



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

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

**DRAFT LAW**  
**ON THE PEOPLE'S ADVOCATE**

**SUBMITTED BY THE ASSEMBLY OF KOSOVO**

The Assembly of Kosovo,

Pursuant to Chapter 9.1.26 (a) and Chapter 10 of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001, as amended), hereby adopts

## **THE LAW ON PEOPLE'S ADVOCATE**

### **CHAPTER I**

#### **I. GENERAL PROVISIONS**

##### **Article 1**

The objective of the Law on People's Advocate (hereinafter "the Law") is protection of human rights and fundamental freedoms, private and legal persons, from public administration bodies

##### **Article 2**

2.1 The People's Advocate shall operate as an independent institution, lead by the principles of impartiality, confidentiality and professionalism, and exercises its activities to protect human rights and freedoms, as foreseen by the Constitution and the law.

2.2 The provisions of this Law shall be implemented to protect the rights, freedoms and interests of all persons in Kosovo and out of Kosovo from unlawful actions or inactions of the public administration bodies in Kosovo.

2.3 Special units for protection of specific categories of human rights shall function within the People's Advocate Institution. Special Units are:

- a) Unit against all types of discrimination;
- b) Unit for Children Rights;
- c) Unit for Gender Equality

2.4. The People's Advocate, as needed, can establish other special units as well within its own institution.

##### **Article 3**

The working languages of the People's Advocate Institution shall be the official languages as set forth by the Constitution.

##### **Article 4**

#### **The criteria to be appointed a People's Advocate**

4.1 Any person that fulfills the following criteria may be appointed as a People's Advocate:

- a) to be a citizen of Kosovo;
- b) to have notable knowledge in the field of human rights and freedoms and the law;
- c) to be distinguished for professional skills and to have a high ethical-moral character;
- d) to not have been convicted of a criminal offence;
- e) to not hold a political post.

## CHAPTER II

### Article 5

#### **Composition of the People's Advocate Institution**

5.1 The People's Advocate Institution shall be composed of:

- a) the People's Advocate
- b) the Principal Deputy People's Advocate
- c) three (3) Deputy People's Advocate, and
- d) professionally competent staff.

### Article 6

#### **Appointment of the People's Advocate, principal deputy, and his deputies**

6.1. The People's Advocate, principal deputy, and his deputies shall be appointed by the Assembly of Kosovo, with two thirds of votes of the Members of the Assembly, for a 5 (five) year term of office, with the possibility of an renewal for another 5 (five) years after the end of the first term of office.

6.2. If the People's Advocate, principal deputy, and his deputies is not appointed after the first round of voting in accordance with paragraph 1 of this Article, then the Lawyer's Advocate shall be appointed in the second round with the majority of votes of the members of the Assembly.

### Article 7

7.1 The procedure to appoint the People's Advocate and his/her Principal Deputy, and there of their deputies shall start no later then 3 (three) months before the expiry of their terms of office.

7.2 Nomination of candidates for the People's Advocate, his/her principal deputy, and their deputies is done through a public vacancy announcement.

7.3 The procedure for the nomination of possible candidates for the post of People's Advocate and his/her Principal Deputy shall be determined by the Office of the President of Kosovo, through special sub normative act.

7.4 The nomination of the People's Advocate and his/her Principal Deputy shall be done by the President of Kosovo, after the completion of the procedures set forth in paragraph 1 and 2 of this Article.

7.5 The Assembly of Kosovo shall decide on the appointment of the People's Advocate and his/her Principal Deputy within 45 days from the date when the President of Kosovo submits the nominations in accordance with paragraph 3 of this Article.

### Article 8

8.1. The People's Advocate nominates (three) candidates for his/her Deputies to the Assembly of Kosovo, who shall be persons of high moral character, impartiality and integrity, who possess a demonstrated commitment to human rights. The Assembly of Kosovo shall decide on the appointment of the nominated candidates in accordance with Article 6 of this Law, no later then 45 days from the date of the nomination.

8.2 The term of office of the 3 (three) Deputies of the People's Advocate shall be 5 (five) years, with the possibility of only one more renewal that after the end of the first term of office.

