 Except as provided in section 2 of UNMIK Regulation No. 1999/24 of 12 December 1999 on the Law Applicable in Kosovo, the Ombudsperson may provide advice and make recommendations to any person or entity concerning the compatibility of domestic laws and regulations with recognized international standards.

4.4 The Ombudsperson shall have the authority to conduct investigations, either in response to a complaint made under section 3.1 or on his or her own initiative.

4.5 The Ombudsperson shall take all necessary steps and actions to address complaints made under section 3.1, including directly intervening with the relevant authorities, which will be required to respond within a reasonable time.

4.6 Where, during an investigation, the Ombudsperson finds that the execution of an administrative decision may result in irreparable prejudice to the rights of the complainant, he or she may recommend that the relevant authority suspend the execution of the said decision.

4.7 The Ombudsperson shall have access to and may examine files and documents of the interim civil administration and of any emerging central or local institution and, subject to this regulation, may require any person to cooperate with him/her by providing relevant information, documents and files. The Special Representative of the Secretary-General may however refuse to release a file or document, provided that reasons in writing are given to the Ombudsperson. In such a case the Ombudsperson may draw such inferences as he or she sees fit from the refusal.

4.8 The Ombudsperson may at any time enter and inspect any place where persons are deprived of their liberty and may be present at meetings or hearings involving such persons. The Ombudsperson may also conduct private meetings with such persons.

4.9 During or following an investigation, the Ombudsperson may make recommendations to the relevant administrative authorities and officials on the appropriate measures to be adopted, including interim measures if necessary.

4.10 Following an investigation, the Ombudsperson may recommend to the competent authorities that disciplinary or criminal proceedings be initiated against any person.

4.11 If, once recommendations have been made by the Ombudsperson, the administrative authorities or officials concerned do not take appropriate measures within a reasonable time, or if they do not provide the Ombudsperson with reasons for not doing so that are acceptable to the Ombudsperson, the Ombudsperson may

draw the Special Representative of the Secretary-General's attention to the matter and may make a public statement thereon.

4.12 The Ombudsperson shall publish his or her recommendations, save in cases which he or she considers to be confidential or secret, or where the complainant has expressly requested that his, her or its identity and the circumstances of the complaint are not to be revealed.

4.13 There shall be no appeal against any action or decision of the Ombudsperson.

Section 5: Composition of the Institution of the Ombudsperson

The Ombudsperson institution shall be composed of the Ombudsperson, at least three (3) Deputy Ombudspersons and a professionally competent staff.

Section 6: The Ombudsperson

6.1 The Ombudsperson shall be an eminent international figure of high moral character, impartiality and integrity, who possesses a demonstrated commitment to human rights and the rights of minorities and who is not a citizen of the Federal Republic of Yugoslavia, of a state that was part of the former Yugoslavia or of Albania.

6.2 The Ombudsperson shall be appointed by the Special Representative of the Secretary-General for a term of two years. The appointment may be renewed for further terms of two years.

Section 7: Deputy Ombudspersons

7.1 Upon proposal of the Ombudsperson following local and international consultation, the Special Representative of the Secretary-General shall appoint at least one international and two local Deputy Ombudspersons, who shall be persons of high moral character, impartiality and integrity possessing a demonstrated commitment to human rights and rights of minorities.

7.2 The Ombudsperson may, as he or she sees fit, delegate to the Deputy Ombudspersons any of the functions and powers set out in section 4 of this regulation.

Section 8: Incompatibilities and removal from office

8.1 The positions of Ombudsperson and Deputy Ombudsperson, and of the staff of the Ombudsperson institution, are incompatible with any political, public or private professional activity or office.

8.2 The Special Representative of the Secretary-General may remove the Ombudsperson and/or his Deputy Ombudsperson(s) from office where the Special Representative of the Secretary-General considers that one or more of the following grounds have been established in respect of the Ombudsperson and/or the Deputy Ombudsperson(s):

- (a) physical or mental disability affecting his or her capacity to perform his or her functions;
- (b) final conviction for a criminal offence punishable by a term of imprisonment;
- (c) failure in the execution of his or her functions; or
- (d) having been placed, by personal conduct or otherwise, in a position incompatible with the due exercise of his or her functions.

The Ombudsperson may request that the Special Representative of the Secretary-General remove one or more of the Deputy Ombudspersons from office on one or more of the above grounds. The Special Representative of the Secretary-General shall make the final decision as to the removal.

8.4 In the event of removal from office of the Ombudsperson or Deputy Ombudsperson(s) pursuant to section 8.2, or in the event of the death or resignation of the Ombudsperson and/or Deputy Ombudsperson(s), the Special Representative of the Secretary-General shall appoint a new Ombudsperson and/or Deputy Ombudsperson(s) as soon as possible in accordance with the present regulation.

Section 9: Staff

Staff of the Ombudsperson institution shall be local and international persons of high standards of competence, efficiency and integrity.

Section 10: Rules of procedure

Following consultation with the Deputy Ombudspersons, the Ombudsperson shall adopt Rules of Procedure for the Ombudsperson institution.

Section 11: Confidentiality

The Ombudsperson institution shall maintain the confidentiality of all confidential information and data obtained, with special attention being given to the safety of complainants and witnesses.

Section 12: Cooperation

12.1 All persons and entities subject to the jurisdiction of the Ombudsperson are obliged to provide the Ombudsperson with preferential assistance.

12.2 The Ombudsperson may cooperate and coordinate with other international Ombudspersons and institutions dealing with human rights protection.

Section 13: Privileges and immunities

13.1 The Ombudsperson, the international Deputy Ombudsperson(s), local Deputy Ombudspersons and international and local staff of the Ombudsperson institution shall enjoy immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity. Such immunity shall continue to be accorded even after they cease their employment with the Ombudsperson institution. The Ombudsperson and his or her Deputy Ombudspersons shall also be accorded other facilities necessary for the independent exercise of their functions.

13.2 The Ombudsperson, the international Deputy Ombudsperson(s) and international staff of the Ombudsperson institution shall be accorded the privileges and immunities of officials of the United Nations, as provided in Article V of the Convention on the Privileges and Immunities of the United Nations. Local Deputy Ombudspersons and locally recruited staff shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in Sections 18(a), (b) and (c) of the above-mentioned Convention.

13.3 Nothing in the present regulation shall be construed as a derogation of the privileges and immunities accorded to UNMIK and its officials under the above-mentioned Convention.

