

607



Strasbourg, 18 July 2000  
<cd\doc\2000\cd\156.pdg>

Restricted  
CDL (2000) 56

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**REGULATION NO. 2000/38**  
**ON THE ESTABLISHMENT**  
**OF THE OMBUDSPERSON INSTITUTION**  
**IN KOSOVO**

**UNMIK**  
**(United Nations Interim**  
**Administration Mission in**  
**Kosovo)**

**UNITED NATIONS**  
United Nations Interim  
Administration Mission in  
Kosovo



**UNMIK**

**NATIONS UNIES**  
Mission d'Administration  
Intérimaire des Nations Unies au  
Kosovo

UNMIK/REG/2000/38  
30 June 2000

---

**REGULATION NO. 2000/38**

**ON THE ESTABLISHMENT OF THE OMBUDSPERSON INSTITUTION IN  
KOSOVO**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

For the purpose of enhancing the protection of human rights in Kosovo,

Hereby promulgates the following:

Section 1

The establishment of the Ombudsperson institution in Kosovo

1.1 The Ombudsperson shall promote and protect the rights and freedoms of individuals and legal entities and ensure that all persons in Kosovo are able to exercise effectively the human rights and fundamental freedoms safeguarded by international human rights standards, in particular the European Convention on Human Rights and its Protocols and the International Covenant on Civil and Political Rights.

1.2 The Ombudsperson shall provide accessible and timely mechanisms for the review and redress of actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution.

Section 2  
Nature of the Ombudsperson

- 2.1 The Ombudsperson shall act independently. No person or entity may interfere with his or her functions.
- 2.2 Services offered by the Ombudsperson shall be free of charge.

Section 3  
Jurisdiction

- 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. The Ombudsperson shall give particular priority to allegations of especially severe or systematic violations and those founded on discrimination. In this section, 'actions' include acts, omissions and decisions.
- 3.2 The jurisdiction of the Ombudsperson shall extend to the territory of Kosovo. The Ombudsperson may also offer his or her good offices with regard to cases involving Kosovars outside the territory of Kosovo.
- 3.3 The Ombudsperson shall have jurisdiction over cases which occur after the coming into force of this regulation and cases arising from facts which occurred prior to this date where these facts give rise to a continuing violation of one or more human rights.
- 3.4 In order to deal with cases involving the international security presence, the Ombudsperson may enter into an agreement with the Commander of the Kosovo Forces (COMKFOR).
- 3.5 The Ombudsperson shall not have jurisdiction to deal with disputes between the international administration and its staff.

Section 4  
Functions and Powers

- 4.1 The Ombudsperson may receive complaints, monitor, investigate, offer good offices, take preventive steps, make recommendations and advise on matters relating to his or her functions.
- 4.2 The Ombudsperson may promote reconciliation between ethnic groups.

4.3 Except as provided in section 2 of UNMIK Regulation No. 1999/24 of 12 December 1999 on the Law Applicable in Kosovo, the Ombudsperson may provide advice and make recommendations to any person or entity concerning the compatibility of domestic laws and regulations with recognized international standards.

4.4 The Ombudsperson shall have the authority to conduct investigations, either in response to a complaint made under section 3.1 or on his or her own initiative.

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.

4.6 Where, during an investigation, the Ombudsperson finds that the execution of an administrative decision may result in irreparable prejudice to the rights of the complainant, he or she may recommend that the relevant authority suspend the execution of the said decision.

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. In such a case the Ombudsperson may draw such inferences as he or she sees fit from the refusal.

4.8 The Ombudsperson may at any time enter and inspect any place where persons are deprived of their liberty and may be present at meetings or hearings involving such persons. The Ombudsperson may also conduct private meetings with such persons.

4.9 During or following an investigation, the Ombudsperson may make recommendations to the relevant administrative authorities and officials on the appropriate measures to be adopted, including interim measures if necessary.

4.10 Following an investigation, the Ombudsperson may recommend to the competent authorities that disciplinary or criminal proceedings be initiated against any person.

4.11 If, once recommendations have been made by the Ombudsperson, the administrative authorities or officials concerned do not take appropriate measures within a reasonable time, or if they do not provide the Ombudsperson with reasons for not doing so that are acceptable to the Ombudsperson, the Ombudsperson may draw the Special Representative of the Secretary-General's attention to the matter and may make a public statement thereon.

4.12 The Ombudsperson shall publish his or her recommendations, save in cases which he or she considers to be confidential or secret, or where the complainant has expressly

requested that his, her or its identity and the circumstances of the complaint are not to be revealed.

4.13 There shall be no appeal against any action or decision of the Ombudsperson.

#### Section 5

##### Composition of the Institution of the Ombudsperson

The Ombudsperson institution shall be composed of the Ombudsperson, at least three (3) Deputy Ombudspersons and a professionally competent staff.

#### Section 6

##### The Ombudsperson

6.1 The Ombudsperson shall be an eminent international figure of high moral character, impartiality and integrity, who possesses a demonstrated commitment to human rights and the rights of minorities and who is not a citizen of the Federal Republic of Yugoslavia, of a state that was part of the former Yugoslavia or of Albania.

6.2 The Ombudsperson shall be appointed by the Special Representative of the Secretary-General for a term of two years. The appointment may be renewed for further terms of two years.