## Article 9

Ethnic and gender representation must be ensured during the nomination and appointment procedures for the People's Advocate, Principal Deputy and other Deputies.

## Article 10

10.1 Upon appointment, the People's Advocate, Principal Deputy and other Deputies shall subscribe to a solemn oath before the Assembly of Kosovo.

10.2 The form of the oath shall be as follows: "I solemnly declare and promise to faithfully discharge the duties and functions entrusted to me by law to protect and promote human rights and fundamental freedoms in Kosovo, to perform my duties thoroughly and impartially, while respecting the principles of equality and good governance."

## Article 11

The positions of the People's Advocate, Principal Deputy and other Deputies, and of the staff of the People's Advocate, are incompatible with the exercise or holding of any political, public or private professional activity or office.

## Article 12

12.1 Upon a motion of one-third of the Members of the Assembly of Kosovo, The People's Advocate, Principal Deputy and other Deputies may be removed from office by a vote having the support of two-thirds of the Members of the Assembly of Kosovo, in the following cases:

- a) when he or she was found guilty of committing a criminal offence and sentenced to prison;
- b) when physical or mental incapacity affect his or her ability to perform his or her functions, and
- c) when he or she fails to perform his or her official duties, or when his or her conduct is in conflict with his or her functions in accordance with this Law.

12.2 The People's Advocate, Principal Deputy and other Deputies may be suspended in the same procedure, pending a final decision, if there are reasonable grounds for removal from office as set forth in paragraph 1 of this Article.

12.3 The People's Advocate may request that the Assembly of Kosovo remove from office or temporarily suspend the Principal Deputy and one or more of other Deputies on one or more of the grounds set out in paragraph 2 of the present article.

12.4 In case of absence, death, permanent or temporary disability, the People's Advocate shall be replaced by the Principal Deputy. If the Principal Deputy is unable to perform this function, then the People's Advocate shall be replaced by the Deputy in turn selected by the Assembly of Kosovo.

12.5 In case of the end of term in office, the People's Advocate shall exercise his/her function until it's taken over by the new candidate.

## Article 13

13.1 The People's Advocate, the Principal Deputy and other Deputies are not held accountable for opinions and recommendations they give during the exercise of their functions.

13.2 During the exercise of their functions, the People's Advocate, the Principal Deputy and other Deputies can not be held in detention in a criminal procedure initiated against them without a prior approval of the Assembly of Kosovo.

#### Article 14

14.1 After the end of his/her term in office, the People's Advocate may return to his/her previous post, job or other work which must be in accordance with his/her professional and educational skills, in public institutions.

14.2 Paragraph 1 of this Article shall be equally applied for the Principal Deputy and other Deputies.

#### Article 15

15.1 The People's Advocate, whose term in office has ended or who for different reasons can not continue to work in his previous working post or can not find another suitable job, nor has he/she fulfilled the general conditions for pension, shall be entitled to remuneration at the same level as he/she would be receiving if he/she was working until he/she starts to work or until he/she fulfills the general conditions for pension, but not longer than one year after the end of the term in office.

15.2 Paragraph 1 of this Article shall be equally applied for the Principal Deputy and other Deputies.

### **CHAPTER III**

#### **Competencies and responsibilities of the People's Advocate**

#### Article 16

16.1 The People's Advocate shall have jurisdiction to receive and investigate complaints from any citizen 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.

16.2 The jurisdiction of the People's Advocate shall extend to the territory of Kosovo. In exercising its functions in respect of cases occurring within the territory of Kosovo, the People's Advocate may offer its services to habitual residents of Kosovo who are temporarily outside the territory of Kosovo.

16.3 The People's Advocate shall have jurisdiction over cases which occur after the entry into force of the present Law and cases arising from facts which occurred prior to this date where these facts give rise to a continuing violation of one or more international human rights standard(s) or constitute a continuing abuse of authority.

16.4 The People's Advocate may exercise its competencies, inter alia, through reconciliation, mediation and conciliation.

16.5 The People's Advocate may provide advice and make recommendations to any natural or legal person concerning the compatibility of domestic laws and regulations with recognized international human rights standards.

16.6 The People's Advocate shall have the competence to advise and make recommendations to the Kosovo Institutions on their programs and policies in order to ensure the protection and promotion of human rights in Kosovo.

