



OMBUDSPERSON INSTITUTION in KOSOVO

REPORT

***Ex Officio* Registration No. 46/2005**

Regarding

**the allocation of apartments in the “Gj” building in the Municipality of
Obiliq/Obilić**

The Ombudsman in Kosovo, pursuant to Sections 4.4 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsman Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsman Institution, on 30 June 2005,

has published the following report:

BASIS FOR THE REPORT

1. This Report is based in part on complaints received by the Ombudsperson from certain individuals concerning the outcome of proceedings involving the allocation of apartments in the “Gj” building belonging to the Municipality of Obiliq/Obilić (hereinafter “the Municipality”). This report is also based on news from the Kosovo media and other information indicating that during the above allocation process, human rights violations may have occurred.

DISCLAIMER

2. Nothing contained in this Report should be construed as implying that the Ombudsperson has waived his right to investigate any individual complaints alleging violations of human rights or abuses of authority with regard to any of the matters addressed therein.

3. The Ombudsperson also reserves all rights to exercise his jurisdiction under Section 4.3 of UNMIK Regulation 2000/38 to review for its compatibility with recognized international standards any UNMIK Regulation or comparable instrument relating to issues raised in this Report.

SCOPE OF THE REPORT

4. This report examines whether the decisions and the procedures concerning the allocation the apartments in the “Gj” building in the Municipality raise certain issues under Article 14 in conjunction with Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter “the European Convention on Human Rights” or “the Convention”).

PROCEEDINGS BEFORE THE OMBUDSPERSON

5. On 2 March 2005, the Ombudsperson received a letter from Ms. A, an employee of the Municipality, complaining that a Commission appointed by the Municipality (hereinafter “Commission” or “The Commission”) had rejected her application to receive an apartment in the “Gj” building by allocation even though she allegedly fulfilled the criteria set up by the Commission. Ms. A affirmed that, according to the public announcement of the competition for the allocation of apartments in the “Gj” building, three of these apartments were meant to be allocated to persons belonging to minority communities. According to her, in the end none of the apartments were allocated to employees of minority ethnicities. Ms. A complained that the members of the Commission did not take into consideration the fact that she is a member of a minority community, nor did they ever visit the place where she currently resides with her husband’s family in order to verify whether she lived under difficult conditions. Ms. A informed the Ombudsperson that she had appealed against the allocation decision of the Commission, but that the Commission had rejected her appeal on the grounds that she did

not fulfil all the necessary criteria. Ms. A also provided the Ombudsperson with documents proving that she did not own any real estate in Obiliq/Obilić.

6. On 4 March 2005, the Ombudsperson received a letter from Ms. B, who also works at the Municipality, complaining that the Commission had disregarded its own criteria when allocating the apartments in the “Gj” building. Ms. B stated that the Commission had failed to take into consideration the size of her family and the fact that she has a sick child who needs more space than is offered by the family’s present accommodation. This last argument was also supported by doctors’ reports. Despite these facts presented to the Commission, it had allocated a small apartment to her, which was not appropriate to meet the needs of a large family and a sick child. In addition, Ms. B claimed that certain beneficiaries of the allocated apartments already owned houses and other assets and that the allocation of the apartments had been made on the basis of personal interests of the members of the Commission.

7. On 9 March 2005, the Ombudsperson opened an *ex officio* investigation into the present case under the Registration No. 46/2005.

8. On 10 March 2005, a representative of the Ombudsperson Institution met with the Deputy President of the Municipality, who was also a member of the Commission, in order to collect information about the instant case. During this meeting, the Deputy President of the Municipality provided the representative of the Ombudsperson Institution with some documents concerning the procedures followed by the Commission as well as information about the criteria applied, the evaluation points to be given for each of the criteria and the decisions issued by the Commission.

9. On 11 March 2005, a representative of the Ombudsperson Institution met Mr. C, who for a certain period of time was a member of the Commission until he resigned from this post on 21 December 2004. During this meeting, Mr. C explained his reasons for resigning from the Commission.