#### Section 7

##### Deputy Ombudspersons

7.1 Upon proposal of the Ombudsperson following local and international consultation, the Special Representative of the Secretary-General shall appoint at least one international and two local Deputy Ombudspersons, who shall be persons of high moral character, impartiality and integrity possessing a demonstrated commitment to human rights and rights of minorities.

7.2 The Ombudsperson may, as he or she sees fit, delegate to the Deputy Ombudspersons any of the functions and powers set out in section 4 of this regulation.

#### Section 8

##### Incompatibilities and removal from office

8.1 The positions of Ombudsperson and Deputy Ombudsperson, and of the staff of the Ombudsperson institution, are incompatible with any political, public or private professional activity or office.

8.2 The Special Representative of the Secretary-General may remove the Ombudsperson and/or his Deputy Ombudsperson(s) from office where the Special Representative of the Secretary-General considers that one or more of the following grounds have been established in respect of the Ombudsperson and/or the Deputy Ombudsperson(s):

(a) physical or mental disability affecting his or her capacity to perform his or her functions;

(b) final conviction for a criminal offence punishable by a term of imprisonment;

(c) failure in the execution of his or her functions; or

(d) having been placed, by personal conduct or otherwise, in a position incompatible with the due exercise of his or her functions.

8.3 The Ombudsperson may request that the Special Representative of the Secretary-General remove one or more of the Deputy Ombudspersons from office on one or more of the above grounds. The Special Representative of the Secretary-General shall make the final decision as to the removal.

8.4 In the event of removal from office of the Ombudsperson or Deputy Ombudsperson(s) pursuant to section 8.2, or in the event of the death or resignation of the Ombudsperson and/or Deputy Ombudsperson(s), the Special Representative of the Secretary-General shall appoint a new Ombudsperson and/or Deputy Ombudsperson(s) as soon as possible in accordance with the present regulation.

#### Section 9 Staff

Staff of the Ombudsperson institution shall be local and international persons of high standards of competence, efficiency and integrity.

#### Section 10 Rules of procedure

Following consultation with the Deputy Ombudspersons, the Ombudsperson shall adopt Rules of Procedure for the Ombudsperson institution.

Section 11  
Confidentiality

The Ombudsperson institution shall maintain the confidentiality of all confidential information and data obtained, with special attention being given to the safety of complainants and witnesses.

Section 12  
Cooperation

12.1 All persons and entities subject to the jurisdiction of the Ombudsperson are obliged to provide the Ombudsperson with preferential assistance.

12.2 The Ombudsperson may cooperate and coordinate with other international Ombudspersons and institutions dealing with human rights protection.

Section 13  
Privileges and immunities

13.1 The Ombudsperson, the international Deputy Ombudsperson(s), local Deputy Ombudspersons and international and local staff of the Ombudsperson institution shall enjoy immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity. Such immunity shall continue to be accorded even after they cease their employment with the Ombudsperson institution. The Ombudsperson and his or her Deputy Ombudspersons shall also be accorded other facilities necessary for the independent exercise of their functions.

13.2 The Ombudsperson, the international Deputy Ombudsperson(s) and international staff of the Ombudsperson institution shall be accorded the privileges and immunities of officials of the United Nations, as provided in Article V of the Convention on the Privileges and Immunities of the United Nations. Local Deputy Ombudspersons and locally recruited staff shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in Sections 18(a), (b) and (c) of the above-mentioned Convention.

13.3 Nothing in the present regulation shall be construed as a derogation of the privileges and immunities accorded to UNMIK and its officials under the above-mentioned Convention.

#### Section 14

##### Inviolability and immunity of premises, communications, archives, files and documents

14.1 The premises of the Ombudsperson shall be inviolable. The competent authorities shall take whatever action necessary to ensure that the Ombudsperson shall not be dispossessed of all or any part of the premises without his or her express consent. The archives, files documents, communications, property, funds and assets of the Ombudsperson, wherever located and by whomsoever held, shall be inviolable and immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.

14.2 The Secretary-General of the United Nations shall be the only authority to waive the above inviolability and immunity.

#### Section 15

##### Offices and facilities of the Ombudsperson

15.1 The Ombudsperson institution shall have its headquarters in Pristina. It shall have regional offices as necessary.

15.2 Subject to section 18 of the present regulation, the Ombudsperson institution shall be provided with appropriate facilities.

#### Section 16

##### Working languages

The working languages of the Ombudsperson institution shall be English, Albanian and Serbian.

#### Section 17

##### Reports

17.1 The Ombudsperson shall provide an annual report to the Special Representative of the Secretary-General and make his or her findings public.

17.2 A special report may also be released whenever the Ombudsperson deems it appropriate.

#### Section 18

##### Financing

For the year 2000, the Ombudsperson institution shall be funded by international donors. In subsequent fiscal years, the Ombudsperson may request funds from international donors and/or the Kosovo Consolidated Budget for the operation of the institution.



Section 19  
Period of implementation

The Ombudsperson institution shall exercise its functions and be open to the public no later than six (6) months after the appointment of the Ombudsperson.

Section 20  
Continuing Operation

The responsibility for the continuing operation of the Ombudsperson institution may be transferred to the elected authorities in Kosovo, once established.

Section 21  
Applicable Law

The present regulation supersedes any provision in the applicable law relating to the establishment or operation of an Ombudsperson institution which is inconsistent with it.

Section 22  
Entry into Force

The present regulation shall enter into force on 30 June 2000.

Bernard Kouchner  
Special Representative of the Secretary-General