



Office of the Ombudsperson Complaints Procedure

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1. Preamble

- 1.1. In accordance with Amendment No. 24 of the Constitution of Kosovo, Article 162(11), and Article 34(9) of the Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, which establish the existence of an Ombudsperson within the Kosovo Specialist Chambers who has exclusive responsibility for the Specialist Chambers and Specialist Prosecutor's Office;
- 1.2. In light of Rules 28 and 29 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers which entered into force on 5 July 2017 and set out the role and functions of the Ombudsperson¹;
- 1.3. Recalling the independence of the Ombudsperson in the exercise of his functions;
- 1.4. The Ombudsperson of the Kosovo Specialist Chambers issues the following Complaints Procedure.

2. Jurisdiction

- 2.1. The Ombudsperson acts independently to monitor, defend and protect the fundamental human rights and freedoms enshrined in Chapter II of the Constitution of Kosovo, of individuals interacting with the Specialist Chambers and Specialist Prosecutor's Office.
- 2.2. The Ombudsperson shall have jurisdiction over the functions of the Specialist Chambers and Specialist Prosecutor's Office wherever these functions are carried out.

3. Scope

- 3.1. The Complaints Procedure shall apply to all individuals seeking to file a complaint with the Ombudsperson's Office as well as to their representatives, as appropriate.
- 3.2. This Complaints Procedure shall also apply to the body concerned, namely, Chambers, the Registry or the Specialist Prosecutor's Office, as appropriate.

4. Definitions

- 4.1. For the purposes of the Complaints Procedure:
 - 4.1.1. "*Body concerned*" is the specific body or bodies that are the subject of a particular complaint, namely, Chambers, the Registry and/or the Specialist Prosecutor's Office, as appropriate;
 - 4.1.2. "*Chambers*" is the organ of the Specialist Chambers as set out in Article 24(1)(a) of the Law on Specialist Chambers and Specialist Prosecutor's Office, Law No. 05/L-053;
 - 4.1.3. "*Communications with the body concerned*" is the chain of communication between the Ombudsperson's Office and the body concerned which will always be through the

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers adopted on 17 March 2017, revised on 29 May 2017, amended on 29 and 30 April 2020.



Principal of the aforementioned body, namely, the President of the Specialist Chambers, the Registrar or the Specialist Prosecutor, as appropriate;

- 4.1.4. “*Complainant*” is a person who submits a complaint to the Ombudsperson alleging a violation of his or her fundamental rights and freedoms, as enshrined in Chapter II of the Constitution of Kosovo, by Chambers, the Registry or the Specialist Prosecutor’s Office;
- 4.1.5. “*Law*” is the Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No. 05/L-053;
- 4.1.6. “*Ombudsperson*” is the person appointed by the Appointing Authority in accordance with the provisions of Article 34(9) of the Law on Specialist Chambers and Special Prosecutor’s Office, Law No. 05/L-053, and Amendment No. 24 of the Constitution of Kosovo, Article 162(11);
- 4.1.7. “*Ombudsperson’s Office*” is the Ombudsperson or the staff of the Office;
- 4.1.8. “*Registry*” is the organ of the Specialist Chambers as set out in Article 24(1)(b) of the Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No. 05/L-053;
- 4.1.9. “*Representative*” is a person who is authorised by a signed Letter of Authority to submit a complaint on behalf of a person alleging a violation of his or her fundamental rights and freedoms, as enshrined in Chapter II of the Constitution of Kosovo, by Chambers, the Registry or the Specialist Prosecutor’s Office. A representative is also a person who represents a complainant during the course of an inquiry before the Ombudsperson’s Office;
- 4.1.10. “*Rules of Procedure and Evidence*” is the Rules of Procedure and Evidence before the Kosovo Specialist Chambers, which entered into force on 5 July 2017²;
- 4.1.11. “*Specialist Chambers*” is the Specialist Chambers, which includes Chambers and the Registry, as set out in Article 24(1) of the Law on Specialist Chambers and Special Prosecutor’s Office, Law No. 05/L-053; and
- 4.1.12. “*Specialist Prosecutor’s Office*” is the Specialist Prosecutor’s Office as set out in Article 35 of the Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No. 05/L-053.