10. On 14 March 2005, the Ombudsperson received two letters from Mr. D and Mr. E, both of them staff members of the Municipality, who complained that the Commission had disregarded the criteria for the allocation of apartments in the “Gj” building and that their applications to obtain apartments had been rejected. Following the statements of Misters D and E, the members of the Commission were incompetent, because the composition of the Commission had only aimed at correctly representing of all political parties in the Municipal Assembly of Obiliq/Obilić, but had not been based on individual merit or qualities of the members. They also affirmed that the Commission had not drawn up any regulation or issued any decision in which it had confirmed the criteria for allocating apartments. Moreover, the Commission had not checked the documentation submitted by Mr. D and Mr. E, who had allegedly fulfilled the criteria set up by the Commission. In addition, both persons claimed that the Commission had not inspected any of their accommodations. They informed the Ombudsperson that their appeal against the allocation decision, along with that of other persons in a similar situation, had not been processed by the Chief Executive Officer of the Municipality as required by Section

35 of UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo (hereinafter “UNMIK Regulation No. 2000/45”). Instead, the same Commission that had issued the allocation decision rejected their appeal without giving any grounds for this. They also alleged that certain persons who had received apartments following the decision of the Commission were owners of houses or apartments and that those beneficiaries were related by family ties to members of the Commission and certain senior officials of the Municipality. Furthermore, Mr. D and Mr. E informed the Ombudsperson that Ms. F, who on 28 December 2004 had been appointed as a new member of the Commission in replacement of one member who had resigned, was not competent to handle the task of processing claims for the allocation of apartments and that she was later given a post in the Education Department of the Municipality. They complained that they had not been officially informed about the contents of the allocation decision of 10 January 2005 as this decision was only made public in the afternoon of 14 January 2005 and removed on the following Monday, namely the 17 January 2005.

11. On 15 March 2005, the Ombudsperson sent a letter to the President of the Municipality requesting full access to all official documents and other relevant information concerning the allocation of apartments located in the “Gj” building.

12. On 16 March 2005, following the meeting of 11 March 2005 (see para. 9 *supra*), the Ombudsperson received a letter from Mr. C containing *inter alia* his reasons for resigning as a member of the Commission. Mr. C affirmed that during the meetings of the Commission, he had remarked that other members of the Commission were not properly following the rules of procedure for the allocation of apartments, but that his comments were constantly ignored. He also asserted that serious social cases had not been included in the list of beneficiaries, while certain wealthy people, who had already resolved their accommodation issues, were included in the list. Moreover, the criterion to allocate three apartments to employees belonging to minority communities was never taken into account. Because of the above, during the Commission’s meeting of 21 December 2004, he decided to resign irrevocably from the Commission. (see para. 27).

13. On 25 March 2005, the Ombudsperson received a letter from the President of the Municipality suggesting that the Ombudsperson contact the Deputy President of the Municipality, who allegedly was in possession of all documentation concerning the procedure for the allocation of apartments in the “Gj” building.

14. On 1 April 2005, a representative of the Ombudsperson Institution called the Deputy President of the Municipality by telephone asking him to provide the Ombudsperson Institution with documentation about the present case.

15. On 14 April 2005, the Ombudsperson received a copy of a decision issued by the Municipal Court in Prishtinë/Priština (hereinafter “the Municipal Court”) on 12 April 2005 from Ms. B. In this decision, the Municipal Court, as an interim measure, had ordered the suspension of the execution of decision no.10-01/05 issued by the Commission on 11 January 2005.

16. On 19 April 2005, a representative of the Ombudsperson Institution called the President of the Municipality by telephone but could not engage in a conversation as the President of the Municipality refused to talk to him.

17. On 20 April 2005, a representative of the Ombudsperson Institution went to the Municipality to meet the President of the Municipality in order to obtain additional information about the present case. The President of the Municipality refused to meet the representative of the Ombudsperson Institution without giving any reasons for this.

18. On 9 May 2005, a representative of the Ombudsperson Institution went to the Municipality and met with the Deputy President of the Municipality in order to ask for further documentation concerning this case. Although the representative of the Ombudsperson Institution had access to the file, the Deputy President of the Municipality was not able to supply him with copies of certain documents due to a power shortage.

19. On 16 May 2005, a representative of the Ombudsperson Institution went to the Municipality and received all the requested documentation from the Deputy President of the Municipality.

20. On 13 June 2005, the Ombudsperson sent a letter to the General Director of Radio Television of Kosovo (RTK) requesting him to provide the Ombudsperson with a video tape containing certain information broadcasted through the television programmes "Lajmet" on 30 April 2005 and "*Pro et Contra*" on 4 May 2005 on the non-execution of a decision of the Municipal Court to suspend the execution of decision No. 01-10/05 of the Commission.

