

UNMIK/REG/2002/6  
18 March 2002

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**REGULATION NO. 2002/6**

**ON COVERT AND TECHNICAL MEASURES OF SURVEILLANCE  
AND INVESTIGATION**

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 and UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Law Applicable in Kosovo,

Recognizing the need to prevent and combat crime in Kosovo,

Taking into account, *inter alia*, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms,

For the purpose of enhancing criminal investigations,

Hereby promulgates the following:

Section 1  
Definitions

For the purposes of the present Regulation:

(a) “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; and

(b) A covert or technical measure of surveillance or investigation (“a measure under the present Regulation”) means any of the following measures:

- (i) Covert photographic or video surveillance;
- (ii) Covert monitoring of conversations;
- (iii) Search of postal items;
- (iv) Interception of telecommunications;
- (v) Interception of communications by a computer network;
- (vi) Use of tracking or positioning devices;
- (vii) A simulated purchase of an item;
- (viii) A simulation of a corruption offence;
- (ix) An undercover investigation;
- (x) Metering of telephone-calls; and
- (xi) Disclosure of financial data.

(c) “Covert photographic or video surveillance” means the monitoring, observing, or recording of persons, their movements or their other activities by a duly authorized officer of a law enforcement authority by means of photographic or video devices, without the knowledge or consent of at least one of the persons subject to the measure;

(d) “Covert monitoring of conversations” means the monitoring, recording, or transcribing of conversations by a duly authorized officer of a law enforcement authority by technical means without the knowledge or consent of at least one of the persons subject to the measure;

(e) “Search of postal items” means search by a duly authorized officer of a law enforcement authority of letters and other postal items which may include the use of X-ray equipment;

(f) “Use of tracking or positioning devices” means the use by a duly authorized officer of a law enforcement authority of devices, which identify the location of the person or object to whom it is attached;

(g) “A simulated purchase of an item” means an act of buying an item, which may serve as evidence in criminal proceedings;

(h) “A simulation of a corruption offence” means an act, which is the same as a criminal offence related to corruption, except that it has been performed for the purpose of gathering information and evidence in a criminal investigation;

(i) “An undercover investigation” means the planned interaction of a duly authorized officer of a law enforcement agency who is not identifiable as a duly authorized officer of a law enforcement agency with persons suspected of having committed a criminal offence;

(j) “Metering of telephone calls” means obtaining a record of telephone calls made from a given telephone number;

(k) “Disclosure of financial data” means obtaining information from a bank or another financial institution on deposits, accounts or transactions;

(l) “Authorizing judicial officer” means the investigating judge or public prosecutor under whose authority an order under the present Regulation has been issued; and

(m) “Subject of an order” means the person against whom a measure under the present Regulation has been ordered.

## Section 2

### Preconditions for Ordering a Measure under the Present Regulation and the Subjects of Such Orders

2.1 Covert photographic or video surveillance, covert monitoring of conversations in public places, metering of telephone calls or disclosure of financial data may be ordered against a particular individual if:

(a) Certain facts substantiate the suspicion that that person has committed a criminal offence which is prosecuted *ex officio*; and

(b) The information that could be obtained by the measure to be ordered would be likely to assist in the investigation of the criminal offence and would be unlikely to be obtained by any other investigative measure without unreasonable difficulty or potential danger to others.

2.2 Metering of telephone calls or disclosure of financial data may also be ordered against the following persons, where the criteria in section 2.1(a) apply to a suspect and the precondition in section 2.1(b) is met:

(a) A person who is suspected of receiving or transmitting communications originating from or intended for the suspect or participating in financial transactions of the suspect; or

(b) A person whose telephone the suspect is suspected of using.