5. Complaints

- 5.1. Any person falling under the terms of Rule 28(2) of the Rules of Procedure and Evidence may submit a complaint alleging a violation of his or her fundamental rights and freedoms, as enshrined in Chapter II of the Constitution of Kosovo, by Chambers, the Registry or the Specialist Prosecutor’s Office.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers adopted on 17 March 2017, revised on 29 May 2017, amended on 29 and 30 April 2020.



- 5.2. A complaint submitted by a representative shall be accompanied by a signed Letter of Authority certifying the consent of the complainant pursuant to Rule 29(2)(a) of the Rules of Procedure and Evidence.
- 5.3. Complaints shall be submitted in writing, either electronically or on paper. The Ombudsperson's Office shall take appropriate measures to assist persons with disabilities to exercise their right to submit a complaint.
- 5.4. A complaint shall be submitted using the Complaints Form available in the official languages on the website of the Specialist Chambers and the Specialist Prosecutor's Office (Albanian, Serbian and English).
- 5.5. A complaint submitted to the Ombudsperson's Office shall be in one of the official languages of the Specialist Chambers and Specialist Prosecutor's Office (Albanian, Serbian and English). Responses and all correspondence by the Ombudsperson's Office in respect of a complaint shall be in the same official language.
- 5.6. Complaints shall be submitted within six months of the alleged violation, unless good cause has been shown.
- 5.7. The Ombudsperson shall not intervene in cases or other legal proceedings before the Specialist Chambers, except in instances of unreasonable delay.

6. Content of complaints

- 6.1. A complaint shall set out:
 - 6.1.1. The name, address, date of birth and occupation of the complainant. A telephone number and email address shall be provided, if available;
 - 6.1.2. The name, address and occupation of the representative. A telephone number and email address shall be provided, if available;
 - 6.1.3. The body concerned against whom the complaint is being made, namely, Chambers, the Registry and/or the Specialist Prosecutor's Office, as appropriate;
 - 6.1.4. A statement of the matter which forms the object of the complaint and the time that the complainant became aware of the matter;
 - 6.1.5. A statement of the alleged violation and the remedy sought;
 - 6.1.6. Details of any attempt made by or on behalf of the complainant to contact any other body or institution concerning the object of the complaint, as well as the outcome of such an attempt, if applicable;
 - 6.1.7. Details of whether the object of the complaint has already been settled or is pending before a court or other institution;
 - 6.1.8. A statement indicating whether the complainant objects to having his or her name made public by the Ombudsperson during the examination of the complaint and reasons thereof; and



- 6.1.9. Any other information that may be relevant to the complaint.
- 6.2. The complainant shall provide all available documentary evidence in support of the complaint. The complainant shall submit only copies of original documents and retain the originals.
- 6.3. The complainant shall clearly identify any document or information that he or she considers confidential upon sending it to the Ombudsperson's Office. This shall not prevent the Ombudsperson from communicating the information to the body concerned if the Ombudsperson deems it necessary in accordance with Section 14.