Section 14: Inviolability and immunity of premises, communications, archives, files and documents

14.1 The premises of the Ombudsperson shall be inviolable. The competent authorities shall take whatever action necessary to ensure that the Ombudsperson shall not be dispossessed of all or any part of the premises without his or her express consent. The archives, files documents, communications, property, funds and assets of the Ombudsperson, wherever located and by whomsoever held, shall be inviolable and immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.

14.2 The Secretary-General of the United Nations shall be the only authority to waive the above inviolability and immunity.

Section 15: Offices and facilities of the Ombudsperson

15.1 The Ombudsperson institution shall have its headquarters in Pristina. It shall have regional offices as necessary.

15.2 Subject to section 18 of the present regulation, the Ombudsperson institution shall be provided with appropriate facilities.

Section 16: Working languages

The working languages of the Ombudsperson institution shall be English, Albanian and Serbian.

Section 17: Reports

17.1 The Ombudsperson shall provide an annual report to the Special Representative of the Secretary-General and make his or her findings public.

17.2 A special report may also be released whenever the Ombudsperson deems it appropriate.

Section 18: Financing

For the year 2000, the Ombudsperson institution shall be funded by international donors. In subsequent fiscal years, the Ombudsperson may request funds from international donors and/or the Kosovo Consolidated Budget for the operation of the institution.

Section 19: Period of implementation

The Ombudsperson institution shall exercise its functions and be open to the public no later than six (6) months after the appointment of the Ombudsperson.

Section 20: Continuing Operation

The responsibility for the continuing operation of the Ombudsperson institution may be transferred to the elected authorities in Kosovo, once established.

Section 21: Applicable Law

The present regulation supersedes any provision in the applicable law relating to the establishment or operation of an Ombudsperson institution which is inconsistent with it.

Section 22: Entry into Force

The present regulation shall enter into force on 30 June 2000.

Bernard Kouchner
Special Representative of the Secretary-General

Annex 4

Rules of Procedure for the Ombudsperson Institution in Kosovo

PREAMBLE

The Ombudsperson.

Pursuant to the authority given to him/her under UNMIK Regulation No. 2000/38 of 30 June 2000, On the Establishment of the Ombudsperson Institution in Kosovo, Section 10, and,

Recalling:

- United Nations Security Council Resolution 1244 (1999) of 10 June 1999, in particular para. 11;
- Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 12 July 1999 (S/1999/779), in particular paras. 89-90;
- Decision 305 of 1 July 1999 of the OSCE (PC.DEC/305), in particular para. 4; and
- Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 23 December 1999 (S/1999/1250), in particular para. 83.

Adopts the present Rules of Procedure:

INTRODUCTORY PROVISIONS

The right to complain to the Ombudsperson regarding violations of human rights and abuses of authority is guaranteed to all persons, irrespective of background, citizenship, ethnicity, nationality, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, age, sexual orientation, place of residence, legal incapacity, detention, relationship with any administrative authority or any other status. All services offered by the Ombudsperson Institution are free.

Definitions:

The terms hereby enumerated shall be understood as having the following meaning:

1. Applicant: Any individual, group of individuals, registered or not registered non-governmental organisation, or entity who/which claims that her/his/its rights have been violated or alleges to be a victim of an abuse of authority.
2. Application: A completed form that states a complaint of a human rights violation or an abuse of authority to which the Ombudsperson will respond.
3. Provisional Registration: The process of numerically listing applications received by the Ombudsperson.
4. Registration: The process of numerically listing applications that have been verified as admissible by the Ombudsperson.
5. Respondent Party: Any person or entity as defined by the Regulation against whom an application has been filed with the Ombudsperson or whom the Ombudsperson identifies *ex officio* as having had a possible role in the alleged violation or abuse.
6. Parties: The Applicant(s) and the Respondent Party/Parties.
7. Other Authority: Any authority/entity/group other than the Respondent Party, which during the investigation, appears to be in any way involved in a case before the Ombudsperson.
8. Representative: Any person authorised by the Applicant or by law to represent her/him throughout the procedures before the Ombudsperson.

Rule 1.

Filing an Application

1. Applicants will fill out an application form provided by the Ombudsperson Institution with the assistance of an Ombudsperson Institution officer. The application form must be dated and signed by the Applicant and/or her/his Representative.
2. Legal representation through a lawyer is not needed.
3. An application should contain the following information:

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Comment: This seems to contradict ... [2]

- a) full name, age, gender, ethnicity, occupation, marital status and citizenship of Applicant, and/or full name and registration information, if registered, of any Applicant(s) that is/are an organisation or entity;
 - b) home and/or work address of the Applicant, and the correspondence address, if different;
 - c) full name, occupation and contact address of the Representative of the Applicant, if any;
 - d) full name/title and contact address of the alleged Respondent Party or Parties if known by the Applicant. If not, sufficient other information to identify the Respondent Party or Parties;
 - e) full name of the officer of the Ombudsperson Institution assisting the Applicant;
 - f) a statement of the alleged facts, including date of incident;
 - g) a statement of the alleged human rights violation or alleged abuse of authority;
 - h) a statement of what the Applicant wants to achieve in that specific case;
 - i) a list of the documents attached to the application, or in case they are not in the Applicants' possession, information as to where necessary documents can be found;
 - j) an indication as to whether a similar complaint has been submitted to any domestic authority, any body of the Interim Civil Administration, or any international body, and the outcome of such proceedings; and
 - k) a general preliminary comment by the officer assisting the Applicant on the case including a provisional classification of the alleged human rights violation(s).
4. An authorisation of the Representative shall be attached if the Applicant files the complaint through a Representative or if the Applicant chooses to be represented during any stage of the procedures before the Ombudsperson.
 5. The application form may be filed in any of the languages used in the region or in English. All conclusions or assessments of the application will be available in English, Albanian and Serbian and another language, if the Ombudsperson so decides.
 6. The Applicant or her/his Representative shall inform the Ombudsperson of any changes of address or any circumstances relevant to the application.

Rule 2
Investigations Ex Officio

The Ombudsperson may conduct investigations on her/his own initiative on receiving information indicating that human rights violations or abuses of authority may have occurred. When deciding whether to open such an ex officio investigation, the Ombudsperson may consider information from any source.

Rule 3
Provisional Registration and Notification of Receipt

1. The Ombudsperson shall provisionally register all applications received.
2. The Ombudsperson shall notify the Applicant of receipt of the Application as soon as possible.