2.3 Covert monitoring of conversations in private places, search of postal items, interception of telecommunications, interception of communications by a computer

network, the use of tracking or positioning devices, a simulated purchase of an item, a simulation of a corruption offence or an undercover investigation may be ordered against a particular individual if:

- (a) Certain facts substantiate the suspicion that that person has committed:
  - (i) A criminal offence punishable by imprisonment of more than four (4) years; or
  - (ii) One or more of the following criminal offences, where committed in the furtherance of a criminal offence under UNMIK Regulation No. 2001/12 of 14 June 2001 on the Prohibition of Terrorism and Related Offences or UNMIK Regulation No. 2001/22 of 20 September 2001 on Measures Against Organized Crime:
    - (1) Coercion, as defined in the applicable criminal code;
    - (2) Endangering security, as defined in the applicable criminal code;
    - (3) An offence related to forgery of documents and money, as defined in the applicable criminal code;
    - (4) Forbidden commerce, as defined in the applicable criminal code;
    - (5) Giving a false statement, as defined in the applicable criminal code;
    - (6) Criminal association, as defined in the applicable criminal code;
    - (7) Unlawful possession of weapons or explosive materials, as defined in the applicable criminal code and UNMIK Regulation No. 2001/7 of 21 February 2001 on the Authorization of Possession of Weapons in Kosovo;
    - (8) Accepting a bribe, as defined in the applicable criminal code;
    - (9) Giving a bribe, as defined in the applicable criminal code;
    - (10) Unlawful detention, as defined in the applicable criminal code; or
    - (11) Unauthorized crossing of the border or boundary, as defined in the applicable criminal code and UNMIK

Regulation No. 2001/10 of 24 May 2001 on the  
Prohibition of Unauthorized Border/Boundary Crossings;  
and

(b) The information that could be obtained by the measure to be ordered would be likely to assist in the investigation of the criminal offence and would be unlikely to be obtained by any other investigative measure without unreasonable difficulty or potential danger to others.

2.4 The search of postal items, the interception of telecommunications or the interception of communications by a computer network may also be ordered against the following persons, where the criteria in section 2.3(a) apply to a suspect and the precondition in section 2.3(b) is met:

(a) A person who is suspected of receiving or transmitting communications originating from or intended for the suspect; or

(b) A person whose telephone or point of access to a computer system the suspect is suspected of using.

Section 3  
Procedure for Requesting the Order

3.1 A public prosecutor may issue an order for each of the following measures:

- (a) Covert photographic or video surveillance in public places;
- (b) Covert monitoring of conversations in public places; or
- (c) An undercover investigation.

3.2 An investigating judge may issue an order for each of the following measures on the basis of an application by a public prosecutor:

- (a) Covert photographic or video surveillance in private places;
- (b) Covert monitoring of conversations in private places;
- (c) Search of postal items;
- (d) Interception of telecommunications;
- (e) Interception of communications by a computer network;
- (f) Use of tracking or positioning devices;
- (g) A simulated purchase of an item;

- (h) A simulation of a corruption offence;
- (i) Metering of telephone calls; or
- (j) Disclosure of financial data.

3.3 An application for one of measures provided for in section 3.2 shall be made in writing and shall include the following information:

- (a) The identity of the public prosecutor making the application;
- (b) A complete statement of the facts relied on by the applicant to justify his or her belief that the relevant criteria in section 2 are satisfied; and
- (c) A complete statement of any previous application known to the applicant involving the same person and the action taken by the authorizing judicial officer on such application.

3.4 In emergency cases, a public prosecutor may issue a provisional order for one of the measures provided for in section 3.2. Such provisional order ceases to have effect if it is not confirmed in writing by an investigating judge within three days of the issuance of the order. A prosecutor may not use his or her authority under this paragraph to issue an order pursuant to sections 4.3 or 4.5.

#### Section 4

##### The Nature and Content of the Order for a Measure under the Present Regulation

4.1 An order for a measure under the present Regulation shall be in writing and shall specify:

- (a) The name and address of the subject or subjects of the order;
- (b) The nature of the measure;
- (c) The grounds for the order;
- (d) The period within which the order shall have effect, which shall not exceed sixty (60) days from the date of the issuance of the order; and
- (e) The agency of the law enforcement authority authorized to implement the measure and the officer responsible for supervising such implementation.

4.2 An order for a measure under the present Regulation shall require that duly authorized officers of a law enforcement authority provide the authorizing judicial officer a report on the implementation of the order at fifteen (15) day intervals from the date of the issuance of the order.

4.3 An order for the monitoring of conversations in private places, interception of telecommunications, interception of communications by a computer network or the use of tracking or positioning devices may authorize duly authorized officers of a law enforcement authority to enter private premises if an investigating judge determines that such entry is necessary to activate or disable the technical means for the implementation of such measures. If duly authorized officers of a law enforcement authority enter private premises pursuant to an order under this paragraph, their actions in the private premises shall be limited to those specified in the order.

