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Kosovo



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REGULATION NO. 2006/6

ON 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 and UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Law Applicable in Kosovo,

Taking into account Chapter 10 of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001, as amended) and section 20 of UNMIK Regulation No. 2000/38 of 30 June 2000, as amended, on the Establishment of the Ombudsman Institution in Kosovo,

After consultation with the Assembly of Kosovo and the Government,

For the purpose of transferring responsibility for the continuing operation of the Ombudsman Institution,

Hereby promulgates the following:

Section 1

The Ombudsman Institution in Kosovo

1.1 The Ombudsman Institution shall monitor, promote and protect the rights and freedoms of habitual residents of Kosovo and natural and legal persons in the

territory of Kosovo in order to ensure that all such persons are able to exercise effectively the human rights and fundamental freedoms safeguarded by international human rights standards as incorporated in the applicable law pursuant to section 1.3 of UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Applicable Law in Kosovo and paragraph 3.3 of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001), in particular the European Convention on Human Rights and its Protocols, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

1.2 The Ombudsperson Institution shall provide accessible and timely mechanisms for the review of actions constituting an abuse of authority by the Kosovo Institutions and provide recommendations for redress. Where continuing serious harm may result from the abuse of authority the Ombudsperson Institution shall expeditiously review the actions constituting the abuse of authority and provide recommendations for redress.

1.3 The term “Kosovo Institutions”, as used in the present Regulation, shall include any Provisional Institution of Self-Government and any organ or agency thereof, any municipality and any organ or agency thereof, and any independent body or office specified in paragraph 11.1 of the Constitutional Framework (UNMIK Regulation No. 2001/9 of 15 May 2001, as amended, on a Constitutional Framework for Provisional Self-Government in Kosovo) or any other independent body or office established by law, as referred to in paragraph 11.2 of the Constitutional Framework.

1.4 The Special Representative of the Secretary-General may as a provisional measure, after consultation with the Ombudsperson, appoint one (1) or more advisers to assist the Ombudsperson Institution in the implementation of its mandate for an initial term of one year following the appointment of the Ombudsperson.

1.5 Thereafter one or more international advisers may be appointed by the Special Representative of the Secretary-General to assist the Ombudsperson Institution in the implementation of its mandate upon the request of the Ombudsperson.

Section 2

Nature of the Ombudsperson Institution

2.1 The Ombudsperson Institution shall act independently. No person or entity may interfere with the exercise of its functions.

2.2 The services offered by the Ombudsperson Institution shall be free of charge.

Section 3 Jurisdiction

3.1 The Ombudsperson Institution shall have jurisdiction to receive and investigate complaints from any habitual resident of Kosovo or any natural or legal person in the territory of Kosovo concerning violations of international human rights standards as incorporated in the applicable law and acts, including omissions, which constitute an abuse of authority by the Kosovo Institutions.

3.2 The jurisdiction of the Ombudsperson Institution shall extend to the territory of Kosovo. In exercising its functions in respect of cases occurring within the territory of Kosovo, the Ombudsperson Institution may offer its services to habitual residents of Kosovo who are temporarily outside the territory of Kosovo.

3.3 The Ombudsperson Institution shall have jurisdiction over cases which occur after the entry into force of the present 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 international human rights standard(s) or constitute a continuing abuse of authority.

3.4 The Ombudsperson Institution may enter into a bilateral agreement with the Special Representative of the Secretary-General on procedures for dealing with cases involving UNMIK.

Section 4 Functions and Competencies

4.1 The Ombudsperson Institution shall have the following responsibilities:

(a) To advise the Government, the Assembly of Kosovo and any other competent Kosovo Institution on any matters concerning the promotion and protection of human rights;

(b) To publicize its advice and opinions, recommendations, proposals and reports;

(c) To examine and report on Assembly legislation and administrative provisions of Kosovo Institutions in force, draft Assembly legislation and proposals and make such recommendations as it deems appropriate to ensure that these provisions conform to international human rights standards;

(d) To recommend the adoption of new Assembly Laws, the amendment of Assembly Laws in force and the adoption or amendment of administrative measures by Kosovo Institutions;

(e) To investigate, report on and attempt to resolve any situation of violation of human rights;

(f) To prepare reports on the situation in Kosovo with regard to human rights in general and more specific matters;

(g) To draw attention to situations in any part of Kosovo where Kosovo Institutions violate human rights and make proposals for initiatives to put an end to such situations and, where necessary, express an opinion on the positions and reactions of the Government;

(h) To promote and ensure the harmonization of Assembly legislation with international human rights standards and their effective implementation;

(i) Acting in conformity with the Constitutional Framework, to cooperate with UNMIK, the United Nations Office of the High Commissioner for Human Rights and any other United Nations body, the Council of Europe and other regional institutions and institutions outside Kosovo that are competent in the areas of protection and promotion of human rights; and

(j) To publicize human rights and efforts to combat all forms of discrimination, in particular racial and ethnic discrimination, by increasing public awareness, especially through information and education and by making use of the media.