21. On 14 June 2005, a representative of the Ombudsperson Institution received a video tape recording the above-mentioned television programmes from RTK.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

The facts, in so far as they can be established, may be summarised as follows:

22. On 30 December 2003, the Municipal Assembly of Obiliq/Obilić (hereinafter "the Municipal Assembly"), pursuant to Article 75.8 of the Statute of the Municipality and Section 14.4 of UNMIK Regulation No. 2000/45, by decision no. 01-564/03 appointed a Commission, composed of four members, for the institutional allocation of apartments in the "D" and "Gj" buildings belonging to the Municipality.

23. On 3 May 2004, the Commission met and decided to establish certain criteria for selecting the beneficiaries of the allocation of apartments and in order to fix a date on which to publicly announce the competition. During this meeting, one of the members, Mr. G, decided to irrevocably resign as member of the Commission, declaring that he was in disagreement with the work of the other members of the Commission. At the same

meeting, the remaining members of the Commission unanimously decided on the criteria to be taken into consideration when deciding on whom to allocate the apartments in the “D” and “Gj” buildings to. The criteria were as follows: 1) work experience, 2) qualification level, 3) family status, 4) financial situation, 5) dwelling issue and 6) distance from the working place. The Commission also proposed to allocate, as a special criterion, three apartments to employees belonging to minority communities.

24. On 6 May 2004, the Municipal Assembly held a session in which issued a decision according to Article 137 of the Statute of the Municipality and Section 14.3 of UNMIK Regulation No. 2000/45. In this decision no. 01-219/04, the Municipal Assembly approved a proposal of the Commission to allocate sixteen apartments in the “Gj” building to employees of the Municipal Administration and to allocate sixteen apartments in the “D” building to public institutions located in the Municipality.

25. On 17 June 2004, during another meeting, the Commission established the number of evaluation points to be given for each of the five following criteria: 1) work experience, 2) qualification level, 3) family status, 4) financial situation and 5) dwelling issue.

26. On 20 August 2004, the Commission, namely Mr. H, Mr. I and Mr. C, in accordance with the decision of the Municipal Assembly No. 01-219/04 of 7 May 2005, by decision No. 01-456/04 announced the competition to allocate sixteen apartments in the “Gj” building to employees of the municipal administration by leasing these apartments. The Commission stated that when selecting the employees who would benefit from this measure, the criteria would be as follows: 1) work experience, 2) qualification level, 3) family status, 4) economic situation and 5) dwelling issue. As a special criterion, the Commission proposed that three apartments should be allocated to employees belonging to minority communities. The Commission also announced that the applicants would need to deliver the complete documentation through the Municipality’s Archive and that the apartments would be rented to the beneficiaries for ten years with the possibility of an extension of the lease contract. In the announcement, the Commission stated that applications should be submitted within a time period of fifteen days from the publication of the competition on the announcement board in the Municipality building.

27. On 21 December 2004, during a meeting of the Commission, Mr. C declared that he was in disagreement with the procedure followed by the Commission and resigned from his post as member of the Commission.

28. On 28 December 2004, the Municipal Assembly, pursuant to Article 137 of the Statute of the Municipality and Section 14.3 of the UNMIK Regulation No. 2000/45, issued a decision appointing Ms. F as a new member of the Commission.

29. On 11 January 2005, the Commission, according to Section 44.2 of UNMIK Regulation No. 2000/45, issued decision No. 01-10/05 allocating apartments in the “Gj” building to a list of fifteen employees of the Municipality, including one member of the Commission. None of the apartments in the “Gj” building were allocated to members of minority ethnicities.

30. On 18 January 2005, Mr. D, Mr. E and a number of other employees of the Municipality whose requests to receive apartments by allocation had been rejected in the decision of 11 January 2005 appealed against this decision to the Commission.

31. On 18 February 2005, the Commission rejected these appeals, stating for each individual case that, following its assessment, the appellants, for one reason or another, did not appear to fulfil the necessary requirements to receive apartments by allocation.