Rule 4
Confidentiality and Classified Documents

1. Upon receipt of each application, the Applicant or the Representative will be asked whether she/he would like her/his/their names to be kept confidential.
2. The Ombudsperson Institution staff members who have access to confidential or classified information are bound not to disclose it to public or authorities.
3. All documents collected during the investigation of cases where discretion is required, shall be registered as classified, either upon request by the Applicant or on the Ombudsperson's own initiative.
4. All classified documents shall be kept in a specially designated secured location.
5. Access to classified documents shall be limited to the investigators who are directly assigned to deal with the respective case and the Director for Investigations. Access of other staff to such documents may only take place when authorised by the Ombudsperson.

Rule 5
Conditions for Admissibility

4. 1. The Ombudsperson shall verify the admissibility of the application.
2. The Ombudsperson shall not consider applications admissible if the application:

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Deleted: (if this is going to take an official form such as 'Authority Form' "power of attorney" or "Authorisation for Representation" then that should be in the definitions) (Carsten – see the Bosnian Ombuds "Explanatory Note" to the Complaint form, sec.1)

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- a. does not fall under the jurisdiction of Ombudsperson in accordance with the provisions of Section 3 of Regulation No. 2000/38 of 30 June 2000;
- b. is manifestly ill-founded or constitutes an abuse of the right of petition;
- c. has not been brought before the competent authorities in Kosovo and there are reasonable grounds to believe that such authority would provide an effective remedy;
- d. is filed by an administrative or other authority and concerns facts under the jurisdiction of that same authority.

3. The Ombudsperson may, at her/his discretion, waive any of the conditions listed above, with the exception of condition 2a.
4. In order to verify the admissibility of an application, the Ombudsperson may conduct any necessary interviews or research.

Rule 6 **Opening of a Case**

1. Once admissibility is verified, the Ombudsperson will open an investigation of the case.
2. Following this decision, the case will be registered.

Rule 7 **Informing the Applicant of the Ombudsperson's Decisions**

1. When the Ombudsperson finds an application to be inadmissible, she/he shall inform the Applicant of the basis for that decision. When appropriate, the Ombudsperson shall also inform the Applicant of any possibilities to file a new or renewed application, for example, on the provision of new information, such as the exhaustion of other remedies or other means of redress falling outside the jurisdiction of the Ombudsperson.
2. If it has been decided that the application is admissible, the Ombudsperson shall notify the Applicant.

Rule 8 **Registration of Investigations Ex Officio**

When the Ombudsperson decides to conduct investigations by her/his own initiative, she/he makes a written decision including the grounds for that decision and this shall be registered as the basis for conducting investigations.

Rule 9 **Decision to Strike a Case**

1. The Ombudsperson may discontinue an investigation of a case if any of the circumstances provided in Rule 5 are present.
2. The Ombudsperson may discontinue an investigation if the Applicant so requests.
3. If the Ombudsperson decides to discontinue an investigation, she/he will notify the Applicant of this decision and its basis. In such cases the Ombudsperson will strike the case from the list of pending cases.
4. The Ombudsperson shall inform the Applicant of the possibility of having the case re-opened if the grounds for the decision to strike the case do no longer exist and/or new facts are presented to the Ombudsperson that justify renewing an investigations of the case.

Rule 10 **Informing the Respondent Party/Parties**

1. The Ombudsperson may inform the Respondent Party/Parties as soon as possible of the application and invite the Party/Parties to submit written information, observations and/or envisaged solutions. The Respondent Party/Parties may also be required to submit specific documents.
2. The Ombudsperson sets the time limit within which the Respondent Party/Parties shall comply with requests of the Ombudsperson.
3. Should the Respondent Party/Parties fail to respond, the Ombudsperson may pursue the investigation on the basis of other information available.

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Investigations and Preferential Assistance¶

¶
At any time during the investigations, the Ombudsperson may interview witnesses and ... [why only put interview – why not also put collect any relevant documentation etc – I know this is below – IT MAY MAKE MOST SENSE TO MOVE THIS RULE TO RIGHT ABOVE THE CURRENT RULE 14, SINCE THESE TWO ARE SO RELATED AND THE CURRENT RULE 14 NATURALLY FLOWS OUT OF IT AS IS...].¶

If civil servants refuse or are prevented from being interviewed the Ombudsperson may ask for explanatory letters and may address the issue hierarchically. I know that 'hierarchically' was deleted during the workshop – and replaced with 'with any superiors, up to and including the Special Representative of the Secretary General.' Also, people may not only refuse to be interviewed – they may refuse to hand over documents – need to include this!¶

All persons and entities subject to the jurisdiction of the Ombudsperson are required to provide the Ombudsperson with preferential assistance. The staff acting on behalf of the Ombudsperson shall benefit of the same preferential assistance. [define?]¶

The Ombudsperson may ask for assistance from the police and KFOR if it is necessary to secure an investigation or to protect Applicants, witnesses or any other person/entity in any way involved in the investigations by the Ombudsperson, including the Ombudsperson and the staff of the Institution, or any persons acting on behalf of the Institution. ¶

If preferential assistance is denied the Ombudsperson may notify th... [7]

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- 4. In special circumstances, the Ombudsperson may decide to initiate investigations in a case without seeking information and/or observations and/or envisaged solutions from the Respondent Party/Parties.

**Rule 11,
Other Authorities**

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- 1. If investigations suggest that any authority other than the Respondent Party /Parties are in any way involved in a case, the Ombudsperson may contact the respective authority at any time during the investigations.
- 2. The Ombudsperson may decide to qualify the respective authority as Respondent Party/Parties and to follow the procedure provided above.

**Rule 12,
Informing the Applicant of the Respondent Party’s Submissions**

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- 1. The Ombudsperson may inform the Applicant of the submission of the Respondent Party/Parties and may give the Applicant the opportunity to reply to the issues raised by the former.
- 2. The Ombudsperson may require the Applicant to reply within a time limit set by the Ombudsperson.
- 3. Should the Applicant fail to reply, the Ombudsperson may pursue the investigations. However, a failure to respond may be considered as a loss of interest and it may justify the termination of the investigation.

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**Rule 13
Investigations and Preferential Assistance**

- 1. At any time during the investigations, the Ombudsperson may interview witnesses.
- 2. If civil servants refuse or are prevented from being interviewed the Ombudsperson may ask for explanatory letters and may address the issue hierarchically.
- 3. All persons and entities subject to the jurisdiction of the Ombudsperson are required to provide the Ombudsperson with preferential assistance. The staff acting on behalf of the Ombudsperson shall benefit of the same preferential assistance.
- 4. The Ombudsperson may ask for assistance from the police and KFOR if it is necessary to secure an investigation or to protect Applicants, witnesses or any other person/entity in any way involved in the investigations by the Ombudsperson, including the Ombudsperson and the staff of the Institution.
- 5. If preferential assistance is denied the Ombudsperson may notify the highest authority with jurisdiction over the matter.