4.2 The Ombudsperson Institution may exercise its competencies, *inter alia*, through reconciliation, mediation and conciliation.

4.3 The Ombudsperson Institution may provide advice and make recommendations to any natural or legal person concerning the compatibility of domestic laws and regulations with recognized international human rights standards. The power of the Ombudsperson Institution to provide such advice and make such recommendations is without prejudice to the power of the Special Representative of the Secretary-General under section 2 of UNMIK Regulation

No. 1999/24 of 12 December 1999, as amended, on the Law Applicable in Kosovo, to provide a clarification in connection with the implementation of such Regulation.

4.4 The Ombudsperson Institution shall have the competence to advise and make recommendations to the Kosovo Institutions on their programs and policies in order to ensure the protection and promotion of human rights in Kosovo.

4.5 The Ombudsperson Institution shall have the competence to conduct investigations, either in response to a complaint made under section 3.1 or on its own initiative.

4.6 The Ombudsperson Institution shall take all necessary steps and actions to address complaints made under section 3.1, including intervening directly with the competent authorities, which will be required to respond within a reasonable time. Where continuing serious harm may result from the subject of a complaint under section 3.1, the competent authorities shall be required to respond urgently.

4.7 Where, during an investigation, the Ombudsperson Institution finds that the execution of an administrative decision may result in irreparable harm to any natural or legal person, the Ombudsperson Institution may recommend that the competent authority suspend the execution of the decision at issue.

4.8 The Ombudsperson Institution shall have access to and may examine files and documents of any Kosovo Institution in relation to cases under consideration and, subject to this Regulation, may require any Kosovo Institution and its staff to cooperate with the Ombudsperson Institution by providing relevant information, documents and files. A Kosovo Institution may refuse to release file(s) or document(s) to the Ombudsperson Institution in circumstances in which in accordance with the applicable legislation regarding the protection of personal data refusal to release the document to the Ombudsperson is expressly permitted, provided that reasons are provided in writing to the Ombudsperson Institution. The Ombudsperson Institution may draw such inferences as seen fit from the refusal to release file(s) or document(s).

4.9 Officials of the Ombudsperson Institution 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. Officials of the Ombudsperson Institution may also conduct private meetings with such persons. Special procedures shall be developed between the Ombudsperson Institution and the competent authorities concerned in order to facilitate the exercise of powers under this paragraph, in particular the immediate and unannounced access of officials of

the Ombudsperson Institution to any place where persons are deprived of their liberty.

4.10 During or following an investigation, the Ombudsperson Institution may make recommendations to the competent authorities on the adoption of appropriate procedures and measures, including interim measures if necessary.

4.11 Following an investigation, the Ombudsperson Institution may recommend to the competent authorities that administrative, civil or criminal proceedings be initiated against any person.

4.12 If, once recommendations have been made by the Ombudsperson Institution, the competent authorities concerned do not adopt appropriate procedures or measures within a reasonable period of time, or if the competent authorities do not provide the Ombudsperson Institution with reasons for not doing so that are acceptable to the Ombudsperson Institution, the Ombudsperson may draw the attention of the Assembly of Kosovo and the Government to the matter and may make a public statement thereon.

4.13 The Ombudsperson Institution shall publish recommendations, save in regard to facts and situations which the Ombudsperson Institution considers to be confidential or secret, or where the complainant, or the injured party if the investigation has been initiated ex officio, has expressly requested that his, her or its identity and the circumstances related to the case are not to be disclosed.

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

4.15 In the exercise of its functions under the present Regulation, the Ombudsperson Institution may seek cooperation from UNMIK, which shall not be unreasonably withheld, including the provision of relevant information, files and documents that facilitate the review of cases under consideration by the Ombudsperson Institution.