32. On 24 February 2005, Mr. D appealed against the allocation decision of 11 January 2005 to the Chief Executive Officer of the Municipality and sent a copy of this appeal to the Commission. He complained *inter alia* about the composition of the Commission, which he stated consisted of advisors to the Municipal Assembly. Instead, the Commission should have been composed of members of the Civil Administration of the Municipality. The Commission was incompetent as it had not followed any regulation approved by the Municipal Assembly. It had also not allocated apartments according to the applicable criteria. The members of the Commission had never conducted on site inspections of the applicants' accommodation. The fact that the President of the Commission was at the same time the Deputy President of the Municipality and that one of the members of the Commission was at the same time an advisor to the Municipality revealed a conflict of interest, in particular as the former had allocated an apartment to his niece in the "D building" and the latter had allocated an apartment to himself in the "Gj building". Such behaviour violated Articles 85 and 86 of the Statute of the Municipality. Many persons who received apartments also were already owners of houses or apartments and had close relations to members of the Commission. Also, the allocation of apartments was very much based on political motivations. When rejecting Mr. D's application, the Commission had not given any reasons for this. Finally, Mr. D alleged that from the sixteen beneficiaries of allocated apartments, only two actually deserved to receive apartments according to the relevant criteria.

33. On 10 March 2005, Ms. B filed a lawsuit against the Municipality with the Municipal Court, requesting that the Municipal Court annul the decision nr.01-10/05 of the Commission, as the allocation of the apartments was conducted in violation of the criteria set up by the Municipal Assembly in its decision no. 01-219/04 of 7 May 2004. She also asked the Municipal Court to issue an interim measure decision suspending the execution of decision no. 01-10/05 issued by the Commission on 11 January 2005.

34. On 16 March 2005, the Chief Executive of the Municipality responded to Mr. D's appeal by stating *inter alia* that all members of the Municipal Assembly supported and authorised the composition of the Commission and the setting up of the relevant allocation criteria. According to the information available to him, the Commission had worked on the basis of the list of criteria established for this purpose. The Chief Executive Officer admitted that the members of the Commission had not conducted on site inspections of the accommodation of applicants, but had rather based its decisions on the data received. Regarding a conflict of interest, the Chief Executive Officer invited Mr. D to present the necessary evidence to prove this allegation and noted that he was not

in a position to respond to the allegations related to the political motivations for selecting certain beneficiaries. The Chief Executive Officer also directed Mr. D to address any further complaints against the Commission to the Municipal Assembly as the body that had appointed the Commission or to other competent bodies, respectively courts.

35. On 12 April 2005, pursuant to Articles 267 and 268 of the Law on Execution Procedure, after having ascertained that in the instant case, the conditions for authorising an interim measure had been met, the Municipal Court issued decision E. nr. 199/05 ordering the suspension of the execution of the Commission's decision until the end of the main procedure. The Municipal Court ordered the Municipality and the Commission to execute the interim measure decision.

36. On 19 April 2005, the Municipality objected to decision E. nr. 199/05 of the Municipal Court and asked the Municipal Court to suspend the executive measures already taken in the case, as the decision of the Municipal Court had been based on a wrong interpretation of the facts.

37. On 30 April 2005, the television news programme "Lajmet" inter alia reported about the Municipal Court's interim measure decision and the Municipality's refusal to comply with this decision. "Lajmet" interviewed two members of the Commission, but retained that it had its doubts as to whether the allocation proceedings were conducted in a regular manner.

38. On 4 May 2005, the television programme "Pro et Contra" broadcast the same piece of information.

39. On 8 June 2005, the Municipal Court dismissed the Municipality's objection as unfounded pursuant to Article 53 of the Law on Execution Procedure, finding that none of the conditions under Article 273 para. 2 of the Law on Execution Procedure allowing for a suspension of execution proceedings had been fulfilled (decision E. nr. 199/05). In particular, the Municipal Court did not consider the allocation decision of 11 January 2005 to constitute sufficient evidence to suspend the execution of the interim measure decision due to the fact that the allocation decision was not final yet and the applicant's lawsuit before the Municipal Court involved the request to annul the same decision.

II. RELEVANT INSTRUMENTS

40. Section 11 of United Nations Security Council Resolution 1244 (1999)(10 June 1999) (hereinafter "S/RES/1244 (1999)") reads, in pertinent part,

"The Security Council [...]

[d] decides that the main responsibilities of the international civil presence will include

[...]

(j) protecting and promoting human rights [...]

41. Section 1.2 of UNMIK Regulation No. 2000/45 (11 August 2000) reads:

The “Central Authority” in the present regulation means UNMIK acting under the authority of the Special Representative of the Secretary-General.

