

REGULATION NO. 2001/28

UNMIK/REG/2001/28

11 October 2001

**ON THE RIGHTS OF PERSONS ARRESTED BY LAW ENFORCEMENT
AUTHORITIES**

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,

Taking into account, *inter alia*, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, the Convention on the Rights of the Child, the Body of Principles for the Protection of All Persons under Any Form of Arrest and Detention and the Standard Minimum Rules for the Treatment of Prisoners,

For the purpose of establishing and protecting the rights of persons arrested by law enforcement authorities,

Hereby promulgates the following:

Section 1

Definitions

For the purposes of the present regulation:

(a) “Arrested person” means a person who has been taken into custody by law enforcement authorities pursuant to Articles 195 and 196 of the applicable law on criminal procedure; and

(b) “Law enforcement authority” means the Civilian Police of the United Nations Interim Administration Mission in Kosovo, also known as the United Nations International Police or as UNMIK Police, and the Kosovo Police Service.

Section 2

Rights of an Arrested Person

2.1 An arrested person has the following rights:

(a) To be informed about the reasons for the arrest in a language that he or she understands;

(b) To remain silent and not to answer any questions, except to give information about his or her identity;

(c) To be given the free assistance of an interpreter if he or she cannot understand or speak the language of the law enforcement authorities;

(d) To receive the assistance of defence counsel of his or her choice, and to have defence counsel provided if he or she cannot afford to pay for legal assistance;

(e) To notify or to require the law enforcement authorities to notify a family member or another appropriate person of his or her choice about the arrest;

(f) If he or she is a foreigner, to communicate orally or in writing with a liaison office, consular post, the diplomatic mission of the State of which he or she is a national or with the representative of the competent international organization, if he or she is a refugee or is otherwise under the protection of an intergovernmental organization; and

(g) To receive a medical examination or medical treatment.

2.2 An arrested person shall be informed:

(a) Orally of the rights set forth under Section 2.1 (b) - (f) immediately after arrest; and

(b) In writing of the rights set forth under the present regulation. The law enforcement authorities shall make the form of the written notification of rights available upon the entry into force of this regulation.

2.3 Whenever an arrested person is interviewed, he or she shall first be informed of the right to remain silent, as set forth in Section 2.1(b), and to receive the assistance of defence counsel, as set forth in section 2.1(d).

Section 3

Right to the Assistance of Defence Counsel

3.1 An arrested person has the right to the assistance of defence counsel of his or her choice upon arrest.

3.2 If an arrested person cannot afford to pay for legal assistance, he or she shall be provided with defence counsel, in accordance with the procedures set forth in an administrative direction.

3.3 An arrested person has the right to communicate confidentially with defence counsel orally and in writing. Communications between an arrested person and his or her defence counsel may be within sight but not within the hearing of the law enforcement authorities.

3.4 An arrested person has the right to the presence of defence counsel during all interviews by the law enforcement authorities. If defence counsel does not appear within two hours of being informed of the arrest, the law enforcement authorities shall arrange for alternative defence counsel for the arrested person. Thereafter, if the alternative defence counsel does not appear within one hour of being contacted by the law enforcement

authorities, the arrested person may be interviewed only if the law enforcement authorities determine that further delay would seriously impair the conduct of the investigation.

3.5 Notwithstanding section 3.4, the law enforcement authorities may, exceptionally, interview an arrested person before defence counsel has arrived, if there are reasonable grounds for concluding that information obtained from the arrested person could enable another person's life to be saved. Such an interview shall only be conducted with a view to obtaining that information. Even in such a case, the rights of an arrested person pursuant to section 2.3 shall not be prejudiced and, on arrival, the defence counsel shall be granted prompt access to the arrested person.

3.6 The right to the assistance of defence counsel may be waived, if such a waiver is made in an informed and voluntary manner. If an arrested person who has made a waiver subsequently reasserts the right to the assistance of defence counsel, he or she may immediately exercise the right. Persons under the age of 18 may waive the right to the assistance of defence counsel with the consent of a parent, guardian or a representative of the Center for Social Work, except that in cases of domestic violence involving the parent or guardian, such parent or guardian may not consent to the waiver of such right. Persons who display signs of mental illness may not waive their right to the assistance of defence counsel.

3.7 The right to the assistance of defence counsel pursuant to this section may be delayed for up to 24 hours from the time of arrest where the arrested person is suspected of terrorism or organized crime and the prosecutor or the competent investigating judge determines that the delay is required by the exceptional needs of the investigation of the case. The prosecutor or the competent investigating judge may, prior to the expiration of the first period of delay of up to 24 hours, determine that an additional delay of 24 hours is required by the exceptional needs of the investigation of the case.