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**Rule 14
Access to Files and Documents and Inspections**

- 1. At any time during the investigations the Ombudsperson may ask individuals, governmental authorities or private entities to co-operate by providing relevant information, files and documents including those classified as secret or confidential. They shall provide all the information and assistance requested by the Ombudsperson.
- 2. In order to ensure that her/his access to documents is not hindered, the Ombudsperson may effectuate routine inspections to any authority under her/his jurisdiction.
- 3. All authorities under the jurisdiction of the Ombudsperson shall permit the Ombudsperson access to their premises, allowing her/him to move within the premises without restriction to acquire documents, interview witnesses or carry out any other activities necessary to the investigation.
- 4. The Ombudsperson may require copies of any of the above mentioned documents be provided by the relevant authority or agency.
- 5. If civil servants refuse or are prevented from providing the above mentioned information, documents or files, the Ombudsperson may ask for an explanatory letter and may address the issue hierarchically.
- 6. If the Special Representative of the Secretary General exercises his power to refuse the release of a document or a file, as provided by Section 4.7 of Regulation No. 2000/38, the Ombudsperson may draw such inferences as she/he sees fit from the refusal and address such refusal in her/his special or annual report.
- 7. If requested, the Ombudsperson and/or her/his staff shall undertake a duty of discretion with regard to the classified information or documents. The duty of discretion shall continue after the person concerned leaves office or ceases employment with the Institution.

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8. The Ombudsperson may at any time enter and inspect any place where people are deprived from their liberty or where freedom of movement is restricted (e.g. detention centre, police lock-up, house arrest, psychiatric or other hospital).
9. The Ombudsperson may interview in private persons deprived of their liberty and take part in any meeting or hearing involving such persons.

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Rule 15 Ombudsperson's Assistance

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The Ombudsperson may at any stage during an investigation be assisted by any person deemed necessary, such as the Applicant, the Respondent Party/Parties and/or their Representatives, interpreters and legal, forensic, financial or other experts.

Rule 16 Interim Measures and Suspension of Administrative Decisions

1. At any time during an investigation the Ombudsperson may recommend that the respondent Party/Parties or any other authority adopt an interim measure she/he deems necessary for the immediate protection of the rights and freedoms of the Applicant or for the safety of the Applicant and witnesses.
2. During an investigation the Ombudsperson may recommend the respondent Party/Parties to suspend the execution of an administrative or disciplinary decision if such an execution may result in irreparable prejudice for the rights of the Applicant.
3. The Ombudsperson may ask the responsible authorities to implement the requested interim measure and sets the time limit within the respondent Part/Parties shall comply with requests of the Ombudsperson.
4. An interim measure taken in accordance with paras. 1 and 2 shall stay in force until an investigation is concluded or until the Ombudsperson decides on its termination.
5. The Ombudsperson shall inform the Parties and other authorities of a recommendation made under paras. 1 and 2 and on the response of the authority to whom the recommendation was addressed.

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Rule 17 Good Offices

1. The Ombudsperson may at any stage during an investigation offer her/his good offices, for example mediation and reconciliation, and place herself/himself at the disposal of the Parties with a view to secure a friendly settlement of the matter on the basis of respect for human rights as defined in the internationally recognised standards.
2. When a friendly settlement is reached, the obligation undertaken by the Parties, the time limits for their fulfilment and any other circumstances relevant for the case shall be included in a written agreement.
3. The Ombudsperson shall terminate an investigation and close the case when she/he is satisfied that the Parties fulfilled the commitments undertaken in the written agreement as a part of the friendly settlement.
4. The Ombudsperson may also offer her/his good offices with regard to cases involving persons from Kosovo outside of its territory.

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Rule 18 Case-report

Once an investigation is concluded the Ombudsperson will issue a case-report that includes the recommendations, if any.

Rule 19 Recommendations

1. If the Ombudsperson finds any of the violations or abuses of authority derived from in Sections 1 and 3 of Regulation No. 2000/38, she/he shall make recommendations to the Respondent Party/Parties about appropriate measures to take, and shall specify a time limit for the fulfilment of them. The limit may be extended if the Ombudsperson deems it necessary.
2. The Ombudsperson may recommend to the competent authorities that disciplinary or criminal proceedings be initiated against any person.

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3. If the Ombudsperson finds that any authority other than the Respondent Party/Parties has indirectly contributed to a breach, she/he may recommend that the respective authority adopt any appropriate measures deemed necessary.
4. The Ombudsperson shall notify the Applicant on her/his recommendations and on the response of the Respondent Party/Parties or of other authorities involved.
5. The Ombudsperson may make recommendations to amend the existing domestic legislation or to adopt new legislation in order to ensure the compatibility of the legal system with the recognised international human rights standards.

Rule 20
Monitoring / Closing the case

1. Once recommendations have been made by the Ombudsperson, if the administrative authorities or officials concerned do not take appropriate measures within a reasonable time, or if they do not provide the Ombudsperson with reasons for not doing so that are acceptable to the Ombudsperson, the Ombudsperson may draw the Special Representatives of the Secretary-General's attention to the matter and may make a public statement thereon.
2. Once the Ombudsperson has decided that the monitoring period is over, either because her/his recommendations were implemented or she/he took measures according to para. 1, the case will be closed.

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Rule 21
Publishing the Case-reports and Recommendations

1. The Ombudsperson shall make public her/his case-reports, save in cases which she/he considers to contain confidential information, or where the applicant has expressly requested that her/his/its identity and the circumstances of the complaint are not to be revealed.
2. All case-reports and recommendations will be available in English, Albanian, Serbian and another language, if the Ombudsperson so decides.

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Deleted: <#>[these dates are really confusing – it says June 30 then calendar year, so this year it's 30 June til years end, and every other year it follows the calendar year, meaning Jan-Dec? then what's the deal with the 30 nov date? Does that mean that the OI has to have a report ready by this Nov 30th (11 days from now!) or that in future years by 30 Nov – and then Dec is always included in the next years report???!]

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Deleted: This appears redundant – or is it trying to say that "the Ombudsperson shall make public, through various mediums, all reports."

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Rule 22
Annual and Special Reports

1. The Ombudsperson shall provide an annual report to the Special Representative of the Secretary General covering the activities during the complete year starting 30 June.
2. The annual report shall be submitted to the Special Representative of the Secretary General no later than 30 November.
3. The Ombudsperson may issue a special report whenever she/he deems it appropriate.
4. The Ombudsperson shall make public the reports.
5. Annual and special reports will be available in English, Albanian, Serbian and another language, if the Ombudsperson so decides.

