



OMBUDSPERSON INSTITUTION in KOSOVO

SPECIAL REPORT No. 13

**On the failure of the Municipal Authorities in Skenderaj/Srbica and
Mitrovicë/Mitrovica to cooperate with the
Ombudsman Institution in Kosovo**

addressed to

The Kosovo Assembly

The Ombudsman in Kosovo, pursuant to Section 4.1 paras (b) and (f) of UNMIK Regulation No. 2006/6 on the Ombudsman Institution in Kosovo and Rules 18 and 19 of the Rules of Procedure of the Ombudsman Institution, on **22 May 2007** issued the

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BASIS FOR THE REPORT

1. This Report is based on letters and oral requests made by the former Ombudsperson and later the Acting Ombudsperson, as well as staff of the Ombudsperson Institution, to the municipal authorities in Skenderaj/Srbica in the period of 16 September 2005 to 23 April 2007 and to the municipal authorities in Mitrovicë/Mitrovica in the period of 9 September 2005 to 16 March 2007.

SCOPE OF THE REPORT

2. This Report examines the compatibility of the above municipal authorities' inaction with Sections 4.6 and 4.8 of UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo, which call on public authorities to cooperate with the Ombudsperson Institution and respond to its requests within a reasonable time.

DISCLAIMER

3. Nothing contained in this 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.

BACKGROUND

The Municipality of Skenderaj/Srbica

4. On 16 September 2005, the former Ombudsperson sent a letter to the Head of the Directorate for Education in the Municipality of Skenderaj/Srbica, informing him about a complaint from a former primary school teacher concerning his dismissal from his job and the cessation of his salary. Both actions allegedly took place without the complainant having received a prior decision to this effect from the Director of the Primary School, even though he had worked there since 1958. In his letter, the former Ombudsperson asked for information on the complainant's case no later than 30 September 2005. (CR. No. 1016/05), but never received a response to this letter, despite the fact that, on several occasions, a representative of the Ombudsperson Institution had contacted the Head of Directorate for Education in the Municipality of Skenderaj/Srbica.
5. On 25 November 2005, the former Ombudsperson sent a letter to the Head of the Directorate for Education in the Municipality of Skenderaj/Srbica, in which he stressed the non-execution of a decision which was issued on 13 September 2005 by the Municipality's Commission for Appeals approving the complainant's appeal of 30 August 2005. In the decision, the Head of the Directorate for Education had recommended that the complainant be reinstated to his position.

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- March 2005 (Prov. Reg. 11944/05). The former Ombudsperson asked for information on the complainant's case no later than 9 December 2005, but never received a response to his letter.
6. On 23 December 2005, the former Ombudsperson sent a reminder to the Head of the Directorate for Education in Skenderaj/Srbica Municipality. A copy of this letter was sent to the President of Skenderaj/Srbica Municipality. The former Ombudsperson asked for information on the complainant's case no later than 6 January 2006, but again did not receive a response to his letter.
 7. On 13 February 2006, the Acting Ombudsperson sent a letter to the Minister of Local Government and to the Minister of Education, Science and Technology informing them that the municipal authorities in Skenderaj/Srbica had failed to respond to the letters of the former Ombudsperson and Acting Ombudsperson. He asked them to ensure that this practice does not continue, so that in future, the Ombudsperson Institution receives the requested information. A copy of this letter was sent to the Coordinator for Standards in the Government of Kosovo and to the President of the Municipality of Skenderaj/Srbica. The Acting Ombudsperson never received a response to this letter.
 8. On 26 May 2006, the Acting Ombudsperson formally opened an investigation in the case (Registration No. 1016/05).
 9. Between May 2006 and February 2007, representatives of the Ombudsperson Institution had several meetings with the complainant. Each time, he confirmed that the Head of the Directorate for Education in the Municipality of Skenderaj/Srbica had still not implemented the decision of the Municipality's Commission for Appeals (see para. 5 supra).
 10. On 29 March 2007, representatives of the Ombudsperson Institution contacted the Head of the Directorate for Education in the Municipality of Skenderaj/Srbica, and asked him about the complainant's case. The Head of the Directorate said that he had no information about the complainant's case.
 11. On 18 April 2007, representatives of the Ombudsperson Institution again contacted the Head of the Directorate for Education in the Municipality of Skenderaj/Srbica and asked him about the complainant's case. Again, the Head of the Directorate said that he had no information on the complainant's case.

