

REGULATION NO. 2001/18

UNMIK/REG/2001/18

25 August 2001

**ON THE ESTABLISHMENT OF A DETENTION REVIEW COMMISSION FOR
EXTRA-JUDICIAL DETENTIONS BASED ON EXECUTIVE ORDERS**

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,

Recalling that Security Council resolution 1244 (1999) was adopted under Chapter VII of the United Nations Charter,

Taking into account UNMIK Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo and UNMIK Regulation No. 2000/6 of 15 February 2000, as amended, on the Appointment and Removal from Office of International Judges and International Prosecutors,

Considering the principles set forth in the International Covenant for Civil and Political Rights and the European Convention for Human Rights,

Recognizing that there should be a mechanism for judicial review of detention, including extra-judicial detention,

Hereby promulgates the following:

Section 1

Establishment of a Detention Review Commission

A Detention Review Commission ("Commission") is established for the purpose of reviewing extra-judicial detentions based on executive orders.

Section 2

Composition of Detention Review Commission

2.1 The Commission shall be composed of three international members appointed by the Special Representative of the Secretary-General. At least two such members shall be judges in their respective home country.

2.2 The members of the Commission shall:

(a) Have a university degree in law or equivalent qualification for practising law in their national jurisdiction;

(b) Have a minimum of 5 years of service as a judge or comparable experience in the judicial field or as a practising lawyer;

(c) Be of high moral integrity;

- (d) Not have a criminal record; and
- (e) Have expertise in evaluating evidence, information or other materials of a sensitive nature.

Section 3

Oath or Solemn Declaration

Upon appointment, each member of the Commission and the Special Counsel referred to in Section 5 shall subscribe to the following declaration before the Special Representative of the Secretary-General:

“I do hereby solemnly declare that:

In carrying out the functions of my office, I shall uphold the law at all times and act in accordance with the highest standards of professionalism and the utmost respect for the dignity of my office and the duties with which I have been entrusted.

In carrying out the functions of my office, I shall uphold at all times the highest level of internationally recognised human rights standards, including those embodied in the principles of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

In carrying out the functions of my office, I shall ensure at all times that the enjoyment of these human rights shall be available to all persons in Kosovo without discrimination on any ground such as ethnicity, sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

I shall respect the confidentiality of the sensitive evidence, information and other materials disclosed to me in connection with the proceedings of the Commission.”

Section 4

Proceedings of the Detention Review Commission

4.1 The Commission shall review extra-judicial detentions based on executive orders. A review may be initiated by the Commission on its own motion or upon the petition of a person detained on the basis of such an executive order or of his or her defence counsel.

4.2 In reviewing an extra-judicial detention based on an executive order, the Commission shall convene a hearing so that the detained person or his or her defence counsel and other appropriate persons, including the public prosecutor, investigating judge or relevant law enforcement authorities, may be heard.

4.3 The proceedings of the Commission shall be in accordance with the present regulation and such rules of procedure as may be adopted by the Commission.

4.4 The Commission shall issue a decision on an extra-judicial detention based on an executive order as speedily as possible, but no later than seven (7) days from the initiation of the review by the Commission on its own motion or from the receipt of the petition of a person detained by such an executive order or his or her defence counsel.

Section 5

Special measures for sensitive evidence, information and other materials

5.1 The Commission shall order special measures for sensitive evidence, information and other materials if their disclosure to the detained persons or his or her defence counsel would jeopardize the security of investigations or military operations or the life or safety of an injured party, witness, informant or their family members.

5.2 The Commission shall, where possible, summarize sensitive evidence, information or other materials in a manner which would not jeopardize the security of investigations or military operations or the life or safety of an injured party, witness, informant or their family members and provide the detained person or his or her defence counsel with such summary.

5.3 If the sensitive evidence, information or other materials cannot be provided in a summary form without jeopardizing the security of investigations or military operations or the life or safety of an injured party, witness, informant or their family members, the Commission shall order that such evidence, information or other materials be withheld from the detained person and/or his or her defence counsel and reviewed in an *in camera* hearing. In such a case, the Commission shall appoint a Special Counsel, to represent the interests of the detained person in the *in camera* hearing. The Special Counsel may not communicate with the detained person or his defence counsel on any matter connected with the sensitive evidence, information or other materials, except to seek specific information from the detained person or his defence counsel, in accordance with the rules of procedure.

Section 6

Decision of the Detention Review Commission

6.1 The Commission shall determine that an extra-judicial detention based on an executive order is justified where the Commission considers that there are reasonable grounds to suspect that a person has committed a criminal act, and

- (a) His identity cannot be established or if other circumstances exist which suggest the strong possibility of flight; or
- (b) There are reasonable grounds to suspect that he will destroy the traces of the criminal act or particular circumstances indicate that he will hinder the investigation by influencing witnesses, accomplices or persons who are concealing the criminal act or traces thereof; or
- (c) Particular circumstances justify a fear that the criminal act will be repeated or an attempted criminal act will be completed or a threatened criminal act will be committed.

6.2 If the Commission decides that an extra-judicial detention based on an executive order is not justified, the executive order shall cease to have effect and the detained person shall be immediately released.

6.3 If the Commission decides that an extra-judicial detention based on an executive order is justified, the decision of the Commission shall be treated as a decision of a panel of the Supreme Court to order detention within the meaning of Article 197(2) of the applicable Law on Criminal Procedure. In such a case, the decision of the Commission shall specify the duration of detention, within the limits of Article 197(2).

Section 7

Finality of Decisions of the Detention Review Commission

Decisions of the Commission regarding special measures for sensitive evidence, information and other materials, as set forth in section 4, or regarding an extra-judicial detention based on an executive order, as set forth in section 5, shall not be subject to appeal.

Section 8

Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present regulation.

Section 9

Applicable Law

The present regulation shall supersede any provision in the applicable law that is inconsistent with it.

Section 10

Entry into Force

The present regulation shall enter into force on 25 August 2001 and shall remain in force for a period of three months.

Hans Haekkerup
Special Representative of the Secretary-General