Rule 23
Languages

1. The Rules of Procedure are published in English, Albanian and Serbian. The authentic version shall be the English language version.
2. The Rules of Procedure and any amendments to it shall be translated into any other language in use within the territory of Kosovo, if the Ombudsperson deems it necessary.

Rule 24
Amending the Rules of Procedure

The Ombudsperson may at any time amend the Rules of Procedures following consultation with the Deputy Ombudspersons.

Rule 25
Forwarding Rules of Procedure and Subsequent Amendments

The Rules of Procedure and any subsequent amendments shall be forwarded to the Special Representative of the Secretary General, Head of the OSCE Mission in Kosovo, as well as any relevant local institutions. They shall be accessible to the public.

Rule 26
Entry into force

The Rules of Procedure shall enter into force on 21 November 2000.

Adopted 20 November 2000 following consultation with the Deputy Ombudspersons

Marek Antoni Nowicki
Ombudsperson

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So nothing in here about either the make-up of the staff or the delegation of powers to the Deputies??¶
¶
I still am not totally confident that some of the places that say "Ombudsperson" don't actually mean "Ombudsperson Institution" ... ¶

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OMBUDSPERSSON IN KOSOVO
RULES OF PROCEDURE¶
¶
PREAMBLE¶
¶
The Ombudsperson,¶
¶
Pursuant to the authority given to him/her under the Regulation no. 2000/38, of 30 June 2000 on the Establishment of the Ombudsperson Institution in Kosovo, Section 10, and¶
Recalling ¶
United Nations Security Council Resolution 1244 (1999) of 10 June 1999, in particular para. 11;¶
Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 12 July 1999 (S/1999/779), in particular paras. 89-90; and ¶
Decision 305 of 1 July 1999 of the OSCE (PC.DEC/305), in particular para.4; and¶
Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 23 December 1999 (S/1999/1250), in particular paras. 8;¶
¶
Adopts the present Rules of Procedure:¶
¶
INTRODUCTORY PROVISIONS ¶
¶
All staff of the Ombudsperson Institution shall always bear in mind that the right to complain to the Ombudsperson regarding violations of human rights and abuse of authority is guaranteed to all persons ... [8]

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English. All conclusion or assessments of the application will be available in English, Albanian and Serbian and another language of the Ombudsperson so decides. ¶ ... [9]

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The Ombudsperson shall register all applications and complaints received irrespective of their form. All applications or complaints shall be registered on provisional forms. The provisional registration shall be followed by the ordinary registration when ... [10]

Page 24: [1] Deleted KLC Staff Member 11/20/2000 8:08:00 AM

[or other person(s) designated by the Ombudsperson to take applications.] [need this to open the door for OLOs to take applications] [just to clarify – then there is no way that a person can file a complaint on their own? May want to add an ‘if necessary’ to open the door to people filing them on there own, just in case the Institution eventually wants to put the form on the web, as the Bosnian Ombuds has done...].

Page 24: [2] Deleted KLC Staff Member 11/20/2000 8:13:00 AM

Comment: ~~This seems to contradict Definition (2) which states that an application can be done by telephone or email – that would mean there would be no forms filled, no signature...do Applicants fill out an ‘application form’ or a ‘complaint form’???~~ If you need to fill out an application form to make an application, then you have to revisit definition 2.

Page 25: [3] Deleted KLC Staff Member 11/20/2000 8:22:00 AM

[I thought that this provision had been discussed at the workshop to be deleted – because if you are filling out an application with an officer, then maybe the application form could have a tear off receipt or a separate receipt form to be given at the time the application is filed out, or do you mean a notification from the Ombudsperson himself when he gets the application from his officers? Or do you mean notification of the admissibility decision?]

Page 25: [4] Deleted KLC Staff Member 11/20/2000 8:24:00 AM

[do you want to add something about ‘or other persons who have access to such information’ since OLOs, their assistants, and probably OSS staff will have access to some of this info too?]

Page 25: [5] Deleted KLC Staff Member 11/20/2000 8:26:00 AM

[should this be so specific as to state ‘special filing cabinets’? It may seem like a small point, but I think something more broad may be appropriate just in case ‘special filing cabinets’ aren’t always available and docs are kept in some other secure fashion, i.e. safes – just in case someone ever wants to challenge the OI for complying with its own RoP, may be better to have slightly broader language...]

Page 25: [6] Deleted KLC Staff Member 11/20/2000 8:26:00 AM

[why is this only written in the negative? Maybe put something in about what *makes* a case *within* the jurisdiction, taking from §§3.1 and 3.2]

Page 26: [7] Deleted KLC Staff Member 11/20/2000 8:35:00 AM

Rule 10

Investigations and Preferential Assistance

At any time during the investigations, the Ombudsperson may interview witnesses **and ... [why only put interview – why not also put collect any relevant documentation etc – I know this is below – IT MAY MAKE MOST SENSE TO MOVE THIS RULE TO RIGHT ABOVE THE CURRENT RULE 14, SINCE THESE TWO ARE SO RELATED AND THE CURRENT RULE 14 NATURALLY FLOWS OUT OF IT AS IS...].**

If civil servants refuse or are prevented from being interviewed the Ombudsperson may ask for explanatory letters and may address the issue **hierarchically**. **I know that ‘hierarchically’ was deleted during the workshop – and replaced with ‘with any superiors, up to and including the Special Representative of the Secretary General.’ Also, people may not only refuse to be interviewed – they may refuse to hand over documents – need to include this.**

All persons and entities subject to the jurisdiction of the Ombudsperson are required to provide the Ombudsperson with **preferential assistance**. The staff acting on behalf of the Ombudsperson shall benefit of the same preferential assistance. [define?]

The Ombudsperson may ask for assistance from the police and KFOR if it is necessary to secure an investigation or to protect Applicants, witnesses or any other person/entity in any way involved in the investigations by the Ombudsperson, including the Ombudsperson and the staff of the Institution, **or any persons acting on behalf of the Institution.**

If preferential assistance is denied the Ombudsman~~an~~person may notify the highest authority with jurisdiction over the matter.