7. Admissibility procedure

- 7.1. The Ombudsperson shall determine whether a complaint is admissible. At any time while procedures are pending, the Ombudsperson may request the complainant to provide further information or documents for the purpose of this determination.
- 7.2. The Ombudsperson may seek the views of the body concerned for the purpose of determining the admissibility of a complaint.
- 7.3. The complainant may submit a reply to the Ombudsperson following the response of the body concerned regarding the admissibility of his or her complaint.
- 7.4. A complaint shall be deemed inadmissible if:
- 7.4.1. It involves a case or other legal proceedings before the Specialist Chambers, other than those alleging unreasonable delay;
 - 7.4.2. It falls outside the Ombudsperson's jurisdiction;
 - 7.4.3. It has not been filed within six months of the alleged violation, unless good cause has been shown;
 - 7.4.4. It is incomplete and, following a request from the Ombudsperson, has not been completed;
 - 7.4.5. Other remedies have not been exhausted, except in cases of inactivity or immediate urgency, in order to avoid severe damage and irreparable prejudice;
 - 7.4.6. It is frivolous; and/or
 - 7.4.7. It is vexatious.
- 7.5. If a complaint is deemed inadmissible, the Ombudsperson shall issue a reasoned decision terminating the proceedings. The reasoned decision terminating the proceedings shall be communicated to the complainant as soon as practicable.

8. Request for re-examination of inadmissibility decisions

- 8.1. Where a new fact has been discovered which was not known to the complainant at the time when the inadmissibility decision was issued; could not have been discovered through the exercise of due diligence; and could have been a decisive factor in reaching the decision, the



complainant may request the Ombudsperson, within a reasonable time after he or she becomes aware of the fact, to re-examine the inadmissibility of the complaint.

- 8.2. The onus to show that the requirements of Section 8.1. have been met lies with the complainant.
- 8.3. If the Ombudsperson is satisfied that the conditions for re-examination of the inadmissibility of a complaint have been met, he shall communicate his decision to the complainant. A re-examination will be conducted in accordance with the provisions set out in Section 7 insofar as applicable.

9. Admissible complaints

- 9.1. Following a determination that a complaint is admissible, the Ombudsperson shall initiate an inquiry.
- 9.2. The Ombudsperson's Office shall notify the complainant and the body concerned of the initiation of an inquiry.
- 9.3. The Ombudsperson shall provide the body concerned with an opportunity to submit a response in relation to the allegations contained in the complaint. The Ombudsperson may also request the body concerned to address specific aspects of the allegations and specific issues arising from, or related to, the complaint in its response.
- 9.4. The body concerned shall submit a response, if any, within thirty (30) days of receipt of the details of the complaint. The Ombudsperson may extend this time limit upon good cause being shown by the body concerned.
- 9.5. The complainant may submit a reply to the Ombudsperson following the response of the body concerned regarding the merits of his or her complaint.
- 9.6. At any time during an inquiry, the Ombudsperson may request the body concerned to provide further information or material within its possession. The Ombudsperson may, after consulting with the body concerned, inspect relevant material or premises. The Ombudsperson may also request a meeting with the body concerned in order to clarify issues falling within the scope of the inquiry.
- 9.7. The Ombudsperson may, for the purpose of carrying out an inquiry, request the complainant or any third party to provide information or material or to clarify information or material already provided. The Ombudsperson may also request a meeting with the complainant in order to clarify issues falling within the scope of the inquiry.
- 9.8. The Ombudsperson may commission any studies or expert reports that he deems necessary and relevant to the inquiry.
- 9.9. Where the Ombudsperson becomes aware that matters which are the subject of an inquiry have become the subject of legal proceedings, he shall terminate the inquiry after consulting with the complainant and the body concerned.



10. Mediation and reconciliation

- 10.1. The Ombudsperson may, at any time during an inquiry, propose or facilitate mediation and reconciliation between the complainant and the body concerned in order to resolve a complaint with the aim of ensuring fairness and the respect of rights and freedoms enshrined in Chapter II of the Constitution of Kosovo. The Ombudsperson shall submit the proposal to the body concerned first.
- 10.2. The body concerned shall submit a response, if any, to the proposal of the Ombudsperson within thirty (30) days. The Ombudsperson may extend this time limit upon good cause being shown by the body concerned.
- 10.3. If the body concerned agrees to the proposal, the Ombudsperson shall provide the complainant with a copy of the proposal for mediation and reconciliation. The complainant shall submit a response, if any, to the Ombudsperson within thirty (30) days. The Ombudsperson may extend this time limit upon good cause being shown by the complainant.
- 10.4. The Ombudsperson shall arrange for mediation and reconciliation between the complainant and the body concerned if both are agreeable to the proposal.
- 10.5. Where the mediation or reconciliation is unsuccessful, the Ombudsperson shall continue with the inquiry.