The Municipality of Mitrovicë/Mitrovica

12. On 9 September 2005, the former Ombudsperson sent a letter to the Head of the Directorate for Urbanism in the Municipality of Mitrovicë/Mitrovica informing him about a complaint received from a house owner, who was inhibited in the free use of his property by a decision allowing a private person to build a hotel in front of the complainant's house (CR. No. 1016/05). The former Ombudsperson never received any response to his letter of 9 September 2005, despite the fact that, on

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- the Head of the Directorate for Urbanism in the Municipality of Mitrovicë/Mitrovica to this effect.
13. On 21 October 2005, the former Ombudsperson sent a reminder to the Head of the Directorate for Urbanism in the Municipality of Mitrovicë/Mitrovica, asking him to respond to the letter dated 9 September 2005. The former Ombudsperson asked for information on the complainant's case no later than 3 November 2005.
 14. On 31 October 2005, the former Ombudsperson received a response from the Head of the Directorate for Urbanism in the Municipality of Mitrovicë/Mitrovica, in which he stated that at the time when the complainant had sent his request to the above-mentioned directorate, it was not clear which directorate was competent to deal with the complainant's issue. Later, it was finally decided that the issue was under the jurisdiction of the Directorate for Economy and Development.
 15. On 16 January 2006, the Acting Ombudsperson sent a letter to the Head of the Directorate for Economy and Development, referring to the letter received from the Head of the Directorate for Urbanism in the Municipality of Mitrovicë/Mitrovica and informing the Head of the Directorate for Economy and Development about the instant complaint. A copy of this letter was sent to the Chief Executive Officer of the Municipality. The Acting Ombudsperson asked for information on the complainant's case no later than 3 February 2006. There was no response to this letter.
 16. On 13 February 2006, the Acting Ombudsperson sent a letter to the Minister of Local Government informing him that the municipal authorities in Mitrovicë/Mitrovica had failed to respond to his letter and asking him to ensure that such practice would not continue, so that the Ombudsperson Institution could receive the requested information. A copy of this letter was sent to the Coordinator for Standards in the Government of Kosovo and to the President of the Municipality of Mitrovicë/Mitrovica. The Acting Ombudsperson never received a response to this letter.
 17. On 25 August 2006, the Acting Ombudsperson sent a reminder to the Head of the Directorate for Economy and Development in the Municipality of Mitrovicë/Mitrovica, asking him to respond to his letter dated 1 January 2006. The Acting Ombudsperson asked for information on the complainant's case no later than 8 September 2006.
 18. On 11 October 2006, not having received a response to his letter of 25 August 2006, the Acting Ombudsperson sent a letter to the President of the Municipality of Mitrovicë/Mitrovica, informing him that he had tried to contact the Head of the Directorate for Economy and Development about the complainant's issue. In his letter, the Acting Ombudsperson asked the President of the Municipality to ensure that the practice of not responding to letters from the Ombudsperson Institution change, so that the Ombudsperson Institution could receive the requested information. The Acting Ombudsperson asked for information on the

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19. On 16 Mars 2007, the Acting Ombudsperson sent a letter to the Head of the Directorate for Economy and Development in the Municipality of Mitrovicë/Mitrovica, asking him to reply to his previous letters. The Acting Ombudsperson asked for information no later than 23 March 2007. There was no response to this letter.
20. On 11 April 2007, the Acting Ombudsperson formally opened an investigation into the case (Registration No. 1936/07).

RELEVANT INSTRUMENTS

21. 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; [...]