16.7 The People's Advocate shall have the competence to conduct investigations, either in response to a complaint made under article 16.1 or on his/her own initiative.

16.8 The services offered by the People's Advocate shall be free of charge.

## Article 17

17.1 The People's Advocate shall have the following responsibilities:

- a) to investigate, report on and attempt to resolve any situation of violation of human rights
- b) to draw attention to situations in any part of Kosovo where Kosovo Institutions violate human rights;
- c) to combat all forms of discrimination, in the same time raise the awareness of people for human rights;
- d) to advise the Government, the Assembly of Kosovo and any other competent Kosovo Institution on any matters concerning the promotion and protection of human rights;
- e) to recommend the adoption of new Assembly Laws, the amendment of Assembly Laws in force and the adoption or amendment of administrative measures by Kosovo Institutions;
- f) acting in conformity with the Constitutional Framework, to cooperate with UNMIK, the United Nations Office of the High Commissioner for Human Rights and any other United Nations body, the Council of Europe and other regional institutions and institutions outside Kosovo that are competent in the areas of protection and promotion of human rights
- g) to initiate proceedings before the Special Chamber of the Supreme Court of Kosovo for evaluation of the lawfulness and constitutionality of any law or subordinate legal acts.

17.6 The People's Advocate shall take all necessary steps and actions to address complaints made under article 16.1, 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 article 16.1, the competent authorities shall be required to respond urgently.

17.7 Where, during an investigation, the People's Advocate finds that the execution of an administrative decision may result in irreparable harm to any natural or legal person, the People's Advocate may recommend that the competent authority suspend the execution of the decision at issue.

17.8 The People's Advocate 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 People's Advocate by providing relevant information, documents and files.

17.9 The legal provisions on confidentiality of obtained information shall be obligatory for the People's Advocate, Deputies and the entire staff.

17.10 Officials of the People's Advocate may at any time enter and inspect any place where persons are deprived of their liberty or other place with limited freedom of movement and may be present at meetings or hearings involving such persons. Officials of the People's Advocate may also conduct private meetings with such persons without the presence of the officials of the relevant institution.

17.11 The People's Advocate or his/her authorized representative may at any time enter and inspect the official premises of any public authority exercising public authorizations.

## Article 18

The People's Advocate shall not intervene in cases in which there is a pending court procedure or other legal procedure, except in cases involving an unjustifiable length of proceedings or evident abuse of authority.

## CHAPTER IV

### Procedure

#### Article 19

19.1 Any person who believes his/her human rights and fundamental freedoms have been violated by a law, action or abuse of authority by a state body, local self-government body or another body entrusted with public authority, may submit a request to the People's Advocate to initiate a procedure in his/her case.

19.2 The People's Advocate may also initiate a procedure on his/her own initiative.

19.3 If the People's Advocate must initiate a procedure upon request of a third party on behalf of the injured person, then the approval of the injured person shall be required for the initiation of the procedure.

19.4. In cases when the claim is pressed on behalf of disabled people or juveniles, the approval of the legal representative is required.

#### Article 20

20.1 Every request submitted to the People's Advocate shall be signed and shall include the personal information of the applicant, as well as all the circumstances, facts and evidence on which this request is based. The applicant may state if any legal remedies were applied or not, and which of these legal remedies were applied.

20.2 Every complaint to initiate the procedure (hereinafter "complaint"), shall, as a rule, be submitted in writing. The complainant may file a complaint with the help of a People's Advocate official.

20.3 Inmates have the right to press claim to People's Advocate in a closed envelope, to receive visits of representatives of the People's Advocate without the presence of the officials where they are detained or serve their sentences.

#### Article 21

21.1. After receiving a complaint, the People's Advocate shall examine it and based on this examination shall decide:

- a) to grant the case a quick reaction treatment;
- b) to start full investigation;
- c) to declare the complaint inadmissible as being outside the jurisdiction of the People's Advocate in accordance with this Law; as being filed outside the time limit, being anonymous or insulting, or involving an abuse of the possibility to file a complaint;
- d) To reject the complaint.

21.2. In all of the above cases, the People's Advocate shall inform the relevant party within 30 (thirty) days from the date the complaint was received.

