

Questionnaire on National Human Rights Institutions and human rights defenders

It would be greatly appreciated if responses were brief. They may be submitted in bullet-point form if preferred.

Please note that responses to the questionnaire will be published on the website of the Special Rapporteur and will be used to inform her next report to the UN Human Rights Council in March 2013. If requested, the response from your Institution will remain confidential

1a. *Please provide a brief overview of the legislative framework adopted to establish a National Human Rights Institution (hereafter 'the Institution') in your country. Please cite the names of any such laws or regulations in full.*

- The Ombudsperson Institution in Kosovo (OIK) was established in 2000 by UNMIK Regulation no. 2000/38, which provided the institution with a mandate to investigate complaints against UNMIK and local public administration. In February 2006 was promulgated the UNMIK Regulation 2006/6, which superseded the Regulation 2000/38. According to this Regulation, the OIK had a mandate to investigate complaints filed against the local authorities or other bodies of the former Provisional Institutions of Self-Government of Kosovo (PISG), but it had no more mandate to investigate the complains against the international administrative bodies in Kosovo.
- UNMIK Regulation 2006/06 also provided an organizational structure, which reflected continuous process of transferring the OIK to the domestic authorities.
- In 2007 was adopted the new Regulation no. 2007/15 for Amendment of UNMIK Regulation no.2006/6 on the OIK. By this regulation were made the following changes: Denomination of the Institution (from “The Institution of the Ombudsperson” into “The Ombudsperson Institution of Kosovo”); the internal structure of the institution, as well as the mandate of the Ombudsperson and its Deputies. The Constitution of the Republic of Kosovo adopted on 15 June 2008 provides the OIK as a constitutional category with a mandate to monitor, defend and protect the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.
- Whereas, on 22 July 2010 the Law on the Ombudsperson was adopted which repealed the UNMIK Regulation no. 2000/38 on the Establishment of the OIK, dated 30 June 2000, the UNMIK Regulation no. 2006/6 on the OIK, dated 16 February 2006 and the UNMIK Regulation 2007/15 for Amendment of UNMIK Regulation 2006/6 on the OIK, dated 19 March 2007, as well as all other provisions which fall in contradiction with this law.

1b. Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principle¹.

- The Constitution of the Republic of Kosovo stipulates that “*Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo*”¹. Whereas, the Article 22 of this Constitution clarifies the obligation and requests the authorities to “*directly implement*” the human rights and freedoms foreseen by international instruments and standards and “*in the case of collision*”, the international instruments and standards has priority over the “*legal provisions and other legal acts adopted by the public institutions*” in the Republic of Kosovo. These laws and regulations are in compliance with the Paris Principles as well.

1c. Please indicate the current accreditation status of the Institution with the International Coordination Committee (ICC) and what measures, if any, have been taken to implement the recommendations highlighted at the most recent ICC Sub Committee on Accreditation meeting with a view to strengthening NHRI's compliance with the Paris Principles.

- The OIK established a very good cooperation with the International Coordinating Committee of National Human Rights Institutions (ICC). Currently, the Ombudsperson institution is only an observer institution due to the political situation. However, OIK has been continuously invited and participated in annual meetings and conferences that has been organized from the ICC and European Regional Group of NHRIs, because it is very important to us to be updated with the information of current developments regarding the protection and promotion of human rights and also to expand our cooperation globally.

2a. Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.

- The Constitution of the Republic of Kosovo, which was adopted in 2008, stipulates the Ombudsperson Institution of Kosovo as an independent institution whose role is to monitor and protect the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities. (Article 132 paragraph 1 of the Constitution). Based in the role and competencies given by the Constitution and laws, the Ombudsperson Institution of Kosovo is fully in compliance with the article 3 of the Paris Principles which lists all the responsibilities that a national institution shall have in order to be in accordance with them.

2b. Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations.

- The OIK based on its constitutional and legal mandate receives complaints from any person who believes that his rights and freedoms are violated by any Law, action or

¹ Constitution of the Republic of Kosovo, article 21.1, www.kushtetutakosoves.info

inaction, mismanagement of public authority bodies, other bodies and organizations exercising public authorities for their account.

- According to the Law No.03/L – 195 on the Ombudsperson has the competences to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international standards of human rights and international conventions, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority.

2c. If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/or the military are permitted and how they are dealt with.

- The OIK is an independent institution that has the jurisdiction over the monitoring, protection and promotion of human rights and fundamental freedoms. It has the jurisdiction over all public authorities and bodies that exercise public authority in the Republic of Kosovo. The Article 16 of the Law No.03/L – 195 on the Ombudsperson contains three paragraphs, namely paragraphs 6, 7, 8, which set forth responsibilities of the OIK.
- The Article 18 of the Law Law No.03/L – 195 on the Ombudsperson sets forth the way of submitting the complaint. According to the Article 18 of the aforementioned law any complaint submitted to the Ombudsperson should be signed and must contain personal data of the submitter of the complaint and should contain all the circumstances, facts and evidences on which the appeal is based. Submitter of the complaint may declare whether legal remedies are exercised or not, and if so which of these remedies are applied. The paragraph 2 of the Article 18 of the Law on the Ombudsperson states that any appeal for initiation of the procedure, as a rule, is submitted in writing. The request for initiation of the procedure may be submitted even verbally, in case it cannot be made in writing.
- The Article 19 of the Law on the Ombudsperson sets forth the procedure after receiving the complaint. According to this Article the Ombudsperson after receiving the complaint within thirty (30) days decides for the admissibility.
- According to the Article 30, paragraph 4 of the Rules of Procedure of the Ombudsperson Institution if the complaint is declared admissible within the aforementioned deadline, the Ombudsperson shall forward the decision on admissibility to the complaining party, as well as to the body against which the complaint is filed.
- Once the admissibility has been verified, the Ombudsperson will determine which type of action has to be taken. Depending on the nature of the case, she/he may decide to intervene at one or more authorities concerned, to conduct further investigations or to take other forms of action as necessary.