11. Final report

- 11.1. Following the completion of an inquiry, the Ombudsperson shall issue a final report and submit it to the complainant, the body concerned and the President of the Specialist Chambers.
- 11.2. The Ombudsperson shall publish a final report pursuant to Rule 29(7) of the Rules of Procedure and Evidence.
- 11.3. The Ombudsperson may make recommendations to the body concerned in the final report, where appropriate.
- 11.4. The Ombudsperson may request information on implementation of the recommendations from the body concerned.

12. Request for re-examination of findings

- 12.1. Where a new fact has been discovered which was not known to the complainant or the body concerned at the time when the final report was issued; could not have been discovered through the exercise of due diligence; and could have been a decisive factor in the outcome of the inquiry, the complainant or the body concerned may request the Ombudsperson, within a reasonable time after he or she becomes aware of the fact, to re-examine the findings contained in the final report.
- 12.2. The onus to show that the requirements of Section 12.1. have been met lies with the complainant or the body concerned, as appropriate.



- 12.3. If the Ombudsperson is satisfied that the conditions for re-examination of the findings contained in the final report have been met, he shall communicate his decision to the complainant and to the body concerned. A re-examination will be conducted in accordance with the provisions set out in Section 9 insofar as applicable.

13. Data protection

- 13.1. The Ombudsperson's Office takes into account and fully respects the obligation to protect the human rights and fundamental freedoms as set out in international human rights law in the handling of complaints and inquiries.
- 13.2. In the handling of complaints and inquiries, the Ombudsperson's Office shall comply with policies and procedures of the Specialist Chambers regarding data protection and shall be guided by applicable European Union standards.

14. Confidentiality

- 14.1. The Ombudsperson's Office shall uphold the highest standards of confidentiality including fully conforming to policies and procedures of the Specialist Chambers regarding the confidentiality of documents, proceedings and other matters.
- 14.2. The Ombudsperson may grant a complainant's request to have his or her name withheld from the public if he or she provides clear reasoning for this request. Where the Ombudsperson grants this request, the identity of the complainant will not be disclosed to the public.
- 14.3. In the handling of complaints and inquiries, the Ombudsperson's Office may, for the purpose of protecting the legitimate interests of a complainant or a third party, treat specific information contained in a complaint or other document or material received as confidential.
- 14.4. As part of the inquiry procedure, having due regard to the fairness of the proceedings and the right of the body concerned to be fully informed of the allegation made against it, the Ombudsperson may decide to share complaints, supporting documents, materials and/or the identity of the complainant with the body concerned.
- 14.5. The Ombudsperson's Office will not publish or disclose any material that could affect the operational effectiveness of the Specialist Chambers or the Specialist Prosecutor's Office and will agree with the Specialist Chambers and Specialist Prosecutor's Office on protocols for secure communication and information management, where necessary and appropriate.

15. Matters not governed by the Complaints Procedure

- 15.1. Any matters not governed by this Complaints Procedure shall be settled by the Ombudsperson having due regard to his functions, the principle of fairness and the fundamental rights and freedoms enshrined in Chapter II of the Constitution of Kosovo.

16. Amendments

- 16.1. The Ombudsperson may amend the Complaints Procedure where such amendment is deemed necessary for the proper functioning of the Complaints Procedure.



16.2. Amendments to the Complaints Procedure shall have no effect on the validity of any complaint received before such amendments come into force.

16.3. No amendment shall operate to the prejudice of the rights of the complainant.

17. Entry into force

17.1. The Complaints Procedure shall enter into force on the day it is adopted by the Ombudsperson.

The Hague, Netherlands

DD MONTH 2018

Pietro Spera

Ombudsperson of the Kosovo Specialist Chambers