21.3 Decision of the People's Advocate to reject or not deny the request-claim is firm.

#### Article 22

The People's Advocate shall decide on granting a case a "quick reaction" treatment, pursuant to Article 21 of this Law, particularly in cases when the actual state of affairs and the attitude of all parties involved are evident from the complaint itself and the documentation attached.

## Article 23

23.1 The People's Advocate shall reject the complaint particularly because of the following reasons:

- a) when it is clear from the available records and circumstances that the rights and fundamental freedoms were not violated nor has any abuse of authority occurred;
- b) when the complaint was not whole and not complete in accordance with the requirements of the People's Advocate;
- c) when the procedure for a case is pending before judicial bodies or other competent bodies, except in cases specified by this Law;
- d) when all regular and extraordinary legal remedies were not exhausted, except if he/she deems it unnecessary for the applicant to initiate or continue the procedure, or if he/she considers that the persons have or can suffer an irreparable harm or in the meantime;
- h) when the request clearly reveals a case of lesser importance in which no results can be expected even after conducting the investigation.

## Article 24

The People's Advocate shall not initiate a procedure if more than 1 (one) year has passed from the violation of the right or the last decision of the relevant competent authority, except if he/she considers that the complainant was late for justifiable reasons or if the case is so important that he/she has to initiate the procedure regardless of the period of time that has passed.

## Article 25

25.1 When the People's Advocate decides to open an investigation (Article 21), then he/she shall communicate his/her decision to the complainant and the body against which the complaint was submitted, as well as ask for all necessary clarifications and additional information.

25.2 The People's Advocate shall determine a deadline within which the body must provide the requested clarifications and additional information in compliance with the preceding paragraph. This deadline shall not be shorter than 8 (eight) days nor longer than 30 (thirty) days. When the body is not able to provide the clarifications and additional information requested by the People's Advocate, then it has to immediately provide the reasons in written why this request was not followed.

25.3 The People's Advocate may directly inform the highest level body about the delays from the preceding paragraph.

25.4 Rejecting or ignoring of the requests of the People's Advocate shall be considered an obstruction of the work of the People's Advocate.

25.5 The People's Advocate may report this action in a special report before the competent working group of the Assembly of Kosovo or the Assembly of Kosovo itself, or may make these facts public.

## Article 26

A refusal of a civil servant, post holder or public authority to cooperate with the People's Advocate gives the People's Advocate the right to request from the competent body to initiate a disciplinary procedure for determining the responsibility of the civil service official, as well as other employees of other public authorities



#### Article 27

All state authority bodies are obliged to assist the People's Advocate in conducting his/her investigations and provide the necessary help in accordance with his/her requests.

#### Article 28

The People's Advocate may send a summon for an interview to any witness or expert regarding the case he/she is examining. The summoned person is obliged to respond to this summon.

28.2. The testimony of the witness is given under the oath.

#### Article 29

The People's Advocate will stop the investigation when he/she concludes that the case was resolved in some other way, or when the complainants does not cooperate during the investigation without a justifiable reason, or when the actions of the complainant show a clear lack of interest to pursue with the investigation.

#### Article 30

30.1 At the completion of the investigation, the People's Advocate shall take the following actions:

- a) explain to the complainant that his/her rights were not violated;
- b) make recommendations to take necessary actions to remedy the violated right to the body that has committed the violation and to the higher body
- c) may propose the initiation of a disciplinary procedure against the officials of the bodies which have committed the abuse of authority that lead to the injustice;
- d) recommend the prosecutor's office the initiate an investigation if there is are well-founded doubts that a criminal offence was committed, or to reinstate investigations that were suspended or put on hold
- e) in cases of violations of the human rights by the judiciary bodies, without interfering into the procedure conducted by the court, the People's Advocate will inform the competent body about these violations;
- f) recommend the injured parties to submit claims to the court.

30.2 The above cases do not exclude one another.

#### Article 31

The bodies to whom the People's Advocate has addressed a recommendation, request or interim measures request, must review the recommendation, request or interim measures request and provide a response within 30 (thirty) days from the date the recommendation, request or interim measures request was send. The response must include reasoned clarifications about the case in question, as well as the actions, inactions or measures that were taken by that body.