2d. In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.

- OIK has mandate to conduct visits to detention facilities. Therefore, a Memorandum of Agreement was signed between the Ombudsperson Institution, Kosovo Rehabilitation Centre for Torture Victims and the Council for Defense of the Human Rights and Freedoms which marked the initiation of establishing a transparent and sustainable mechanism for monitoring the places where the persons deprived of their liberty are held and will work on establishing a National Mechanism for Prevention of Torture (NPM).
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3a. Please indicate what mechanisms, if any, are in place within the Institution to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases).

- The OIK does not have any such mechanisms to ensure that human rights defenders at risk are protected.

3b. Please indicate whether any obstacles or challenges exist with regard to the effective protection of human rights defenders through these mechanisms, and how the Institution addresses them.

4a. Please describe the working relationship between the Institution and civil society, including human rights defenders, in accordance with the Paris Principles.

- The Ombudsperson considers as a very important issue the cooperation with the civil society for providing an effective system for protection and promotion of human rights. Such cooperation can help the OIK to accomplish its mission. The cooperation with the civil society impacts positively the awareness rising on human rights and participation of vulnerable groups of society in the human rights system. Hence, many activities are organized in cooperation with civil society organizations, including roundtable meetings, conferences and also initiation of matters in Constitutional Court for different issues.

4b. Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with civil society and/or human rights defenders and how the Institution seeks to address them.

- There is not any problem in cooperation and interaction of civil society until now.
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5a. Please indicate whether any member of the Institution's staff has ever been the victim of threats, or other kind of harassment, as a result of work carried out on behalf of the organisation.

- There is no such case until now.

5b. Please specify what mechanisms, if any, are in place to protect Institution members investigating human rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect Institution members.

- The OIK as a constitutional category is independent in exercising its mandate and the staffing operates according to the Constitution and Law and report only to the Assembly of the Republic of Kosovo.

5c. Please indicate whether the Institution has ever been subjected to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subject to interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principle.

- No, never. There has been no visit by representatives from the police or state authorities that

would have been considered as an interference or threat to the institution's independence.

6a. Please indicate the main sources of funding for the Institution.

- The OIK is financed from the budget of the Republic of Kosovo. Nonetheless, the Law on the Ombudsperson, Article 35 also sets forth that "*Ombudsperson Institution may accept additional donations from local and international donors, for which the Assembly of the Republic of Kosovo is notified and which do not affect the financial independence of the Ombudsperson Institution and which are not in contrary to the Law, and that do not affect the independence of the Ombudsperson Institution or its rights on the Budget of the Republic of Kosovo.*". In the year 2011, our institution received some donations, 10% of the entire budget, from UNICEF, Embassy of Norway, Embassy of Belgium and Embassy of Turkey in Kosovo, which were mostly dedicated for capacity building for the OIK's employees.

6b. In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organization and how this impacts on the work of the Institution.

- *Based on the on the Law on the Ombudsperson, the Institution manages independently with its own budget, therefore nobody else has the right to approve or interfere in the expenditure process of the funds that are allocated for the Ombudsperson Institution of Kosovo.*
- The only limitation is the number of staff which is conditioned by the state budget. The staff must reflect the principle of pluralism, multi ethnicity and gender equality.

7a. Please describe the procedures in place relating to the selection and appointment of members of the governing body.

- The legal base for the appointment of the Ombudsperson is the Constitution of the Republic of Kosovo and the Law on the Ombudsperson. The Constitution of the Republic of Kosovo in its Article 134 sets forth the qualification, election and dismissal of the Ombudsperson.
- According to paragraph 1 of the above-mentioned Article the Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term.
- Article 19 of the Law on the Ombudsperson of Kosovo sets forth the procedure for the election of the Ombudsperson. According to paragraph 1 of the Law on the Ombudsperson, The Ombudsperson is elected by the Assembly of the Republic of Kosovo, with majority of votes of all its deputies for a term of five (5) years, without the right of re-election.

- While, paragraph 2 of the Law on the Ombudsperson explains further procedures for the election of the Ombudsperson. According to this paragraph The Ombudsperson should be elected within thirty (30) days from the day of proposal of candidates. If this deadline is not reached, the Assembly of the Republic of Kosovo votes for the election of the Ombudsperson in each plenary session for thirty (30) other days. If the Ombudsperson is not nominated within sixty (60) days, the respective Committee of the Assembly will again publish competition for the Ombudsperson.

7b. Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.

- The Ombudsperson reports to the Assembly of the Republic of Kosovo. The Assembly, therefore, elects and may remove from the office The Ombudsperson and his/her Deputies in accordance with the Constitution and the Law on the Ombudsperson. According to Article 134 paragraph 5 of the Constitution of the Republic of Kosovo the Ombudsperson may be dismissed only upon the request of more than one third (1/3) of all deputies of the Assembly and upon a vote of two thirds (2/3) majority of all its deputies.
- The Article 134 paragraph 4 of the Constitution of the Republic of Kosovo sets forth the immunity of the Ombudsperson. This Article states the following “The Ombudsperson shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of responsibilities of the Ombudsperson”.
- The Article 11 paragraph 1 of the Law on the Ombudsperson states that the Ombudsperson and his deputies enjoy immunity from prosecution, civil Lawsuit and dismissal for activities or decisions that are within the scope of responsibilities of the Ombudsperson Institution.