22. UNMIK Regulation No. 2000/45 on Self –Government of Municipalities in Kosovo (11 August 2000) (hereinafter UNMIK Regulation 2000/45) reads, in pertinent part:

Section 3

Responsibilities and powers of Municipalities

3.1 Within its territory, each municipality shall be responsible for the following activities, within the laws regulating each activity:

- (a) Providing basic local conditions for sustainable economic development;
- (b) Urban and rural planning and land use;
- (c) Licensing of building and other development;
- (d) Local environmental protection;
- (e) The implementation of building regulations and building control standards;
- [...]
- (i) Pre-primary, primary and secondary education; [...]
- (q) Such other activities as are necessary for the proper administration of the municipality and which are not assigned elsewhere by law.

[...]

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23. UNMIK Regulation No. 2004/50 on the Establishment of the New Ministries and Introduction of the Posts of Deputy Prime Minister and Deputy Ministers in the Executive branch, (4 December 2004) (hereinafter UNMIK Regulation 20004/50) reads, in pertinent part:

Section 1

New Ministries

1.1 The following new Ministries of the Executive Branch of the Provisional Institutions of Self-Government shall be established:

[...]

(c) Ministry of Local Government Administration. The Ministry shall be responsible for matters related to the promotion of effective local self-government. In the exercise of its competencies for effective local governance the Ministry shall be responsible for ensuring provision of centrally controlled public services to meet the needs of all Communities and ensuring equitable access to such services.

1.2 Detailed responsibilities and functions of the Ministries referred to in section 1.1 shall be set out in a subsequent Regulation amending UNMIK Regulation No. 2001/19. The Ministries shall assume their respective competencies and responsibilities upon the entry into force of the Regulation amending UNMIK Regulation No. 2001/19. Until that time the competencies and responsibilities concerned shall continue to be exercised by the authorities and entities currently responsible for performing them. [...]

24. UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institution of Self-Government in Kosovo (13 September 2001) states, in pertinent part:

[....]

Annex IV

Ministry of Education, Science and Technology

The Ministry shall:

- (i) Develop policies and implement legislation for the development of education, including higher education, and science in Kosovo;
- (ii) Promote a non-discriminatory educational system in which each person's right to education is respected and quality learning opportunities are available to all;
- (iii) Extend non-formal education and adult education on all levels, including remote areas, and promote life-long learning opportunities for all;
- (iv) Design, implement and supervise equitable and effective forms of educational

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- (v) Improve the quality, relevance and efficiency of education at all levels;
- (vi) Facilitate the development and qualitative improvement of the education system and the efficient delivery of educational services;
- (vii) Promote research related to the social, economic, scientific, technological and cultural development of Kosovo;
- (viii) Develop a comprehensive library system, which will include general, special and school libraries;
- (ix) Promote an inclusive policy for the integration of impaired and disabled persons into the educational system; and
- (x) Promote parental and community participation in educational activities and appropriate forms of school-community partnership at the local level.

25. The Constitutional Framework for Provisional Self-Government in Kosovo, as promulgated by UNMIK Regulation No. 2001/9, on 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. [...]

26. UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo (16 February 2006), as amended by UNMIK Regulation 2007/15, states, in pertinent part:

[...]

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. [...]

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. [...]

4.8 The Ombudsperson Institution shall have access to and may examine files and documents of any Kosovo Institution in relation to cases under consideration

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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). [...]

ANALYSIS

27. The Ombudsperson considers that the failure of the municipal authorities in Skenderaj/Srbica and Mitrovicë/Mitrovica to cooperate properly or at all 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. [...]”

28. UNMIK Regulation No. 2006/06 on the Ombudsperson Institution in Kosovo reads, in pertinent part:

“Section 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 [...]

Section 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. [...]