OMBUDSPERSSON IN KOSOVO RULES OF PROCEDURE

PREAMBLE

The Ombudsperson,

Pursuant to the authority given to him/her under the Regulation no. 2000/38, of 30 June 2000 on the Establishment of the Ombudsperson Institution in Kosovo, Section 10, and

Recalling
United Nations Security Council Resolution 1244 (1999) of 10 June 1999, in particular para. 11;
Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 12 July 1999 (S/1999/779), in particular paras. 89-90; and
Decision 305 of 1 July 1999 of the OSCE (PC.DEC/305), in particular para.4; and
Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 23 December 1999 (S/1999/1250), in particular paras. 83

Adopts the present Rules of Procedure:

INTRODUCTORY PROVISIONS

All staff of the Ombudsperson Institution shall always bear in mind that the right to complain to the Ombudsperson regarding violations of human rights and abuse of authority is guaranteed to all persons, irrespective of back-ground, citizenship, ethnicity, nationality, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, place of residence, legal incapacity, detention, or relationship with any administrative authority.

Definitions

The terms hereby enumerated shall be understood as having the following meaning:

Applicant: *any individual, group of individuals, non-governmental organisation registered or not registered, or entity who/which presents* to the Ombudsman Institution a complaint which may or may not directly concern him or herself.

Complaint: Any contact with the Ombudsperson Institution such as email, letter, or phone call which communicates *a grievance as deemed within the jurisdiction of the Ombudsperson Institution.*

Respondent Party: any person or entity against whom a complaint has been filed with the Ombudsperson.

Parties: the applicant and the respondent Party/Parties who take part in the proceedings before the Ombudsperson's institution.

Facts: any action, failure to act or decision which allegedly gives rise to one or more human rights violations or which constitutes an alleged abuse of authority.

Other authority/or Third Party?: any authority/entity/group other than the respondent Party, which during the investigation, appears to be in any way involved in a case before the Ombudsperson's institution.

1. APPLICATIONS AND INVESTIGATIONS

Rule 1

Filing an Application & Preliminary Investigations

The applicant shall file the application in writing. It shall be submitted on the application form provided by the Office of the Ombudsperson and dated and signed by the applicant or his/her/its representative.

Legal representation through a lawyer is not needed.
Free assistance for filing the application form or for other matters connected with the complaint may be offered at request or at the initiative of the Ombudsperson.

An application should contain the following information:

full name, age, gender and citizenship; full name and registration information where the applicant is an organisation or an entity;
home or/and professional address of the applicant; the correspondence address, if different;
full name, occupation and contact address of the representative of the applicant, if any;
full name/ title and contact address of the alleged respondent Party or Parties if known by the applicant: if not, sufficient other information to identify the respondent Party or Parties;
a statement of the alleged human rights violations or alleged abuse of authority;
a statement of what the applicant wants to achieve in that specific case;
a list of the documents attached to the application, and in case they are not in the applicants possession, information as to where they can be found;
an indication as to whether a similar application has been submitted to any domestic authority, any body of Interim Civil Administration, or any international body and the outcome of such proceedings; an indication as to whether the identity of the applicant and/or the alleged facts should be kept confidential.

An application made in a less formal manner or an oral complaint may be received by the Ombudsperson in well justified circumstances provided an application form is later filed.

If the applicant does not specify the respondent Party/Parties due to lack of information or knowledge, the Ombudsperson shall endeavour to identify the respondent Party/Parties and shall inform the applicant on the outcome.

Any of the requirements provided under the paragraph 4 may be waived by the Ombudsperson where serious reasons justify the applicant's failure to provide such information or where the allegation relates to serious violation.

In cases of allegations of discrimination, the applicant may also be required to provide information on his/her nationality, ethnicity or any other *delicate* information about the reasons for discrimination.

An application shall be considered filed with the Ombudsperson at the date of the first written or oral complaint, even if the application form is filled at a later date.

If the applicant is capable to provide copies of the relevant documents, they shall be attached to the application form.

The authorisation of the representative shall be attached if the applicant files the complaint through a representative or wants to be represented during the procedures before the Ombudsperson.

Page 30: [9] Deleted

Staff Member

8/23/2000 3:54:00 PM

The application form may be filed in any of the languages used in the region or in English. All conclusion or assessments of the application will be available in English, Albanian and Serbian and another language of the Ombudsperson so decides.

The applicant or his/her representative shall inform the Ombudsperson on the changes of the address or of changes of any circumstances relevant to the application.

Rule 2 Investigations Ex Officio

The Ombudsperson may conduct investigations by his/her own initiative when there is information indicating human rights violations or abuse of authority. Information may come from any external source,

such as non-governmental organizations or media reports as well as from any internal source, such as inspections conducted by the Ombudsperson or from the existing cases.

Rule 3
Provisional Registration and Notification of Receipt

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Staff Member

8/23/2000 4:11:00 PM

The Ombudsperson shall register all applications and complaints received irrespective of their form. All applications or complaints shall be registered on provisional forms. The provisional registration shall be followed by the ordinary registration when the decision to investigate the matter is taken. Upon receipt of each application, the applicant will be asked whether they would like their names to be kept confidential

The Ombudsperson shall send a notification of receipt preferably within 10 days from the date the complaint was received. When the complaint is brought in person by the applicant or by anyone on his/her/its behalf to the Office of the Ombudsperson, the provisional registration and the notification shall, when possible, be fulfilled at once.

Rule 4
Additional Information

If the application does not contain all relevant information, the Ombudsperson shall require the applicant or his/her/its representative to submit the necessary information within a time limit set by the Ombudsperson.

Rule 5
Registration of Ex Officiis

When the Ombudsperson decides to conduct investigations on its own initiative, he/she shall write a note describing the facts and arguments for such a decision. The note shall be registered as the basis for conducting investigations.

Rule 6
Verifying the Jurisdiction

Following the receipt of an application, the Ombudsperson shall verify his/her jurisdiction over the case in accordance with the provisions of the Section 3 of the Regulation no. 2000/38 of 30 June 2000.

Rule 7
Admissibility Factors

Following the verification of jurisdiction, the Ombudsperson shall confirm admissibility of the application. The Ombudsperson shall not consider applications admissible if the application:

is manifestly ill-founded or constitutes an abuse of the right of petition;
is substantially the same as a matter which has already been filed and/or examined by the Ombudsperson if it contains no relevant new information;

- d) **is currently being examined by an international or national body, contains no relevant new information and the Ombudsperson is satisfied that the matter falls within the jurisdiction of that body;**
- e) **has not been brought before the competent authorities in Kosovo and there are reasonable grounds to believe that such authority would provide an effective remedy;**
- f) **is filed by an administrative or other authority and concerns facts under the jurisdiction of that same authority.**

3. The Ombudsperson may, at his/her discretion, waive any of the conditions listed above.

In order to confirm the admissibility of an application, the Ombudsperson may conduct any necessary interviews which shall be considered preliminary investigations.

