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**REPORT WITH RECOMMENDATIONS
OF THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO**

Complaint No. 533/2017

**Ahmet Murati
Versus
Ministry of Education, Science and Technology and
the
University of Prishtina „Hasan Prishtina”
Concerning**

**The failure to recognize Master Degree, for qualifications acquired, according to five
year university study system, based on before Bologna system**

Mr. Shyqiri Bytyqi, Minister
The Ministry of Education, Science and Technology
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Prishtinë, 19 July 2018

The purpose of this Report with Recommendations

1. This Report with Recommendations is based on the complaint lodged by Mr. Ahmet Murati, against the Ministry of Education, Science and Technology and the University of Prishtina "Hasan Prishtina" and is about the failure to recognize the right to Master Degree, for those graduated in five year university education system in the technical field, according to before Bologna system.
2. The Report aims to draw attention of the Ministry of Education, Science and Technology on the need to undertake actions as per harmonization of primary and secondary legislation, which regulates the comparability and equivalence of diplomas and study programs, before the Bologna system and the Bologna system.

Legal bases

3. The Constitution of Republic of Kosovo, in Article 135, paragraph 3, stipulates that: *“The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed”*.
4. According to the Law no. 05/L-019 on Ombudsperson, the Ombudsperson has powers:
 - *„ 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 instruments of human rights, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority,, (Article 16, paragraph 1);*
 - *“to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them” (Article 18, paragraph 1, subparagraph 1.1);*
 - *“to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases” (Article 18, paragraph 1, subparagraph 1.2);*
 - *“to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media ” (Article 18, paragraph 1, subparagraph 1.4);*
 - *“to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-*

discrimination” (Article 18, paragraph 1, subparagraph 1.5);

- *“to publish notifications, opinions, recommendations, proposals and his/her own reports” (Article 18, paragraph 1, subparagraph 1.6);*
 - *“to recommend promulgation of new Laws in the Assembly, amendment of the Laws in force **and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo**” (Article 18, paragraph 1, subparagraph 1.7) ;*
 - *“The Ombudsperson can advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advancement of human rights and freedoms in the Republic of Kosovo.” (Article 18, paragraph 3).*
5. Further, the Law No.05/L-021 on Protection from Discrimination, in Article 9, paragraph 1, stipulates that:
- *“The Ombudsperson is state institution for equality, for promotion and protection of human rights. The Ombudsperson shall handle cases related to discrimination under the relevant Law on Ombudsperson”, while paragraph 2, subparagraph 2.1, of this Article, explicitly stipulates that: “The Ombudsperson has the following competences: receives and investigates submissions of persons, gives opinions and recommendations on concrete cases of discrimination”.*

The circumstances of the case

6. The Ombudsperson, pursuant to Article 16, paragraph 1, of the Law no. 05 / L-019 on the Ombudsperson, on 25 July 2017, received the complaint of Mr. Ahmet Murati, against the Ministry of Education, Science and Technology (MEST), concerning Article 5 of the Administrative Instruction (MEST) no. 11, Comparability and Equivalence of Diplomas and Study Programs Prior to the Bologna System and the Bologna System, regarding the failure of Master's Degree recognition.
7. Mr. Murati also complaint against the University of Prishtina "Hasan Prishtina" (UP) as per not issuing a diploma for the equivalence of qualifications gained in five (5) year study system, according to the applicable study system before the Bologna system for Master degree.
8. According to the information obtained by the complainant, it resulted that Mr. Murati, completed his undergraduate studies in 1988, at the Faculty of Electrical and Computer Engineering, Electronics Department, of the University of Prishtina and gained the qualification- Graduated Engineer of Electrotechnology. From

Diploma Addendum, dated 20 September 20, issued by the Faculty of Electrical and Computer Engineering of UP, it can be seen that Mr. Murati had completed the undergraduate studies according to before Bologna system, in the duration of 5 (five) years and 10 (ten) semesters. Based on the duration of the studies, the complainant accumulated a total of 300 ECTS credits. According to point 5.1 of the Diploma Addendum, 300 ECTS credits have granted the right to submit application for Master and / or Doctorate studies.

