



OMBUDSPERSON INSTITUTION in KOSOVO

SPECIAL REPORT No. 10

**ON THE FAILURE OF THE PRESIDENT OF THE MUNICIPALITY OF
PRISHTINË/PRIŠTINA TO COOPERATE WITH THE OMBUDSPERSON
INSTITUTION IN KOSOVO**

addressed to

**The Special Representative of the Secretary-General of the United Nations
and
the Minister for Local Self-Government**

The Ombudsperson in Kosovo, pursuant to 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, on **20 December 2005** issued the following report:

BASIS FOR THE SPECIAL REPORT

1. This Special Report is based on letters sent by the Ombudsperson to the President of the Municipality of Prishtinë/Priština (hereinafter “the President of the Municipality”) in the period of 8 March 2004 to 14 October 2005.

SCOPE OF THE REPORT

2. This report examines the compatibility of the President of the Municipality’s inaction with Sections 3 and 4 of UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo, which calls on the public authorities to respond to the requests of the Ombudsperson Institution within a reasonable time.

DISCLAIMER

3. 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 above law and practice or to review any thereto related or subsequent enactments for their compatibility with recognised international standards. The Ombudsperson reserves all rights to exercise his jurisdiction regarding these or any related matters.

BACKGROUND

4. On 8 March 2004 the Ombudsperson sent a request for interim measures to the President of the Municipality to ensure that the execution proceedings involving the forceful removal of applicants kiosk be suspended (Prov. Reg. No. 1227/04) The applicant had sent a letter to the Municipality of Prishtinë/Priština (hereinafter “the Municipality”) a year before coming to the Ombudsperson, requesting that the Municipality prolong the permission to run the kiosk, but had never received a response to this request. The Ombudsperson never received any response to his letter of 8 March 2004, regardless of the fact that, on several occasions, a representative of the Ombudsperson Institution had contacted the Deputy President of the Municipality and the Director of Urbanism of the Municipality.
5. On 12 March 2004, the Ombudsperson sent a letter to the President of the Municipality asking for information about a case (CR-354/04), in which the applicant complained that he had never received a response from the Chief Executive of the Municipality concerning his request to be able to return to his previous working place. The Ombudsperson never received a response to this letter.
6. On 31 March 2004, the Ombudsperson sent a letter to the President of the Municipality concerning a case (Prov. Reg. 1238/04) involving the decision of the

Municipality to remove the applicant's store located in the Trade Center "Kroi i Bardhë" in Prishtinë/Priština. There was no response to this letter.

7. On 9 June 2004, the Ombudsperson sent a letter to the President of the Municipality, asking for information about the case of applicant (Prov. Reg. No. 1350/04), who was the owner of a kiosk located at "Mother Teresa" Street. The applicant had requested from the Directorate for Urbanism of the Municipality the repossession of this kiosk, which had been relocated to the vehicle market in Fushë Kosovë/Kosovo Polje, but had received no response to his request. The Ombudsperson never received a response to his request of 9 June 2004, regardless of the fact that, on several occasions, a representative of the Ombudsperson Institution had contacted the Deputy President of the Municipality and the Director of Urbanism of the Municipality.
8. On 6 July 2004, the Ombudsperson sent a letter to the President of the Municipality, asking for information about the case of an applicant (Prov. Reg. 1380/04), who had requested permission from the municipal authorities to reconstruct his house, which was included in the list of cultural heritage monuments. The Ombudsperson received no response regarding this matter.
9. On 16 July 2004, the Ombudsperson sent a letter to the President of the Municipality asking for information on a case (Prov. Reg. 1404/2004) in which an applicant was complaining about the lack of the use of an official language that she could understand in documents issued by the Municipality. The Ombudsperson has not received a response to this letter.
10. On 22 November 2004, the Ombudsperson informed the President of the Municipality about an extremely urgent request addressed to the Special Representative of the Secretary-General (hereinafter "the SRSG") concerning the eviction of former workers of a construction company from the barracks where they had been living with their families in Dardania, Prishtinë/Priština (Prov. Reg. No.1556/04). The President of the Municipality received a copy of the interim measure request. The Ombudsperson never received a response to this letter.
11. On 23 November 2004, the Ombudsperson sent a reminding letter to the SRSG with regard to the evictions from barracks in Dardania (see para. 10). A copy of this letter was sent to the President of the Municipality, who never responded with regard to this matter.
12. On 2 December 2004, the Ombudsperson sent a letter to the President of the Municipality about certain problems that the children attending the "Hasan Prishtina" Primary School were facing and requested that a parcel of land be selected to build a new school, while informing the President of the Municipality that the Ministry of Education, Science and Technology had promised to allocate the necessary budget. The Ombudsperson never received a response to this letter.
13. On 18 January 2005, the Ombudsperson sent a letter to the President of the Municipality, asking for information in the case of the applicants (Prov. Reg

