



**OMBUDSPERSON INSTITUTION in KOSOVO
INSTITUCIONI I OMBUDSPERSONIT në KOSOVË
INSTITUCIJA OMBUDSPERSONA na KOSOVU**

SPECIAL REPORT No. 8

**ON THE LEGALITY OF ACTIONS OF PUBLIC AUTHORITIES AIMED AT
BANNING THE WEARING OF RELIGIOUS SYMBOLS BY PUPILS IN PUBLIC
SCHOOLS THROUGHOUT KOSOVO**

addressed to

The Special Representative of the Secretary-General of the United Nations

The Ombudsman in Kosovo, pursuant to Sections 4.3 and 4.9 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsman Institution in Kosovo and Rule 22, paras. 3 and 4 of the Rules of Procedure of the Ombudsman Institution, on 4 June 2004 issued the following report:

BASES FOR AND SCOPE OF THE SPECIAL REPORT

1. This Special Report is based on individual complaints and other sources of information received by the Ombudsperson. It analyses the conformity of actions of public authorities aimed at banning the wearing of religious symbols by pupils in public schools throughout Kosovo with Article 9 of the European Convention on Human Rights.

DISCLAIMER

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

RELEVANT INSTRUMENTS

3. UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo (12 December 1999), as amended by UNMIK Regulation 2000/59 (27 October 2000) reads, in pertinent part:

1.1 The law applicable in Kosovo shall be:

- (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued there under; [...]

4. The Law on Education in force following UNMIK Regulation 2002/19 of 31 October 2002 (hereinafter “The Law on Education“) states, in pertinent part:

Section 1

[...]

- (i) “Educational Institution” means any school or training establishment providing education [...]

- (o) “Public Educational Institution” means an educational institution financed from public funds.

[...]

Section 4.7

Public educational institutions shall refrain from religious instruction or any activities promoting any specific religion.

5. 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”) states, in pertinent part:

[...]

Article 9

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom [...] to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

[...]

ANALYSIS

6. The Ombudsperson considers that the actions of public authorities aimed at banning the wearing of religious symbols such as headscarves by pupils in public schools of Kosovo raise issues under Article 9 of the European Convention on Human Rights which reads, in pertinent part:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom [...] to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

7. At the outset, the Ombudsperson recalls that according to Article 9 to the European Convention on Human Rights, everyone has the right to freedom of thought, conscience and religion. This right includes the right to manifest one's religion, which represents one of the foundations of a “democratic society” within the meaning of the Convention. In its religious dimension, this is one of the most vital elements that make up the identity of believers and their conception of life, but it is

also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one's religion. Bearing witness in words and deeds is bound up with the existence of religious convictions (see the case of *Dalhab v. Switzerland*, decision of 15 February 2001, *Kokkinakis v. Greece*, judgment of 25 May 1993 and *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994). It is common knowledge that the wearing of headscarves is considered to be one of the symbols in manifestation of the Islamic faith.

8. The actions of public authorities aimed at banning the wearing of religious symbols by children in public schools of Kosovo. They therefore affected the freedom of certain pupils to manifest their religious beliefs, thereby constituting an interference by a public authority with these persons' rights under Article 9 of the Convention.
9. The Ombudsperson underlines that any limitation of the freedom to express one's religion imposed by public institutions is lawful within the sense of Article 9 para. 2 of the European Convention of Human Rights if it is prescribed by a national law. In the case of *The Sunday Times v. the United Kingdom (no. 1)* (judgment of 26 April 1979) (see also the case of *Dalhab v. Switzerland*, cited above), the European Court on Human Rights made the following observations on the expression "prescribed by law" in paragraph 2 of Article 9:

"In the Court's opinion, the following are two of the requirements that flow from the expression 'prescribed by law'. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

10. According to the Minister of Education in his letter to the Ombudsperson Institution of 4 April 2004, the legal basis for any public authority's actions aimed at banning the wearing of religious symbols by pupils in public educational institutions would be Section 4.7 of the Law on Education, which states that "public educational institutions shall refrain from religious instruction or any activities promoting any specific religion".
11. The Ombudsperson stresses that the prohibition contained in the above provision is addressed expressly and exclusively to public educational institutions. The Ombudsperson recalls that public educational institutions are defined in section 1.1 (o) as being any school or training establishment providing education that is "financed from public funds". Section 4.7 obliges public institutions to adopt a neutral attitude towards religion when providing education, in order to guarantee the respect for freedom of religion for children. This means that public educational institutions cannot endorse religious symbols, and that the teachers who are working there must refrain from promoting any specific religion by wearing any

religious symbol or by trying to indoctrinate children (see the case *Dalhab v. Switzerland*, cited above).

12. The Ombudsperson considers that Section 4.7 of the Law on Education in Kosovo is not applicable to pupils, who are in fact the addressees of the educational process. There is a crucial difference between a religious symbol that is displayed by a public authority and one which is displayed by a private individual attending a public school. While a teacher at a public school is clearly a representative of the school, a pupil attending this school is not. If a pupil wears a religious symbol such as a headscarf, this conveys a personal message relating to this pupil's individual beliefs, but does not in any way constitute a religious statement on the side of the public educational institution attended by the pupil. The mere fact that certain pupils wear religious symbols while at school thus does not mean that the educational institution itself is endorsing these symbols, nor does it endanger the neutrality of this institution.

CONCLUSION

13. For the above reasons, the Ombudsperson does not consider that Section 4.7 of the Law on Education may serve as a legal basis for any action of a public authority aimed at banning the wearing of religious symbols by pupils in public educational institutions throughout Kosovo. In such cases where educational public authorities have attempted to do so, such actions were thus in violation of Article 9 of the European Convention of Human Rights.

RECOMMENDATION

14. The Ombudsperson recommends that the Special Representative of the Secretary-General should:
 - ensure that, in the absence of any adequate legal provision, public authorities refrain from any action which could interfere with pupils' freedom of manifesting their religion in schools by wearing religious symbols;
 - upon receiving this report, disseminate it through all appropriate channels to all public educational institutions throughout Kosovo;
 - inform the Ombudsperson of the actions taken in response to these Recommendations, in accordance with Section 4.9 of UNMIK Regulation 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo.

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Ombudsperson