Section 5

Composition of the Ombudsperson Institution

The Ombudsperson Institution shall be composed of the Ombudsperson, a Principal Deputy Ombudsperson, three (3) Deputy Ombudspersons and a professionally competent staff. The Ombudsperson shall establish the responsibilities of the Principal Deputy Ombudsperson and the Deputy Ombudspersons.

Section 6
The Ombudsperson, the Principal Deputy Ombudsperson and the Deputy Ombudspersons

6.1 The Ombudsperson and the Principal Deputy Ombudsperson shall be eminent figures of high moral character, impartiality and integrity, who possess a demonstrated commitment to human rights and who are habitual residents of Kosovo.

6.2 The Ombudsperson and the Principal Deputy Ombudsperson shall be appointed by the Assembly of Kosovo according to open and transparent procedures by a vote having the support of a majority of the Members of the Assembly of Kosovo following a public announcement issued by the Presidency of the Assembly calling for nominations within a period of not less than forty (40) days from organizations and institutions involved with the monitoring, protection or promotion of human rights and fundamental freedoms.

6.3 The term of office of the Ombudsperson and the Principal Deputy Ombudsperson shall be four (4) years. The appointment may be renewed for a further term.

6.4 The three (3) Deputy Ombudspersons shall be persons of high moral character, impartiality and integrity, who possess a demonstrated commitment to human rights and who are habitual residents of Kosovo.

6.5 The three (3) Deputy Ombudspersons shall be appointed by the Assembly of Kosovo according to open and transparent procedures by a vote having the support of a majority of the Members of the Assembly of Kosovo based upon recommendations submitted by the Ombudsperson following a public announcement issued by the Presidency of the Assembly calling for nominations within a period of not less than forty (40) days from organizations and institutions involved with the monitoring, protection or promotion of human rights and fundamental freedoms.

6.6 The term of office of the three (3) Deputy Ombudsperson(s) shall be three (3) years. The appointment may be renewed for a further term.

6.7 The individuals appointed as the Ombudsperson, the Principal Deputy Ombudsperson and the three (3) Deputy Ombudspersons shall include at least one (1) person from the Kosovo Albanian Community, at least one (1) person from the Kosovo Serb Community, and at least one (1) person from the one of the other non-majority Communities entitled to be represented in the Assembly of Kosovo.

The persons appointed shall serve in their individual capacities and shall collectively represent the ethnic diversity of Kosovo society.

6.8 The individuals appointed as the Ombudsperson, the Principal Deputy Ombudsperson and the three (3) Deputy Ombudspersons shall include at least one (1) person who is female.

6.9 Before the public announcements issued pursuant to paragraphs 2 and 5 of the present section by the Presidency of the Assembly calling for nominations for the posts of Ombudsperson, Principal Deputy Ombudsperson and Deputy Ombudspersons, the Assembly of Kosovo shall in accordance with its rules adopt formal procedures, which shall be open and transparent. Such procedures shall take into particular account the requirements set forth in paragraph 7 of the present section for representation of Communities and in paragraph 8 of the present section for gender balance.

6.10 If the response to the public announcements pursuant to paragraphs 2 and 5 of the present section would not enable the Ombudsperson, the Principal Deputy Ombudsperson and the Deputy Ombudspersons to meet the requirements set forth in paragraph 7 of the present section for representation of Communities and in paragraph 8 of the present section for gender balance, the Presidency of the Assembly may recommend to the Assembly that one or more of the posts of Deputy Ombudsperson be kept vacant and that further calls be made for nominations until the criteria set forth in paragraphs 7 and 8 are met.

6.11 The term of office of the Ombudsperson, the Principal Deputy Ombudsperson, and the three (3) Deputy Ombudspersons shall end upon expiration, resignation, death or removal from office by the Assembly of Kosovo as provided under Section 8 of the present Regulation. The Presidency of the Assembly shall issue a public announcement in order to fill the vacancy for the Ombudsperson, Principal Deputy Ombudsperson, or Deputy Ombudsperson(s) within fourteen (14) days of the end of the respective term of office.

6.12 Upon appointment, the Ombudsperson, Principal Deputy Ombudsperson, and the Deputy Ombudsperson(s) shall subscribe to a solemn oath before the Assembly of Kosovo. The form of the oath shall be as follows: "I solemnly declare and promise to faithfully discharge the duties and functions entrusted to me by law to protect and promote human rights and fundamental freedoms in Kosovo, to perform my duties thoroughly and impartially and not to seek or accept instructions from any outside source."