Section 4

Right to Notify Family or Other Appropriate Persons

4.1 An arrested person has the right to notify or to require the law enforcement authorities to notify a family member or another appropriate person of his or her choice about the arrest and the place of custody, immediately after the arrest, and about any subsequent changes in the place of custody, immediately after the change in the place of custody.

4.2 When an arrested person has not reached age 18, the law enforcement authorities shall notify the parents or guardian of the arrested person about the arrest and the place of custody, immediately after the arrest, and about any subsequent changes in the place of custody, immediately after the change in the place of custody. If such notification is impossible, would be detrimental to the interests of the arrested person, or is expressly refused by the arrested person, the law enforcement authorities shall immediately after arrest notify the Center for Social Work.

4.3 When an arrested person displays signs of mental illness, the law enforcement authorities shall notify a person nominated by the arrested person, and the Center for Social Work, about the arrest and the place of custody, immediately after the arrest, and about any subsequent change in the place of custody, immediately after the change in the place of custody.

4.4 Where an arrested person is a foreigner, the law enforcement authorities shall also promptly inform him or her of the right to communicate orally or in writing with a liaison office, consular post, the diplomatic mission of the State of which he or she is a national or with the representative of the competent international organization, if he or she is a refugee or is otherwise under the protection of an international organization.

4.5 Notification of a family member or another appropriate person pursuant to sections 4.1 and 4.2 may be delayed for up to 24 hours from the time of arrest where the prosecutor or the competent investigating judge determines that the delay is required by the exceptional needs of the investigation of the case. In such a case, where the arrested person is under the age of 18, notification must nevertheless be made immediately after the arrest to the Center for Social Work.

Section 5

Right to a Medical Examination and Treatment

5.1 An arrested person has the right, upon request, to be examined by a doctor designated by law enforcement authorities as promptly as possible after his or her arrest.

5.2 An arrested person shall also be entitled to medical treatment whenever necessary, upon the request of the arrested person or family members. The arrested person shall be allowed to be visited and treated by his or her own doctor or dentist if the doctor designated by law enforcement authorities determines that there are reasonable grounds for his or her application and he or she is able to pay any expenses incurred.

5.3 The law enforcement authorities shall also appoint a doctor to conduct a medical examination and to provide medical treatment at any time in case of physical injury and/or other apparent medical necessity. In case the arrested person refuses to undergo a medical examination or to accept medical treatment, the doctor will take a final decision on the necessity of such an examination or treatment, after due consideration for the rights of the arrested person.

5.4 If an arrested person displays signs of mental illness, the law enforcement authorities may immediately order an examination by a psychiatrist.

5.5 The results of any medical examination or any medical treatment undertaken pursuant to this section shall be duly recorded, and such records shall be made available to the arrested person and his or her defence counsel, and to the prosecution and the court.

Section 6

Record of Arrest and Interview By Law Enforcement Authorities

6.1 The law enforcement authorities shall keep a written record of all actions taken with respect to an arrested person, including:

- (a) The reason for arrest;
- (b) Time and place of arrest;
- (c) The identity of the officials of the law enforcement authorities concerned;

(d) The oral and written notification to the arrested person of his or her rights, as set forth in section 2.2 of the present regulation;

(e) The place of custody;

(f) The provision of defence counsel, as set forth in section 3 of the present regulation, including attempts to contact the defense counsel or designated alternate as the case may be;

(g) The notification of family or other appropriate persons, or any delays in notification, as set forth in section 4 of the present regulation; and

(h) The conduct of a medical examination or the provision of medical treatment, as set forth in section 5 of the present regulation.

6.2 The law enforcement authorities shall keep a written record of any interview with the arrested person, including the start and end times of any interview of the arrested person, and the identity of the officials of the law enforcement authorities who conducted the interviews and any other persons present. If the defence counsel is not present, this shall be duly noted.

6.3 The written records set forth in paragraphs 1 and 2 of this section shall be made available to the arrested person and his or her defence counsel and in a language that the arrested person understands, but may be withheld by the law enforcement authorities and prosecutor until after a decision is made and filed either to initiate an investigation or to abandon it.

Section 7

Implementation

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

Section 8

Applicable Law

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

Section 9
Entry into Force

The present regulation shall enter into force on 1 November 2001.

Hans Haekkerup
Special Representative of the Secretary-General