Rule 8

Informing the Applicant on Decision on Rule 7

The Ombudsperson shall notify the applicant, in writing, on the decision taken pursuant to Rules 6 and 7 and its grounds. When the case so requires, the Ombudsperson shall inform the applicant on the existing means of redress falling outside the Ombudsperson's jurisdiction or of the possibility to file a new application subject to providing new information.

Rule 9

Opening of a Case and Case Registration

Once jurisdiction is verified and admissibility is confirmed the case shall be considered open. The case shall be registered once the above decision has been taken.

Rule 10

Investigations and Preferential Assistance

Any time during the preliminary-investigation or investigation, the Ombudsperson may interview witnesses. If civil servants refuse or are prevented from being interviewed the Ombudsperson may ask for explanatory letters and may address the issue hierarchically.

All persons and entities subject to the jurisdiction of the Ombudsperson are required to provide the Ombudsperson with preferential assistance. The staff acting on behalf of the Ombudsperson shall benefit of the same preferential assistance.

The Ombudsperson may ask for assistance from the police if it is necessary to secure an investigation or to protect applicants, witnesses or any other person or entity in any way involved in the investigations by the Ombudsperson as well as the Ombudsperson and the staff acting on his/her behalf.

If preferential assistance is denied the Ombudsman may notify the highest authority with jurisdiction over the matter.

Rule 11

Informing the respondent Party/Parties

When contact with the respondent Party/Parties has not been made during preliminary contact, the Ombudsperson shall inform them within a reasonable time of the application and invite the Party/Parties to submit written information, observations and/or envisaged solutions. The respondent Party/Parties may also be required to submit specific documents.

The Ombudsperson shall require that the respondent Party/Parties fulfil the request under para. 1 within a time limit set by the Ombudsperson.

Should the respondent Party/Parties fail to respond, the Ombudsperson may pursue the investigations. The Ombudsperson may decide to initiate investigations in a case without seeking information and/or observations and/or envisaged solutions from the respondent Party/Parties.

Rule 12
Other Authorities

If investigations suggest that any authority other than the respondent Party /Parties are in any way involved in a case, the Ombudsperson may contact the respective authority at any time during the investigations. The Ombudsperson may decide to qualify the respective authority as respondent Party/Parties and to follow the procedure provided above.

Rule 13
Informing the applicant of the respondent Party's submissions

The Ombudsperson shall inform the applicant on the respondent Party's/Parties' submissions and shall give the applicant the opportunity to reply to the issues raised by the former. The Ombudsperson shall require the applicant to reply within a time limit set by the Ombudsperson. Should the applicant fail to reply, The Ombudsperson may pursue the investigations. However, the applicant's failure to respond may be considered as lost of interest and it may justify the termination of the investigation.

Rule 12
Position of Parties during the investigations

At any time during the investigations the Ombudsperson may ask questions to the Parties involved and may require answers within time limits set by the Ombudsperson. Parties' failure to answer in accordance with para.1 shall not prevent the Ombudsman from continuing investigations. However, the applicant's failure to answer questions may justify the termination of investigations. If he/she deems appropriate the Ombudsperson may advise that contacts between Parties shall only take place through the Institution of the Ombudsperson

/3. is Debatable, but of course, the OP can always advise or maybe better recommend/TM/
Rule 14

Access to Documents

At any time during the investigations the Ombudsperson may ask individuals or private entities to cooperate by providing relevant information, documents and files including those classified as secret or confidential, considering, however, the Regulation, paragraph 4.7. .

At any time during the investigation the Ombudsperson shall have full access to and may examine the above mentioned official documents. In order to ensure that his/her access to documents is not hindered the Ombudsperson may effectuate routine inspections to any authority under his/her jurisdiction. /This would be the only way to make these kind of routine inspections "legal", e.g. accordingly to the Regulation/TM/The Ombudsperson may require copies of any of the above mentioned documents.

If civil servants refuse or are prevented from providing the above mentioned information, documents or files, the Ombudsperson may ask for an explanatory letter and may address the issue hierarchically.

If the Special Representative of the Secretary General exercises his power to refuse the release of a document or a file, as provided by Section 4.7 of the Regulation n, the Ombudsperson may address such refusal his/her special or annual report.

If requested the Ombudsperson and/or his/her staff shall undertake a duty of discretion with regard to the classified information or documents. The duty of discretion shall continue after the person concerned is relieved from the office.

Rule 15

Proceedings before the Courts

Either in response to a complaint or on his/her own initiative the Ombudsperson may at any time express his/her views on a particular matter by filing an amicus curie with the court where the case is pending where the respective case is pending.

When the Ombudsperson finds necessary to attend hearings held in camera, he/she shall ask the permission of the president of the court. When attending hearings held in camera the Ombudsperson will be bound by the confidentiality of such proceedings. If the Ombudsperson finds it necessary to refer to such proceedings in his/her special or final reports to matters the confidentiality has to be maintained.

If the attendance of such hearings is denied the Ombudsperson may ask for written reasons and may address the issue publicly if he is satisfied that the independence and impartiality of the court would not be hampered by such an action.

Rule 16

Ombudsperson's Assistance

The Ombudsperson may at any stage during the investigations be assisted by any person deemed necessary, such as the applicant, the respondent Party/Parties and/or their representatives, or legal, forensic, financial or other expert.

2. INSPECTIONS

Rule 17

Inspecting Premises under the Jurisdiction of the Ombudsperson

All the authorities under the jurisdiction of the Ombudsperson shall permit the Ombudsperson unlimited access to their premises, including the right to move within the premises without restriction. They shall provide all the information and assistance requested by the Ombudsperson.

Ombudsperson may notify the respective authorities on the visit. The Ombudsperson may be assisted by experts and interpreters who shall act under the authority of the Ombudsperson. Rule 18

Inspecting Places where People are deprived of their Liberty

The Ombudsperson may at any time enter and inspect any detention centre, police lock-up, psychiatric or other hospital or any other place where people are in any way deprived of their liberty or where the freedom of their movement is confined.

The Ombudsman may interview in private persons deprived of their liberty and take part to any meeting or hearing involving such persons.

3. DECISIONS DURING THE INVESTIGATIONS

Rule 19

Interim Measures

At any time during the investigations the Ombudsperson may recommend the respondent Party/Parties or any other authority to adopt any interim measure he/she deems necessary for the immediate protection of the rights and freedoms of the applicant or for the safety of the applicant and witnesses.

