



OMBUDSPERSON INSTITUTION in KOSOVO

SPECIAL REPORT No. 11

On the failure of the President of the Municipal Court of Ferizaj/Uroševac to cooperate with the Ombudsperson Institution in Kosovo

addressed to

THE ASSEMBLY OF KOSOVO

The Acting Ombudsperson in Kosovo, pursuant to Sections 4.3 and 4.10 of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo and Rule 16, paras. 3 and 4 of the Rules of Procedure of the Ombudsperson Institution, on **6 April 2007** issued the following report:

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BASIS FOR THE SPECIAL REPORT

1. This Report is based on letters sent by the Deputy Ombudsperson and the Acting Ombudsperson to the President of the Municipal Court in Ferizaj/Urosevac (hereinafter “the President of the Court”) in the period of November 2005 to December 2006.

SCOPE OF THE REPORT

2. This report examines the compatibility of the President of the Court’s inaction with Sections 3 and 4 of UNMIK Regulation No. 2006/06 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.
3. This report includes all cases submitted to the Ombudsperson Institution during the above mentioned period in which the Deputy Ombudsperson or Acting Ombudsperson requested information from the President of the Court and the latter failed to cooperate with the Ombudsperson Institution in Kosovo.

DISCLAIMER

4. 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 recognized international standards. The Ombudsperson reserves all rights to exercise his jurisdiction regarding these or any related matters.

PROCEDURE BEFORE THE OMBUDSPERSON INSTITUTION

5. From November 2005 to December 2006, several complainants lodged complaints with the Ombudsperson Institution concerning the length of court proceedings in both criminal and civil cases pending before the Municipal Court in Ferizaj/Uroševac (hereinafter “the Municipal Court”).
6. Also from November 2005 to December 2006, a Deputy Ombudsperson and the Acting Ombudsperson sent separate letters and later reminder letters to the President of the Court, asking for information regarding the complainants allegations.
7. On 5 May 2006, due to the large number of complaints, the Acting Ombudsperson collected all cases against the Municipal Court and registered them under one case called “Abdyl Beqa and others against the Municipal Court in Ferizaj/Urosevac”.

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8. On 5 May 2006, the Acting Ombudsperson sent a letter to the President of the Court, asking for information on current court proceedings in the complainants' cases. Copies of this letter were sent to the Minister of Justice, the Standards Coordinator of the Government of Kosovo, the President of the Judicial Council of Kosovo and the Coordinator of the Judicial Inspection Unit within the UNMIK Department of Justice.
9. On 19 June 2006, the Acting Ombudsperson sent a letter to the President of the District Court in Prishtinë/Priština, as the higher instance court to the Municipal Court. A copy of this letter was sent to the Minister of Justice.
10. On 6 July 2006, one of the complainants came to the Ombudsperson Institution and informed the Acting Ombudsperson that there had been no new developments in his case pending before the Municipal Court.
11. On 3 October 2006, representatives of the Ombudsperson Institution met with the President of the Court, asking him to respond to letters received from the Acting Ombudsperson. During this meeting, the President of the Court promised to respond to requests of the Acting Ombudsperson in future.
12. By end of October 2006, the President of the Municipal Court had not responded to any of the Acting Ombudsperson's requests.
13. On 31 October 2006, a representative of the Ombudsperson Institution paid a regular visit to Ferizaj/Uroševac and on that occasion visited the Municipal Court, where he talked to the court administrator regarding the complaints pending before the Ombudsperson Institution. The court administrator also promised that the Municipal Court would soon respond to letters received from the Acting Ombudsperson.
14. On 26 December 2006, the representative of the Ombudsperson Institution again paid a regular visit to Ferizaj/Uroševac and on that occasion visited the Municipal Court. There, he again met with the court administrator regarding the above-mentioned cases. During this meeting, the court administrator stated that the Acting Ombudsperson's requests for information had been passed on to those judges competent for the respective cases.
15. On 26 January 2007, the Acting Ombudsperson officially opened investigations in this case.
16. Until the day on which this report was issued, the Municipal Court had not responded to any of the Acting Ombudsperson's requests.

RELEVANT INSTRUMENTS

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17. 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 there under; and

[...]

18. The Constitutional Framework for Provisional Self-Government, as promulgated by UNMIK Regulation No. 2001/9 (15 May 2001) states, in pertinent part:

[...]

The Ombudsperson

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. [...]

19. UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo (16 February 2006) states, in pertinent part:

[...]

Section 3.1

The Ombudsperson shall have jurisdiction to receive and investigate complaints from any habitual resident of Kosovo or any natural person 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.

[...]

Section 4.6

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.

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Where continuing serious harm may result from the subject of a complainant under the section 3.1, the competent authorities shall be required to respond urgently.

[...]

Section 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, provide 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).

ANALYSIS

20. The Ombudsperson considers that the failure of the President of the Court to cooperate with the Ombudsperson Institution raises serious issues under the law applicable in Kosovo. Section 10.2 of the 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.”

21. UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo states, in pertinent part:

Section 4.6

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. Where continuing serious harm may result from the subject of a complainant under the section 3.1, the competent authorities shall be required to respond urgently.

[...]

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Section 4.8

The Ombudsperson Institution [...] may require any Kosovo Institution and its staff to cooperate with the Ombudsperson Institution by providing relevant information, documents and files [...].

22. Based on the above, the Ombudsperson may address public institutions, meaning any administrative office or part of the judiciary or legislative, and ask them to intervene in any given case. He may also ask them for information, documents or access to certain files.
23. Following the above regulations, public institutions and their staff, including the President of the Court, 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.
24. Between November 2005 and December 2006, a Deputy Ombudsperson and the Acting Ombudsperson, in conducting investigations based on the requests of many different individuals complaining about the length of proceedings before the Municipal Court, had addressed a number of letters to the President of the Court, but had never received a response to any of these interventions, despite reminding letters.
25. By not responding to any of the Deputy Ombudsperson and Acting Ombudsperson's interventions or requests, the President of the Court did not fulfill the above obligations imposed on him as head of a public institution toward the Ombudsperson Institution in Kosovo by UNMIK Regulation 2006/6.

CONCLUSION

26. The Ombudsperson concludes that the failure of the President of the Court to cooperate with the Ombudsperson Institution with regard to individual complaints about matters falling under the competence of the Municipal Court is in contravention with the obligations imposed on all public institutions by Sections 4.6 and 4.8 of UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo. The President of the Court's failure to follow these provisions was also not in keeping with the principles of good governance.

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RECOMMENDATIONS

27. The Ombudsperson recommends that the President of the District Court in Prishtinë/Priština, should, no later than **5 May 2007**:

- ensure that the President of the Municipal Court in Ferizaj/Uroševac respond without any further delay to the past and future requests and interventions of the Ombudsperson Institution;
- inform the Ombudsperson of the actions taken in response to this Recommendations, in accordance with Section 4.10 of UNMIK Regulation 2006/6 on the Establishment of the Ombudsperson Institution in Kosovo.

28. The Ombudsperson further recommends that the Kosovo Judicial Council should, no later than 20 April 2007,

ensure that copies of this report be distributed to all courts in Kosovo.

Hilmi Jashari
Acting Ombudsperson

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