4.4 An order for the metering of telephones or the interception of communications by a computer network shall include all the elements for the identification of each telephone or point of access to a computer network to be intercepted. Except as provided in section 4.5, an order for the interception of telecommunications shall include all the elements for the identification of each telephone to be intercepted

4.5 Upon the application of a prosecutor, which has been approved by the Department of Justice, an order for the interception of telecommunications may include only a general description of the telephones which may be intercepted, where an investigating judge has determined that certain facts substantiate a suspicion that:

(a) The suspect is using various telephones so as to avoid surveillance by duly authorized officers of a law enforcement authority; and

(b) A telephone or telephones, as described in the order, are being used or are about to be used by the suspect.

4.6 If an order for the interception of telecommunications is issued by an investigating judge pursuant to section 4.5,

(a) The duly authorized officers of a law enforcement authority after implementing the order in respect of a particular telephone shall promptly inform the investigating judge in writing of the relevant facts, including the number of the telephone;

(b) The order may not be used to intercept the telecommunications of a person who is not the suspect; and

(c) The duration of the order is limited to fifteen (15) days and may be renewed up to a total period of ninety (90) days from the date of issuance of the order.

4.7 An order for the search of postal items shall designate the address on the postal items to be searched. Such address shall be that of the subject or subjects of the order.

4.8 An order for interception of telecommunications, interception of communications by a computer network, metering of telephone calls, search of postal items or disclosure of financial data shall include as an annex a separate written instruction to persons other than duly authorized officers of the law enforcement

authority whose assistance may be necessary for the implementation of the order. Such written instruction shall be addressed to the director or the official in charge of the telecommunications system, computer network, postal service, bank or other financial institution and shall specify only the information, which is required for assistance in the implementation of the order.

## Section 5

### Implementation of an Order for a Measure under the Present Regulation

5.1 A duly authorized officer of a law enforcement authority shall commence the implementation of an order for a measure under the present Regulation no later than fifteen (15) days after it has been issued.

5.2 The implementation of an order shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under the present Regulation.

5.3 If any of the conditions for ordering the measure cease to apply, duly authorized officers of the law enforcement authority shall suspend implementation of the order and shall notify in writing the authorizing judicial officer. If the order was issued by an investigative judge, the officers of the law enforcement authority shall also notify the public prosecutor. On receiving the written notification the authorizing judicial officer shall make a written determination as to whether the order shall be terminated.

5.4 Duly authorized officers of a law enforcement authority shall make a record of the time and date of the beginning and end of each action taken in implementing the order. The record shall state the names of the duly authorized officers of the law enforcement authority who carried out each operation and the functions they performed. Such records shall be annexed to the report submitted to the authorizing judicial officer under section 4.2.

5.5 With respect to the implementation of an order for interception of telecommunications, interception of communications by a computer network, search of postal items and metering of telephone calls, persons responsible for the operation of telecommunications, computer-networks or postal services shall facilitate the implementation of an order under the supervision of the director or official in charge of the telecommunications system, computer network, or postal services.

5.6 With respect to the implementation of an order for the disclosure of financial data, employees of a financial institution shall facilitate the implementation of such an order under the supervision of the director or the official in charge of the financial institution.

5.7 With respect to the implementation of an order for an undercover investigation, a simulated purchase of an item or a simulation of a corruption offence:



(a) A duly authorized officer or officers of a law enforcement authority may not incite a person to commit a criminal offence which that person would not have committed but for the intervention of the officer or officers; and

(b) A duly authorized officer of a law enforcement authority who, in accordance with the provisions of the present Regulation, implements such an order does not commit a criminal offence.

5.8 With respect to the implementation of an order for the interception of telecommunications, interception of communications by a computer network or search of postal items, such an order may not be implemented in relation to communications between a suspect and his or her lawyer, unless certain facts substantiate the suspicion that the suspect and the lawyer are engaged together in criminal activity which constitutes the grounds for the order.