42. Section 14 of UNMIK Regulation No. 2000/45 reads, in pertinent part:

[...]

14.3 The Municipal Assembly and its committees shall make their decisions by open voting unless otherwise required by the present regulation.

14.4 Decisions of the Municipal Assembly and its committees shall be made by a simple majority of the members present and voting unless otherwise required by the present regulation.

43. Section 35 of the UNMIK Regulation No. 2000/45 reads, in pertinent part:

35.1 A person may file a complaint about an administrative decision of a municipality if he or she claims that his or her rights have been infringed by the decision. Complaints must be submitted in writing to the Chief Executive Officer or made in person at the office of the Chief Executive Officer within the period of one month from the complainant being notified of the decision.

35.2 The Chief Executive Officer shall re-examine both the legality of the decision and the administrative process by which it was reached. He or she shall give the complainant a reasoned response in writing within one month of the receipt of the complaint. [...]

35.7 The rights set out in this section shall be additional to any rights that the person may have to refer an administrative decision to the Ombudsperson or to a court of law.

44. Chapter 8 on Property of the Municipality of the UNMIK Regulation No. 2000/45 reads, in pertinent part:

[...]

44.2 A municipality shall not sell or lease for more than ten years land or buildings without approval of the Central Authority. [...]

45. Article 32 of the Law on Housing Relations of the Socialist Autonomous Province of Kosovo (hereinafter “the Law on Housing Relations”) (*SAPK Official Gazette, No. 11/83 (28 March 1983), amendments in Nos. 29/86, 42/86*) reads:

[unofficial translation]

The apartment may be allocated for use to one occupancy right holder only. The allocation right holder shall issue a decision on the allocation of the apartment for use to a person who is supposed to move into that apartment in accordance with the general act, namely the provision on allocation of apartments for use.

46. Article 33 of the Law on Housing Relations reads, in pertinent part:

[unofficial translation]

The allocation right holder shall allocate apartments for use in accordance with the general act, namely the provision on the allocation of apartments for use.

The general act, namely the provision on the allocation of apartments for use, stipulates in particular:

1. The conditions, criteria and order of priorities for the allocation of apartments for use
2. The manner of giving permission to the occupancy right holder to use the apartment for personal business activities [...]

The general act referred to in paragraph 1 of this Article also defines: the form of the document on the allocation of the apartment for use, bodies which decide on the allocation of the apartment for use as well as on the appeal of a worker who believes that his/her right to apartment allocation was violated.

When establishing criteria referred to in item 1 of paragraph 2 of this article, the housing situation, the worker's contribution and the years of employment should be decisive factors to be taken into account for the allocation of an apartment, as well as the financial situation of the family, the [family's] health situation, [...], the number of children and the total number of family members living in one household including other circumstances that are of importance for use.

47. Article 48 of the Yugoslav Law on Execution Procedure (hereinafter “the Law on Execution Procedure”) (*SFRY Official Gazette, No. 29, 26 May 1978*) reads:

[unofficial translation]

The debtor can complain against an execution order by filing an objection, unless his or her objection only relates to a decision on court expenses.

48. Article 52 of the Law on Execution Procedure reads:

[unofficial translation]

The objection [of the debtor] is delivered to the creditor.

The creditor can submit a reply to the objection within eight days from the day on which the objection was delivered to him/her.

49. Article 53 of the Law on Execution Procedure reads, in pertinent part:

[unofficial translation]

Upon receipt of a reply to the objection or following the expiration of the statutory time period in which to reply, the court will, according to the circumstances of the case, schedule a hearing in order to discuss the objection or it will issue a decision without scheduling a hearing [...]

50. Article 267 of the Law on Execution Procedure reads, in pertinent part:

In order to secure a non-monetary claim, the court can issue an interim measure decision, if the creditor has provided enough evidence in support of the claim and to prove that there would be significant potential obstacles to the realisation of the claim. An interim measure decision can also be issued once the creditor raises the credible claim that such a measure is necessary in order to prevent the use of force or damages that cannot be compensated. [...]

51. Article 268 of the Law on Execution Procedure reads, in pertinent part:

In order to secure a non-monetary claim, the court may issue any measure by which the aim of the securing the claim can be achieved, in particular: [...]