- 1608/05) who had complained that the municipal authorities of Prishtinë/Priština had failed to resolve their case involving the construction of a road in the “Bledi II” quarter in Prishtinë/Priština, which created problems for thirty families living in the area. The President of the Municipality never responded to this letter.
14. On 18 January 2005, the Ombudsperson sent a letter to the President of the Municipality, asking for information about the case of an applicant who complained that the municipal authorities of Prishtinë/Priština had failed to resolve her case involving real estate compensation for a parcel of her land that the Municipality had expropriated for the purpose of building a graveyard for the people from villages who belongs to the Municipality of Prishtinë/Priština and who had been killed during the armed conflict in Kosovo in 1998-1999 (Prov. Reg. No. 1586-04). At the time, the Municipality had promised to compensate the applicant’s family, but had never lived up to that promise. The President of the Municipality never responded to the Ombudsperson’s letter.
 15. On 16 February 2005, the Ombudsperson sent a reminding letter to the President of the Municipality in the case involving the pupils of the “Hasan Prishtina” Primary School and reiterated the requests formulated in his letter of 2 December 2004 (see para. 12). A copy of this letter was sent to UNMIK Standards Coordinator. The Ombudsperson never received a response to this letter either.
 16. On 21 February 2005, the Ombudsperson sent a reminding letter to the President of the Municipality, reiterating his request for information sent in the letter of 18 January 2005 (see para. 13). There was no response to this letter.
 17. On 2 March 2005, the Ombudsperson sent a letter to the President of the Municipality, asking for information about the case of an applicant who was complaining that he had never received a response to his request to the Municipality to allocate to him a new space for his kiosk, as the current location was being occupied by another person (C.R. No. 783/05). The Ombudsperson never received a response to this letter.
 18. On 3 March 2005, the Ombudsperson sent a letter to the President of the Municipality, asking for measures to be taken to resolve the problems related to shelter for an applicant (C.R. No. 517/05), who was living before 1999 in certain barracks that were destroyed as a consequence of the NATO’s bombings in 1999. There was no response to this letter, despite several visits that a representative of the Ombudsperson Institution made to the municipal authorities regarding this case.
 19. On 3 March 2005, the Ombudsperson sent a letter to the President of the Municipality, asking him to provide shelter for an applicant and his family (C.R. No. 795/05), who had been obliged to free an apartment in Prishtinë/Priština by 10 March 2005, following an order issued by the Housing and Property Directorate (HPD). The applicant had been illegally occupying this apartment after his house had been completely burned down in 1999. The General and

Regional Directors of the HPD were also informed about this case. There was no response in this case.