Section 7
Staff

Staff of the Ombudsperson Institution shall be selected from among habitual residents of Kosovo of high standards of competence, efficiency and integrity. Staff of the Ombudsperson Institution shall be members of the Kosovo Civil Service, which shall be without prejudice to the independent exercise of their functions as staff of the Ombudsperson Institution. No member of the staff of the Ombudsperson Institution shall participate in the consideration of any case in which he or she or a member of his or her family has an interest of a personal or financial nature which may call into question the ability of the Ombudsperson Institution to act impartially.

Section 8
Incompatibilities and Removal from Office

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

8.2 Upon a motion of any member of the Assembly, signed by five additional members, the Assembly of Kosovo may remove from office or temporarily suspend the Ombudsperson, the Principal Deputy Ombudsperson, and/or the Deputy Ombudsperson(s) by a vote having the support of two-thirds of the Members of the Assembly of Kosovo, where the Assembly of Kosovo considers that one or more of the following grounds have been established in respect of the Ombudsperson, the Principal Deputy Ombudsperson and/or the Deputy Ombudsperson(s):

(a) Physical or mental incapacity affecting his or her ability to perform his or her functions;

(b) Conviction after due process in accordance with internationally accepted standards for a criminal offence punishable by a term of imprisonment;

(c) Failure to discharge his or her official duties satisfactorily as determined by the judgment of the Assembly of Kosovo; or

(d) Personal conduct or behavior of a nature that is incompatible with the due exercise of his or her functions.

8.3 The Ombudsperson may request that the Assembly of Kosovo remove from office or temporarily suspend one or more of the Deputy Ombudspersons on one or more of the grounds set out in paragraph 2 of the present section.

8.4 The Assembly of Kosovo shall in accordance with its rules adopt formal procedures, which shall be open and transparent, which will set forth the procedure by the Assembly of Kosovo shall:

(a) Remove from office or temporarily suspend the Ombudsperson, the Principal Deputy Ombudsperson or a Deputy Ombudsperson pursuant to paragraph 2 of the present section;

(b) Remove from office or temporarily suspend a Deputy Ombudsperson pursuant to paragraph 3 of the present section; and

(c) Reinstate the Ombudsperson, the Principal Deputy Ombudsperson or a Deputy Ombudsperson following a period of temporary suspension pursuant to paragraphs 2 and 3 of the present section.

Section 9 Rules of Procedure

The Ombudsperson Institution shall adopt its own Rules of Procedure.

Section 10 Confidentiality

The Ombudsperson Institution and its staff shall maintain the confidentiality of all information and data obtained, with special attention being given to the protection of the safety of complainants, injured parties and witnesses.

Section 11 Cooperation

11.1 All natural and legal persons subject to the jurisdiction of the Ombudsperson Institution are obliged to provide the Ombudsperson Institution with all necessary assistance requested in conformity with the present Regulation.

11.2 Acting in conformity with the Constitutional Framework, the Ombudsperson Institution may cooperate with other ombudsperson institutions

and with other organizations or institutions dealing with human rights and their monitoring, protection and promotion.

Section 12 Privileges and Immunities

12.1 The Ombudsperson, the Principal Deputy Ombudsperson, the Deputy Ombudsperson(s) and the 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.

12.2 The premises of the Ombudsperson Institution shall be inviolable. The archives, files documents, communications, property, funds and assets of the Ombudsperson Institution, 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.

12.3 Paragraph 2 of the present section shall not preclude:

(a) The conduct of an audit of the Ombudsperson Institution pursuant to the Law on Public Finance Management and Accountability, promulgated by UNMIK Regulation No. 2003/17 of 12 May 2003; and

(b) The performance of the functions of the Independent Oversight Board for Kosovo in relation to the Ombudsperson Institution pursuant to UNMIK Regulation No. 2001/36 of 22 December 2001 on the Kosovo Civil Service.

12.4 Paragraphs 1 and 2 of the present section shall be without prejudice to the authority of UNMIK under United Nations Security Council resolution 1244 (1999).

Section 13 Waiver of Privileges and Immunities

The Assembly of Kosovo in consultation with the Special Representative of the Secretary-General may in the interests of the proper administration of justice waive the privileges and immunities set forth in Section 12 of the present

Regulation by a vote having the support of a two-thirds majority of the Members of the Assembly of Kosovo.