3) to stop the debtor from undertaking actions which could cause damage to the creditor, as well as to prevent changes to the situation addressed by the claim,

52. Article 273 Para. 2 of the Law on Execution Procedure reads, in pertinent part:

At debtor's proposal, procedure will be suspended and executed actions will be terminated if circumstances for which measure has been determined, changed later so that they are not necessary any more....

53. Article 75 of the Statute of the Municipality (adopted on 9 March 2001) reads, in pertinent part:

(unofficial translation)

The President of the Municipality

[...]

recommends certain issues of general interest for the municipality to the competent organs.

54. Article 85 of the Statute of the Municipality reads:

(unofficial translation)

Members of the Municipal Assembly or members of the Committee [established by the Municipal Assembly] cannot participate in the decision-making process and administrative procedure dealing with issues in which they or any close member of their family have individual or material interest.

55. Article 86 of the Statute of the Municipality reads:

(unofficial translation)

In case of a potential conflict of interest [of members of the Municipal Assembly] after a decision [of the Municipal Assembly] has been taken, but before this decision has been executed, such a decision shall be declared null and void and the case will be readdressed.

56. Article 137 of the Statute of the Municipality reads:

(unofficial translation)

When exercising their powers, municipal bodies will issue legal acts. These legal acts are: Regulations, Directions, Directives, Instructions and Decisions.

57. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) (hereinafter “the European Convention on Human Rights” or “the Convention”) reads

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

58. Article 14 of the European Convention on Human Rights reads:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ANALYSIS

59. Following certain complaints received regarding the proceedings through which the Municipality allocated apartments in the “Gj” building to certain employees, the Ombudsperson conducted a thorough investigation into these proceedings to see whether they were compatible with international human rights and rule of law standards, mainly Article 14 in conjunction with Article 8 of the Convention. These articles, in pertinent part, read as follows:

Article 8

”Everyone has the right to respect for his private and family life [and] his home [...]. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law [...].”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

60. Having in mind that Article 8 protects the right of each individual to private and family life and a home, the Ombudsperson considers that proceedings involving the allocation of apartments to private persons for social reasons fall within the ambit of this Article, as the rights to private and family life and to a home are at stake in such proceedings.

61. At the same time, the distribution of the apartments for housing must be, in accordance with Article 14, conducted in a non-discriminatory manner, thus giving each applicant the same chances to obtain an apartment regardless of his or her individual characteristics or other factors that are not unreasonable and legitimate.

62. In order to ensure adequate safeguards, the Municipality undertaking these proceedings must ensure that they are conducted in a fair and impartial manner which leaves no room for any form of arbitrariness or discrimination.

63. At the outset, the Ombudsperson notes one of the primary requirements necessary for preventing any form of arbitrariness is the requirement that such proceedings are firmly rooted in a legal basis.

64. In the instant case, the Ombudsperson notes that the applicable law for the allocation of apartments is the Law on Housing Relations of 1983, which describes in detail the allocation proceedings and the criteria that should be taken into account in this respect.

65. In the instant case, the Municipal Assembly decided to appoint a Commission to conduct the allocation proceedings, but did not base its decision on the Law on Housing Relations, nor did it require the Commission to follow the rules of this law.

66. There were also no rules regulating the composition of the Commission. The Ombudsperson notes that when the Municipal Assembly established the Commission, it appointed four persons to be members of this Commission, but did not decide on any details considering the decision-making process by the Commission. There was no decision on how many members of the Commission were entitled to take decisions, nor were there any provisions for any substitutes should members of the Commission not attend meetings or resign. The practical effect of this lack of a detailed regulation was that when one member of the Commission resigned in May 2004, the Commission took decisions with three members instead of with four without it being clear whether such decisions were valid or not. At the same time, the Municipal Assembly saw no need to appoint somebody to replace this former member. It was only after another member of the Commission had resigned in December 2004 that the Municipal Assembly considered it necessary to appoint another member to replace him. Even after that, the Commission continued to operate with three members, but never again with four members as appointed by the Municipal Assembly on 30 December 2003

67. Such a lack of regulations on how many members were permitted to take valid decisions on behalf of the Commission creates a situation where there are no safeguards to prevent certain members of the Commission from taking decisions that are not supported by the majority behind the back of other Commission members. It leaves the members to operate in whichever way and in whichever composition they see fit and thus leaves a considerable amount of room for arbitrary behaviour.