The Ombudsperson may require the respective authority to comply with a recommendation made under para. 1 within a time limit set by the Ombudsperson.

The adoption of the interim measures by the authority shall not terminate the investigation unless the Ombudsperson so decides.

An interim measure taken in accordance with para. 1 shall stay in force until **the** The Ombudsperson shall inform the Parties **and other authorities on a Rule 22** **At any time during the investigations the Ombudsperson may recommend the**

Rule 20

Good offices

The Ombudsperson may at any stage during the procedures offer **the** good offices and place himself/herself at the disposal of the Parties with a view to secure a friendly settlement of the matter on the basis of respect for human rights as defined in the internationally recognised standards.

When a friendly settlement is reached, the obligation undertaken by the Parties, the time limits for their fulfilment and any other circumstances relevant for the case shall be included in a written agreement.

The Ombudsperson shall terminate investigations when he/she is satisfied that the Parties fulfilled the commitments undertaken *in* the written agreement of the friendly settlement.

The Ombudsperson may also offer his/her good offices with regard to cases involving Kosovars outside Kosovo.

CLOSING THE INVESTIGATION

Rule 24

Dismissing a case

The Ombudsperson may cease to investigate a case if any of the circumstances provided in Rule 7 are at hand.

The Ombudsperson shall notify the Parties on the decision and its grounds.

The Ombudsperson shall inform the applicant on the possibility to have the case re-opened if the grounds justifying the decision to dismiss the case are no longer in existence.

Rule 25

Recommendations

At the end of the investigation the Ombudsperson shall issue a decision stating as to whether the alleged facts disclose a violation of one or more of the human rights guaranteed by the domestic or international law, or an abuse of authority by the respondent Party/Parties as defined in Section 1 of the Regulation no.

(section 2 omitted, unnecessary) If the Ombudsperson finds any of the breaches in Section 1 of the Regulation no, he/she shall make recommendations to the respondent Party/Parties with a view to the adoption of appropriate measures, and shall specify the time for the fulfillment of them. The time may be extended if the Ombudsperson deems it necessary.

If the Ombudsperson finds that any other authority than the respondent Party/Parties has indirectly contributed to a breach, he/she may recommend the respective authority to adopt any appropriate measures deemed necessary.

The Ombudsperson may require the respondent Party/Parties or other authorities as provided in paragraph 3 to specify in writing and within a time limit how it intends to comply with the recommendations.

The Ombudsperson shall notify the applicant on his/her recommendations and on the response of the respondent Party/Parties or of other authorities involved.

Rule 26

Appropriate measures

The appropriate measures may include the following:

Any measure deemed as necessary to prevent, stop, redress, remedy and/or compensate the victim of a particular human rights violation or of an abuse of authority found by the Ombudsperson.

Any measure aimed at a fair solution in cases where the manner of enforcement of an internal, administrative or other type of rule gave rise to inequality for the applicant.

The amendment of the existing criteria for the enforcement of an administrative regulation, order or measure or the adoption of such criteria where they do not exist.

The initiation by the competent authorities of disciplinary proceedings or other administrative investigations if the findings of the Ombudsperson relate to activities or services provided by the civil servants acting under a contract with the public authorities.

The initiation by the competent authorities of criminal investigations if the Ombudsperson finds aspects of alleged criminal conduct.

Rule 27

Recommendations concerning the legislation

The Ombudsperson may make recommendations to amend the existing domestic legislation or to adopt new legislation in order to ensure the compatibility of the legal system with the recognised international human rights standards.

The Ombudsperson may provide advise to any person or entity in his jurisdiction on the matters described in para. 1.

When providing such recommendations or advice to the courts the Ombudsperson shall pay attention to the SRSG's clarifications in similar matters in accordance with the section 2 of the UNMIK Regulation no 1999/24 on the Applicable Law in Kosovo. However, this does not restrict the right of the Ombudsperson to provide advice and make recommendations on the applicable law in Kosovo to the SRSG.
(is this really needed? He/she will do that in any case)

(The next one - rule 39 in Monica's paper – cannot be regulated in the Rules of Procedure; the right place is the Regulation and it is there, section 4.13. - Isn't the stuff in section 40 of the Rules of Procedure already said clearly enough in the Regulation section 4.11?)

REPORTS

Rule 28

Issuing the Reports

The Ombudsperson shall provide an annual report to the Special Representative of the Secretary General at the end of January each year

The Ombudsperson may issue special reports at any time and in any case he/she finds it necessary (the rest here, rule 41, is unnecessary, even ridiculous: The Ombudsperson giving orders or guidelines for him/herself!).

Rule 29 /DELETE/

Publishing the Reports and Recommendations

The Ombudsperson shall publish his/her recommendations, save in cases which he/ she considers to be confidential or secret, or where the complainant has expressly requested that his/her/its identity and the circumstances of the complaint are not to be revealed (This is said in the Regulation, 4.12. Is it necessary to repeat here?/PKK)

FINAL TITLE

Rule 30

Division of Labour

Division of labour between the Ombudsperson and the Deputy Ombudspersons shall be decided by the Ombudsperson after consultation with the deputies.

If the Ombudsperson is not able to exercise his/her functions he/she may delegate them to one of the deputies specifying the period of time for such delegation.

In the interest of the investigations the Ombudsperson may for a limited period of time invest specific powers in one or more of his/her staff members.

Rule 31

Cooperation with other Ombudspersons and organizations

The Ombudsperson may co-operate and co-ordinate with other Ombudspersons. The Ombudsperson may co-operate with any private or public organization acting in the human rights' field.

(I wonder whether this really is necessary – he is entitled to do so anyhow, actually it belongs to his job! - PKK)

Rule 32

Classified Documents

All documents collected during the investigation of cases where discretion was required by the applicant or decided by the Ombudsperson shall be registered as classified.

All classified documents shall be kept in special filing cabinets.

Access to the classified documents shall be limited to the investigators or lawyers who deal with the respective case. Access of other staff to such documents may only take place at the approval of the investigator or lawyer in charge with the respective case.

Rule 33

Ombudsperson's Instructions

Within the limits of the Regulation 2000/38 on Ombudsperson in Kosovo and other legislation applicable in Kosovo the Ombudsperson may issue binding instructions for any matter he/she deems necessary.

Violation of such instructions may result in disciplinary proceedings against the respective person.

Rule 34

Authentic Version

The authentic version of the Rules of Procedure *is the English language version*. The Rules of Procedure and any amendments to it shall be translated into Albanian and Serbian and upon request any other language Head of Mission in Kosovo The Rules of Procedure shall enter into force on