## Section 6 Modification, Extension of the Order and Termination

6.1 The authorizing judicial officer may issue a further written order for:

(a) The extension of an order under the present Regulation for a maximum of sixty (60) days, which may be renewed up to a total period of three hundred and sixty (360) days from the date of the issuance of the order, if the preconditions for ordering a measure under the present Regulation, as set forth in section 2, continue to apply and there is a reasonable explanation of the failure to obtain some or all of the information sought under the earlier order;

(b) The modification of the order at any time, if he or she determines that such modification is necessary to ensure that the preconditions for ordering a measure under the present Regulation, as set forth in section 2, still apply; or

(c) The termination of the order at any time if he or she determines that the preconditions for ordering a measure, as set forth in section 2, cease to apply.

6.2 The extension of an order for a measure ordered by an investigative judge may only be ordered on the motion of a public prosecutor.

## Section 7 Handling of Collected Materials

7.1 If the implementation of a measure under the present Regulation has been completed before a judicial investigation has been initiated, the duly authorized officers of the law enforcement authority shall send all documentary records, tapes and other items relating to the order and its implementation (“collected materials”) to the public prosecutor. When requesting the conduct of an investigation or when the

public prosecutor files an indictment without conducting an investigation, the public prosecutor shall deliver such collected materials to the competent investigating judge.

7.2 If the implementation of a measure under the present Regulation has been completed after a judicial investigation has been initiated, the duly authorized officers of the law enforcement authority shall send the collected materials to the investigating judge undertaking the judicial investigation.

7.3 The collected materials shall be kept securely at all times.

7.4 Postal items, which do not contain information that will assist in the investigation of a criminal offence, shall immediately be forwarded to the recipient.

### Section 8

#### Notification of the Subject of an Order and Destruction of the Collected Materials

8.1 The public prosecutor shall promptly inform in writing by registered mail each subject of an order that he or she has been the subject of that order, that he or she has a right to submit a complaint through the Director of the Department of Justice to a Surveillance and Investigation Review Panel within six (6) months of being informed and that he or she shall be permitted access to the collected materials, if:

(a) There is no longer a suspicion that the suspect has committed a criminal offence; or

(b) The public prosecutor does not request the opening of an investigation within six (6) months of the termination of an order for a measure under the present Regulation.

8.2 An investigating judge may, on the application of a public prosecutor, order that the subject of the order shall not be informed in accordance with section 8.1, if informing him or her that he or she has been the subject of the order or permitting him or her access to the collected material would jeopardize the security of investigations or the life or safety of an injured party, witness, informant or their family members.

8.3 Exceptionally, when making the decision to initiate an investigation or during the course of the investigation, an investigating judge may, on the application of the public prosecutor, order in writing that certain items of the collected materials be placed in a sealed envelope and removed from the record, if he or she determines that:

(a) Revealing those items of evidence to the accused or his or her defence counsel would jeopardize the security of investigations or the life or safety of an injured party, witness, informant or their family members; and

(b) The items of evidence are not deemed exculpatory.

8.4 Nothing in this section shall be construed in any way to prejudice the right of the accused and the defence counsel to examine the record, under the applicable criminal procedure code, except that the accused and the defence counsel may be denied access to the parts of the record placed in a sealed envelope pursuant to section 8.3, on the condition that:

(a) The items of evidence, which have been placed in a sealed envelope, may not be the basis for a decision on detention or guilt; and

(b) The order of the investigating judge under section 8.3 shall be reviewed by the president of the trial panel at the beginning of the trial and after all the witnesses have been examined. If the president of the trial panel determines that such items of evidence are exculpatory, he or she shall notify the public prosecutor of the determination and with the agreement of the public prosecutor the items shall be placed on the court file. If the public prosecutor does not agree to place the items of evidence on the court file, the issue in respect of which they are deemed exculpatory by the president of the trial panel shall be interpreted in the favour of the accused by the court.

8.5 If the Director of the Department of Justice does not receive a complaint from the subject of an order six (6) months after the subject has been informed in accordance with section 8.1, the public prosecutor shall destroy the collected materials.

8.6 The public prosecutor shall make a written record of the destruction of the collected materials under section 8.5.

## Section 9

### Admissibility of the Evidence Obtained by Measures under the Present Regulation

9.1 Evidence obtained by a measure under the present Regulation may only be used as the basis for a judicial decision if the order for the measure and its implementation are lawful.