20. On 15 March 2005, the Ombudsperson sent a letter to the President of the Municipality, reiterating the request already formulated in his letter of 6 July 2004 (see para. 8). The Ombudsperson also informed the Prime Minister of Kosovo about this case, asking from him to make use of his authority to ensure that the Municipality fulfill its obligations by resolving the applicant's matter. A copy of this letter was also sent to the Minister of Local Self-Government, the Minister of Culture, Youth, Sports and Non-Residential Matters, the President of the Municipality and the UNMIK Standards Coordinator. Again, the Ombudsperson received no response from the President of the Municipality
21. On 16 March 2005, the Ombudsperson sent a letter to the President of the Municipality asking for information regarding the use of official languages in correspondence between the Municipality and different organs of central authorities and in the documents delivered to individuals by the Municipality, as well as on public signs within the Municipality (Ex Officio No. 25/02). The Ombudsperson received no response to this request.
22. On 18 March 2005, following the lack of cooperation of the President of the Municipality, the Ombudsperson sent a letter to the Minister of Local Self-Government, asking him to make use of his authority to ensure that the local self-government institutions comply with the Ombudsperson's requests, in light of the authorizations and competencies of the Ombudsperson Institution in Kosovo. A copy of this letter was also sent to Deputy Special Representative of the Secretary General, UNMIK Standards Coordinator and also to the Senior Adviser to the Minister of Local Self-Government.
23. On 21 March 2005, following the lack of engagement of the President of the Municipality in finding a temporary shelter in the case that was the object of the Ombudsperson's letter of 3 March 2005 (see para. 18), the Ombudsperson sent a letter to the President of the Municipality of Fushë Kosovë/Kosovo Polje regarding this case and asked him to provide shelter for the applicant and his family in the Municipality of Fushë Kosovë/Kosovo Polje.
24. On 25 April 2005, the Ombudsperson informed the President of the Municipality about an urgent request for interim measures addressed to the Special Representative of the Secretary-General asking him to suspend the execution of the decision of the municipal authorities in Prishtinë/Priština to destruct houses in Mat village which had been built without the required permission. The Ombudsperson never received any response to this request from the President of the Municipality.
25. On 29 April 2005, the Ombudsperson received a response from the Acting UNMIK Municipal Representative regarding the request for interim measure of 25 April 2005 (see para. 24), in which he enclosed a copy of his letter to the Chief Executive Officer of the Municipality supporting the Ombudsperson's request to

suspend the demolition orders to allow for the relocation of the families concerned. The Municipal Representative also asked the Municipality to address other deficiencies mentioned by the Ombudsperson such as advance notices to the persons concerned and effective appeal procedures. The Ombudsperson was never informed whether any action had been taken by the Municipality following this letter.

26. On 26 April 2005, the Ombudsperson sent a letter to the President of the Municipality asking for information in a case (C.R. No. 661/04) in which the municipal authorities had not responded to an individual's request for a license to start a small business. The Ombudsperson did not receive any response to this letter.
27. On 27 May 2005, the Ombudsperson sent a letter to the President of the Municipality, asking for information about any actions the municipal authorities had taken with regard to the case of the applicant (Prov. Reg. No. 1376/04), who had requested from the municipal authorities to inform him about the removal of his kiosk located in "Arbëria" district, but had never received a response to this request. There was no response to this letter.
28. On 24 June 2005, the Ombudsperson reiterated his request of 26 April 2005 concerning the case of an individual applying for a license to start a business (see para. 26). There was no response from the President of the Municipality.
29. On 4 July 2005, following a meeting between the Acting Municipal Representative of Prishtinë/Priština and the Director of Investigations of the Ombudsperson Institution, the Ombudsperson received a letter from the Acting Municipal Representative. In this letter, he stated that the Municipality had been urged to improve its response rate by giving the outmost priority to communications from the Ombudsperson Institution in Kosovo.
30. On 14 July 2005, the Ombudsperson received a response from the Minister of Local Self-Government about the request of the Ombudsperson for an intervention with the President of the Municipality in order to ensure his compliance with the Ombudsperson's requests. The Minister of Local Self-Government informed the Ombudsperson that he had asked the President of the Municipality for a separate meeting in which to discuss this issue.
31. On 29 July 2005, the Ombudsperson reiterated his request of 27 May 2005 (see para. 27) and asked, within the scope of his competencies, that the municipal authorities respond to the Ombudsperson's requests within a reasonable period of time. There was no response to this letter.
32. On 14 October 2005, the Ombudsperson sent a letter to the President of the Municipality asking for information about a case where certain applicants were complaining that although they had submitted a request to the municipal authorities about the problems they were encountering when attempting to access their properties following the illegal construction of an apartment building in the

Hilmi Rakovica Street in Prishtinë/Priština, they had never received a response. The Ombudsperson has not received an answer to this letter.

RELEVANT INSTRUMENTS

33. United Nations Security Council Resolution 1244 (1999) (10 June 1999) (hereinafter Resolution 1244) reads, in pertinent part:

Article 11

The Security Council decides that the main responsibilities of the international civil presence will include [...] (b) Performing basic civilian administrative functions where and as long as required [...] (j) Protecting and promoting human rights [...].

34. UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo (12 December 1999) as amended by UNMIK Regulation 2000/59 (27 October 2000) (hereinafter UNMIK Regulation 2000/59) 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 thereunder; and

35. UNMIK Regulation No. 2001/19 on a Constitutional Framework for Provisional Self-Government in Kosovo, (15 May 2001) states, in pertinent part:

[...]

10.1 Natural and legal persons in Kosovo shall have the right, without threat of reprisal, to make complaints to an independent Office concerning human rights violations or actions constituting abuse of authority by any public authority in Kosovo.

10.2 The Office, in accordance with UNMIK legislation in force, shall have jurisdiction to receive and investigate complaints, monitor, take preventive steps, make recommendations and advise on any such matters. [...]

36. UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo (30 June 2000) states, in pertinent part:

[...]

- 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. [...]
- 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. [...]
- 4.7 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. [...]

ANALYSIS

37. The Ombudsperson considers that failure of the President of the Municipality to cooperate with the Ombudsperson Institution raises serious issues under the law applicable in Kosovo. Section 10.2 of UNMIK Regulation No. 2001/19 on a Constitutional Framework for Provisional Self-Government in Kosovo reads, in pertinent part:

[...] “The Office [of the Ombudsperson], in accordance with UNMIK legislation in force, shall have jurisdiction to receive and investigate complaints, monitor, take preventive steps, make recommendations and advise on any such matters.
[...]”

38. UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo reads, in pertinent parts:

“Section 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 [...]

Section 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.

[...]

Section 4.7

The Ombudsperson [...] may require any person to cooperate with him/her by providing relevant information, documents and files [...]"

39. Based on the above, the Ombudsperson may address public authorities and ask them to intervene in certain cases or suspend the execution of their decisions. He may also ask them for information, documents or access to certain files.
40. Following the above regulations, public authorities including the President of the Municipality have certain obligations to assist the Ombudsperson in his work. More specifically, they are obliged to respond to his requests within a reasonable time and provide him with any information, documents or files that he requests.
41. Between March 2004 and October 2005, the Ombudsperson, in conducting investigations based on the requests of many different individuals complaining against the Municipality, had addressed a number of letters to the President of the Municipality, but had never received a response to any of these interventions, despite reminding letters addressed to the President of the Municipality in many of these cases.
42. The Minister for Self-Government and UNMIK were informed about this lack of cooperation on the side of the President of the Municipality and both the Minister for Local Self-Government and the competent Acting Municipal UNMIK Representative informed the Ombudsperson that they had or would discuss the issue with the President of the Municipality.
43. Unfortunately, these reactions from the above institutions have not led to an improvement of the situation, as to the day of this report, the Ombudsperson has still not received a response to any of his intervention letters.
44. By not responding to any of the Ombudsperson's interventions or requests, the President of the Municipality did not follow the above obligations imposed on him as a public authority toward the Ombudsperson Institution in Kosovo by UNMIK Regulation 2000/38.

Conclusion

45. The Ombudsperson concludes that the failure of the President of the Municipality to cooperate with the Ombudsperson Institution with regard to individual

complaints about matters falling under the competence of the Prishtinë/Priština municipal authorities is in contravention with the obligations of the municipal authorities originating from the UNMIK Regulation No. 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo and UNMIK Regulation No. 2001/19 on a Constitutional Framework for Provisional Self-Government in Kosovo. The President of the Municipality bears a responsibility towards these requests as the highest municipal authority and the requests need to be reviewed within a reasonable time, therefore the way in which the President of the Municipality treated these matters went against the principles of good governance.

RECOMMENDATIONS

46. The Ombudsperson recommends that the Minister of Local Self-Government, in cooperation with the Special Representative of the Secretary-General should, no later than **30 January 2006**:

- ensure that the President of the Municipality respond without any further delay to the past and future requests and interventions of the Ombudsperson
- ensure that the Minister of Local Self-Government distribute the copies of this report to all municipalities in Kosovo
- inform the Ombudsperson of the actions taken in response to this Recommendation, in accordance with Section 4.9 of UNMIK Regulation 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo.

Marek Antoni Nowicki
Ombudsperson