Section 14
Offices and Facilities of the Ombudsperson Institution

14.1 The Ombudsperson Institution shall have its headquarters in Prishtinë/Priština. It may establish additional offices as necessary within the territory of Kosovo.

14.2 The Ombudsperson Institution shall be provided with appropriate premises and other related facilities in order to enable it to carry out its functions and responsibilities effectively.

Section 15
Working Languages

The working languages of the Ombudsperson Institution shall be Albanian and Serbian.

Section 16
Reports

16.1 The Ombudsperson Institution shall provide an annual report to the Assembly of Kosovo and shall make its findings public.

16.2 The Ombudsperson Institution may release a special report to the Assembly of Kosovo when circumstances so warrant. Such special reports shall be made public.

Section 17
Financing

17.1 The Ombudsperson Institution shall be allocated sufficient funds from the Kosovo Consolidated Budget to allow it to carry out its functions and responsibilities fully and independently. Public authorities shall not use the budgetary process for allocating funds from the Kosovo Consolidated Budget in a manner that interferes with the independence of the Ombudsperson Institution. The Ombudsperson may draw the attention of the Assembly of Kosovo to

budgetary proposals from the Government that may compromise the ability of the Ombudsperson Institution to carry out its functions and responsibilities fully and independently.

17.2 The Ombudsperson Institution may receive supplemental donations from international donors, which shall be recorded in the annual accounts of the Ombudsperson Institution within the Kosovo Consolidated Budget. Donor resources that are made available and accepted shall not affect the independence of the Ombudsperson Institution or its entitlement to funds from the Kosovo Consolidated Budget.

Section 18

Salary Levels of the Ombudsperson, the Principal Deputy Ombudsperson and the Deputy Ombudspersons

18.1 The level of salary of the Ombudsperson shall be equivalent to that of the President of the Supreme Court of Kosovo.

18.2 The level of salary of the Principal Deputy Ombudsperson and the Deputy Ombudspersons shall be equivalent to that of a judge of the Supreme Court of Kosovo.

Section 19

Transitional Provisions and Repeal

19.1 The Ombudsperson Institution shall be constituted upon the appointment of the Ombudsperson and the Principal Deputy Ombudsperson under the present Regulation.

19.2 The Deputy Ombudspersons in post at the time of the entry into force of the present Regulation shall remain in post and exercise powers and responsibilities in accordance with UNMIK Regulation No. 2000/38 of 30 June 2000, as amended, on the Establishment of the Ombudsperson Institution in Kosovo, until the Ombudsperson Institution has been constituted.

19.3 A person who is a Deputy Ombudsperson at the time of the entry into force of the present Regulation may be appointed as the Ombudsperson or the Principal Deputy Ombudsperson under section 6.2 or a Deputy Ombudsperson pursuant to section 6.5 and such appointment may be renewed for a further term pursuant to section 6.3 or section 6.6.

19.4 Upon the appointment of the Ombudsperson and the Principal Deputy Ombudsperson, any Deputy Ombudsperson remaining in post pursuant to paragraph 2 of the present section who has not been appointed Ombudsperson or Principal Deputy Ombudsperson shall serve provisionally as an Acting Deputy Ombudsperson and as such shall exercise powers and responsibilities in accordance with the present Regulation, until the appointment of the three Deputy Ombudspersons pursuant to section 6.5.

19.5 Cases of alleged violations of international human rights standards by Kosovo Institutions which, immediately before the Ombudsperson Institution has been constituted, were still the subject of investigation by the Ombudsperson Institution established by UNMIK Regulation No. 2000/38 or by the Deputy Ombudspersons pursuant to paragraph 2 of the present section shall upon the constitution of the Ombudsperson Institution become the responsibility of the Ombudsperson Institution established under the present Regulation.

19.6 Except as provided under paragraph 2 of the present section, UNMIK Regulation No. 2000/38 of 30 June 2000, as amended, on the Establishment of the Ombudsperson Institution in Kosovo shall cease to have effect at the time of the entry into force of the present Regulation.

Section 20 Implementation

The Special Representative of the Secretary-General may issue Administrative Directions for the implementation of the present Regulation.

Section 21 Applicable Law

The present Regulation shall supersede any provision in the applicable law that is inconsistent with it.

Section 22
Entry into Force

The present Regulation shall enter into force on 16 February 2006.

Søren Jessen-Petersen
Special Representative of the Secretary-General