#### Article 32

If the People's Advocate does deems the responses or the measures that were taken by the body as insufficient, he/she has the right to proceed the matter to the higher competent body or the relevant Ministry, or submit a special report to the Assembly, while also recommending the concrete measures to remedy the violated right.

### Article 33

The People's Advocate may publicize special reports with his proposals also through the media about a violation committed by a body, if the latter has not responded properly to his/her recommendations and proposals after repeated requests to do so.

### Article 34

34.1 The People's Advocate shall submit his overall annual report to the Assembly no later than 30<sup>th</sup> of June of the following year.

34.2 The People's Advocate annual report is published by the People's Advocate.

### Article 35

The President of the Assembly, the Prime Minister and the Ministers based on the need and their estimations they can meet in person with the People's Advocate within 48 hours from the time such request is submitted.

## **CHAPTER IV**

### **Offices, facilities, staff and budget of the People's Advocate Institution**

### Article 36

36.1 The People's Advocate Institution shall have its headquarters in Prishtinë/Priština.

36.2 The People's Advocate may establish additional offices as necessary within the territory of Kosovo.

36.3 The People's Advocate shall be provided with appropriate premises and other related facilities in order to enable it to carry out its functions and responsibilities effectively.

36.4 The premises of the People's Advocate shall be inviolable.

### Article 37

37.1 The People's Advocate Institution shall issue its own Rules of Procedure.

37.2 The Rules of Procedure shall be published in Kosovo Official Gazette.

### Article 38

38.1 The level of salary of the People's Advocate shall be equivalent to that of the President of the Supreme Court of Kosovo.

38.2 The level of salary of the Principal Deputy People's Advocate shall be equivalent to that of a judge of the Supreme Court of Kosovo.

38.3 The level of salary of the other Deputies of the People's Advocate shall be equivalent to that of the President of a District Court in Kosovo.

#### Article 39

Staff of the People's Advocate Institution shall be selected from among habitual residents of Kosovo of high standards of competence, efficiency and integrity, while taking into consideration the need to guarantee the representation of ethnic diversity as well as the need for gender equality. The People's Advocate Institution staff shall be guaranteed a personal income of a level that ensures impartiality, sustainability and professionalism of the Institution.

#### Article 40

40.1 The People's Advocate in agreement with the employer may appoint other advisors and experts employed in the civil service, as need calls, to serve him/her for a determined period of time.

40.2 The temporarily appointed advisors and experts have the right to reinstate to their previous functions and working posts.

#### Article 41

41.1 The People's Advocate Institution shall be financed from the Kosovo Consolidated Budget.

41.2 The budgetary means for the People's Advocate Institution shall be allocated by the Assembly of Kosovo in accordance with the proposals of the People's Advocate.

#### Article 42

The People's Advocate may receive supplemental donations from international donors, which shall be recorded in the annual accounts of the People's Advocate within the Kosovo Consolidated Budget. Donor resources that are made available and accepted shall not affect the independence of the People's Advocate or its entitlement to funds from the Kosovo Consolidated Budget.

## **CHAPTER V**

### **Transitional and final provisions**

#### Article 43

The current mandate of the People's Advocate, Principal Deputy, and other deputies shall continue until the expiry of their mandate.

#### Article 44

Within 3 (three) month from his/her appointment, the People's Advocate will draft and adopt the Rules of Procedure, in cooperation with his Deputies.

#### Article 45

Entering into force of this Law will abolish UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo, promulgated on 16 February 2006.

## Article 46

46.1 The People's Advocate, and Principal Deputy People's Advocate,, who were appointed according to UNMIK Regulation 2006/06, will maintain their term of office for a period of four (4) years from the date of appointment under that Regulation. Their appointment may be renewed for a further term according to the present Law."

46.2 The three (3) Deputy **Ombudspersons**, who were appointed according to UNMIK Regulation 2006/06, will maintain their term of office for a period of three (3) years from the date of appointment under that Regulation. Their appointment may be renewed for a further term according to the present Law.

## Article 47

The present Law shall enter into force after being adopted by the Assembly of Kosovo and promulgated by the Special Representative of the Secretary-General.