Section 4.8

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

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29. 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.
30. Following the above regulations, public authorities, including the Head of the Directorate for Education in the Municipality of Skenderaj/Srbica, the President of the Municipality of Skenderaj/Srbica, the Head of the Directorate of Economy and Development in the Municipality of Mitrovicë/Mitrovica, the Chief Executive Officer in the Municipality of Mitrovicë/Mitrovica and the President of the Municipality of Mitrovicë/Mitrovica, 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.
31. Between September 2005 and March 2007, the former Ombudsperson and later the Acting Ombudsperson, in cases involving investigations against the Municipalities of Skenderaj/Srbica and Mitrovicë/Mitrovica, had addressed a number of letters to these authorities. In the case of the Municipality of Skenderaj/Srbica, letters were sent on 16 September 2005, 25 November 2005 and 23 December 2006 and representatives of the Ombudsperson Institution contacted the competent municipal officials directly several times. For a long time, there was no answer to the Ombudsperson Institution's requests, while in Spring 2007, the Head of the Directorate for Education twice responded to direct oral requests from staff of the Ombudsperson Institution by saying that he had no information on the case.
32. In the case of the Municipality of Mitrovicë/Mitrovica, letters were addressed to the competent authorities on 9 September 2005, 21 October 2005, 16 January 2006, 25 August 2006, 11 October 2006 and 16 March 2007, but there was never any response to these interventions or requests for information, despite several reminder letters and oral requests (see paras 15, 17, 18 and 19 *supra*).
33. The Ombudsperson notes that the Minister for Local Government, other competent ministers, and the Coordinator for Standards in the Government of Kosovo were informed about this lack of cooperation on the side of the authorities of the Municipality of Skenderaj/Srbica and the Municipality of Mitrovicë/Mitrovica (see para 16 *supra*). However, despite the supervisory functions of the respective ministries, none of the central organs responded to the Ombudsperson's requests, nor was there any indication that they had taken any action to improve the cooperation of the municipalities of Skenderaj/Srbica and Mitrovicë/Mitrovica with the Ombudsperson Institution.

Conclusion

34. In the case of the authorities in the Municipality of Skenderaj/Srbica, namely the Head of the Directorate for Education and the President of the Municipality, the

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Ombudsperson's and the Acting Ombudsperson's letters for a period of one-and-a-half years was in violation to the obligations imposed on them as public authorities by Sections 4.6 and 4.8 of UNMIK Regulation 2006/06. Even when contacted directly, the Head of the Directorate for Education in this Municipality merely answered that he had no information on the case. While the Ombudsperson finds that difficult to believe given the decision of the Municipal Commission on Appeals against him, he further notes that the Head of this Directorate did not take any action to investigate the matter and provide the Ombudsperson Institution with the necessary information on the case. He therefore behaved negligently and continued to delay investigation proceedings conducted by the Institution.

35. In the case of the authorities in the Municipality of Mitrovicë/Mitrovica, namely the Head of the Directorate for Economy and Development, the Chief Executive Officer and the President of the Municipality, the Ombudsperson notes that by failing to respond to all letters received from both the former Ombudsperson and the Acting Ombudsperson for a period of one-and-a-half years, these authorities also did not follow the obligations imposed on them as public authorities toward the Ombudsperson Institution in Kosovo by Sections 4.6 and 4.8 of UNMIK Regulation 2006/06 and thus violated the above provisions.
36. Finally, as regards the inaction of the central government authorities, primarily the Ministry of Local Government and, in the case of the Municipality of Skenderaj/Srbica, the Ministry of Education, Science and Technology, the Ombudsperson finds that this failure to ensure that the respective municipal authorities fulfill their obligations under the law and cooperate with the Ombudsperson Institution constitutes a breach of their obligation to supervise the local administration under their competency as set out in UNMIK Regulation 2004/50 on the Establishment of the New Ministries and Introduction of the posts of Deputy Prime Minister and Deputy Ministers in the Executive Branch and in Annex IV of UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institution of Self-Government in Kosovo respectively.

RECOMMENDATIONS

37. The Ombudsperson recommends that the Minister for Local Government and the Minister for Science, Education and Technology should, no later than **22 June 2007**:
 - Ensure that the President of the Municipality of Skenderaj/Srbica Municipality and the President of the Municipality of Mitrovicë/Mitrovica and their staff respond without any further delay to the previous and future requests and interventions of the Ombudsperson Institution,
 - Ensure that copies of this Report be distributed to all directorates

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- Inform the Ombudsperson of any actions taken in response to this Report, issued in accordance with Section 16.2 of UNMIK Regulation 2006/6 on the Ombudsperson Institution in Kosovo.

Hilmi Jashari
Acting Ombudsperson

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