9.2 Evidence which has been obtained by covert monitoring of conversations in private places, search of postal items, interception of telecommunications, interception of communications by a computer network, the use of tracking or positioning devices, a simulated purchase of an item, a simulation of a corruption offence or an undercover investigation is only admissible in criminal proceedings in respect of a criminal offence which is specified in section 2.3.

9.3 Upon receipt of the collected materials, pursuant to section 7, the investigating judge shall issue to the parties a written decision as to whether an order for a measure under the present Regulation and its implementation have been lawful. A party may submit an appeal against that decision to a panel of judges under Article 23(6) of the applicable Law on Criminal Procedure within seventy-two (72) hours of its delivery. The decision that an order or its implementation is unlawful enters into force:

- (a) When the panel of judges takes its decision on an appeal; or
- (b) On the expiry of the period for appeal against the decision of the investigating judge if no appeal has been submitted.

9.4 When the decision that an order or its implementation is unlawful enters into force, the investigating judge shall remove all collected materials from the record and submit such materials through the Director of the Department of Justice to a Surveillance and Investigation Review Panel for a decision on compensation.

### Section 10 Surveillance and Investigation Review Panel

10.1 A Surveillance and Investigation Review Panel ("Panel") shall:

- (a) Adjudicate on a complaint in respect of a measure under the present Regulation and decide on compensation where appropriate; or
- (b) Decide on compensation for the subject or subjects of an order if a judge has decided under section 9.3 that the order or its implementation is unlawful.

10.2 A Panel shall be composed of three international judges who shall be assigned by the Special Representative of the Secretary-General to adjudicate on an individual complaint or to decide on compensation following an individual decision under section 9.3. None of the three members of the Panel shall be professionally connected with the subject of the complaint or the collected materials, which are the subject of the decision under section 9.3.

10.3 Officers of a law enforcement authority and public prosecutors shall provide the Panel with such documents as the Panel shall require to perform its functions and shall, on request, provide oral testimony to the Panel.

10.4 When a decision of an investigating judge that an order for a measure under the present Regulation or its implementation is unlawful enters into force, it is binding on the Panel.

10.5 If a person considers that he or she has been the subject of a measure under the present Regulation, which is unlawful, or an order for a measure under the present Regulation, which is unlawful, he or she may submit a complaint through the Director of the Department of Justice to a Panel for adjudication.

10.6 If on adjudicating on a complaint the Panel finds that a measure under the present Regulation is unlawful or an order for such measure is unlawful, it may decide to:

- (a) Terminate the order, if it is still in force;

- (b) Order the destruction of the collected materials; and/or
- (c) Award compensation to the subject or subjects of the order.

### Section 11 Criminal Offences

11.1 An officer of a law enforcement authority who implements an order under the present Regulation in breach of the provisions of the present Regulation commits a criminal offence punishable by a fine or a term of imprisonment of up to three (3) years.

11.2 A person who reveals information, which will damage the effectiveness of the implementation of a measure under the present Regulation, commits a criminal offence punishable by a fine or a term of imprisonment of up to three (3) years.

11.3 A person responsible for the operation of telecommunications, computer-networks or postal services or an employee of a financial institution who fails to take appropriate steps to facilitate the implementation of an order for interception of telecommunications, interception of communications by a computer network, search of postal items, metering of telephone calls or disclosure of financial data, commits a criminal offence punishable by a fine or a term of imprisonment of up to three (3) years.

### Section 12 Assistance of other authorities

A law enforcement authority may, where appropriate, seek the assistance of other authorities responsible for maintaining law and order and a secure environment in Kosovo in connection with the implementation of measures under the present Regulation.

### Section 13 The powers of official persons

The provisions of the present Regulation are without prejudice to the powers granted to official persons under the applicable law to conduct surveillance and investigation when providing customs and other related services.

Section 14  
Implementation

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

Section 15  
Applicable Law

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

Section 16  
Entry into Force

The present Regulation shall enter into force on 18 March 2002 and shall remain in force for an initial period of twelve (12) months. Upon review this period may be extended by the Special Representative of the Secretary-General.

Michael Steiner  
Special Representative of the Secretary-General