68. Furthermore, since it was not bound by the Municipal Assembly to follow the Law on Housing Relations, the Commission does not appear to have explicitly followed the rules contained in this law when deciding whom to allocate apartments to. In answer to an appeal against the allocation decision taken by the Commission, the Chief Executive Officer himself admitted that the Commission had taken its decision based only on the criteria that it had set for itself, but also did not mention any legal provisions.

69. Such a situation where the Commission was permitted to establish its own criteria and its own rules, the whole process of assessing the various applications was entirely up to the Commission. This left too much room for arbitrary behaviour on the side of the Commission, as was evidenced in the course of proceedings when on 3 May 2004, it first

established six criteria, namely work experience, qualifications, family status, the economic situation, dwelling issues and distance from the work place and “proposed” another criteria, namely that three apartments should be allocated to members of minority communities. The term “proposed” as opposed to “decided” leaves much room for interpretation and does not clarify how binding this criterion was on the members of the Commission. In the end, this criterion was not fulfilled in the allocation decision because not one apartment was allocated to a member of a minority community, although at least one application from a member of a minority community was submitted by Ms. A. At the same time, the Commission, in a later meeting on 17 June 2004, when it established the number of evaluation points to be given for each criteria, simply appears to have dropped the criterion “distance from the work place”. This final criterion was also not mentioned in the public announcement of the competition for allocation proceedings on 20 August 2004.

70. This is not the only example where the Commission did not follow its own rules – while following the Commission’s proposal, the Municipal Assembly agreed to allocate sixteen apartments to selected employees, the Municipal Assembly ended up only allocating fifteen apartments. No reasons were given by the Commission for this change in numbers, nor did the Municipal Assembly request any explanation.

71. At the same time, it appears clear, also from information received from the Chief Executive Officer, that the Commission never conducted any on-site inspections of the accommodations of the applicants to verify whether they fit the category of people in need of an apartment or not.

72. Furthermore, the Ombudsperson notes that in the end, one member of the Commission eventually allocated an apartment to himself. This constitutes a blatant conflict of interest and violates Article 85 of the Statute of the Municipality, which provides that Members of the Municipal Assembly or members of a Committee established by the Assembly cannot participate in a decision-making process and administrative procedure dealing with issues in which they or any close member of their family have individual or material interest.

73. The above proves that in the absence of sufficient regulations or laws, the Commission operated with near-to complete impunity, in particular as throughout the entire allocation proceedings, it was not obliged to report back to any other body within the Municipality. In the absence of adequate laws and procedures governing the work of the Commission, this would have been the last and most basic form of guaranteeing that arbitrariness in the decision-making process be kept to a minimum. But not even this minimum was maintained.

74. Instead, the Commission had complete power over the way in which the apartments in the “Gj” building were allocated and did not have to answer to any laws, procedures or supervisory bodies. All of the above factors lead to the conclusion that the entire proceedings did not contain sufficient safeguards to prevent arbitrary behaviour on the side of the Commission and thus did not sufficiently protect the applicants’ rights to be free from all forms of discrimination.

75. At the same time, the complaints made to the Ombudsperson gave evidence of the negative consequences such a lack of oversight could have. Given the lack of protection

of rights, the complaints received from A, B, D, E regarding irregularities in proceedings (see paras. 5, 6 and 10), which are supported by at least one of the former members of the Commission who resigned due to alleged irregularities in the allocation proceedings (see para. 12) , appear plausible.

Conclusion

76. In light of the above lack of legal, procedural and hierarchical safeguards to ensure that the allocation proceedings were conducted in a fair and impartial manner, the Ombudsperson considers that the rights of the persons applying to receive apartments by allocation decisions were left without sufficient protection against discriminatory behaviour in violation of Article 14 in conjunction with Article 8 of the Convention.

RECOMMENDATIONS:

77. The Ombudsperson recommends that the Special Representative of the Secretary-General should, no later than **1 September 2005**, in cooperation with the Ministry of Public Services and the Ministry of Local Self-Government:

- ensure that the allocation proceedings in dispute be conducted anew, taking into consideration the international standards mentioned in the above report;
- respond in an adequate manner to the allegations concerning irregularities in the allocation proceedings concerning the “Gj” building;
- inform the Ombudsperson of the actions taken in response to the preceding Recommendations, in accordance with Section 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo.

Marek Antoni Nowicki
Ombudsperson