9. The issue of organizing higher education in the Republic of Kosovo is regulated by Law no. 04 / L-037 on Higher Education in the Republic of Kosovo. According to Article 4, paragraph 2, subparagraph 2.1 and 2.2 of the Law:

„ Higher education is organized, as following: first level – three (3) to four (4) years of studies by which the student reaches 180, respectively 240 /ECTS/, and obtains Bachelor Diploma”.

According to the same Article, it is determined that, the student obtains Master diploma solely when reaches 60, respectively 120 ECTS:

“second level – one (1) to two (2) years of studies after completion of the first level by which the students reaches 60, respectively 120/ECTS/ and the student obtains Master Diploma”.

10. While Article 5 of the Administrative Instruction (MEST) No. 11 Comparability and Equivalence of Diplomas and Study Programs Before the Bologna System and of the Bologna System even though foresees that:

“Diplomas of university studies 4.5 (four and a half years) and 5 (five years) years, who have completed with public protection of the topic in the technical system areas before Bologna are equivalent with 300 ECTS “; does not provide explanations which will accurately define which grade will be acquired with the specific credit numbers.

11. The Instruction further, without giving any explanation for the master's degree, in Article 6, sets forth the number of credits as condition for enrollment in PHD studies:

„ In studies of doctorate could be enrolled all graduates who in studies of previous levels have earned at least 300 ECTS and meet the required criteria from higher education institution in Kosova”.

12. Considering that, according to the aforementioned Instruction, the Master Degree is not recognized to the complainant as well as to others who have graduated in before Bologna system, although the studies accomplished by them are equal with 300 ECTS credits, it should be considered that the failure to recognize Master's Degree comprises elements of unequal and discriminatory treatment of the complainant as well as others, those who have graduated in the same system and are employed in

educational institutions. Unequal treatment reflects on employment conditions and the difference in remuneration received according to Master's degree.

13. Although the complainant, based on the legal provisions of the abovementioned Administrative Instruction, addressed his request to his employer, the Education Directorate of the Municipality of Obiliq, requesting equalization of the salary compensation due to Master degree qualification, no positive response as per his request was obtained due to the lack of a legal bases.
14. Complainant, as well as others, addressed also the UP with a request for issuing of Master's degree, but a written response has never been served to them. Through informal communication they were notified that due to the fact that the abovementioned Administrative Instruction does not explicitly specify the equivalent of the 300 ECTS credit obtained during the five year undergraduate studies in the technical field, they are prevented of issuing diplomas with the Master Qualification.

Actions in front of the Ombudsperson Institutions

15. On 25 August 2017, the Ombudsperson Institution (OI) representative had a meeting with the Director of Legal Department, the Director of the Inspectorate and the Senior Officer responsible for the Division on Monitoring, Development and Quality in Higher Education at MEST, in the course of which they discussed regarding restrictions deriving from Administrative Instruction as well as the possibility of its amendment or clarification.
16. On 28 September 2017, the OI representative met with the Secretary General of UP, and was provided with the information that issuing of respective Faculty Diplomas is conducted in accordance with the UP Statute and Administrative Instructions promulgated by MEST. According to him, as the Administrative Instruction does not explicitly stipulate that accomplishment of 5 (five) years of undergraduate studies before Bologna system is equivalent to the Master degree, this Degree cannot be issued due to the absence of a legal bases,.
17. On 7 February 2018, the OI representative was informed by the head of the Division for Monitoring, Development and Quality in Higher Education at MEST that the Ministry did not take any action to initiate procedures for amending / supplementing of the Administrative Instruction.
18. On 13 April 2018, the Ombudsperson had a meeting with the Acting Director of the Department of Higher Education in MEST, the Director of the Legal Department at MEST as well as the Secretary General of UP, where undertaking of actions with the aim to regulate the status of all those graduated in the five-year before Bologna system was discussed and issuing of Master's Degree. Undertaking of tangible steps

was decided in the meeting by MEST in order to address this issue and supplement / amend the Administrative Instruction no. 11 of MEST, which regulates this issue.

Case analyses

19. The Constitution of Republic of Kosovo, in Article 21, paragraph 2 and 3, stipulates that: *“The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution. Everyone must respect the human rights and fundamental freedoms of others”*.
20. Equality before the law has been foreseen by Article 24 of the Constitution of Republic of Kosovo: *“All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination. No one shall be discriminated against on grounds ..., or other personal status”*.
21. One of the principles on which the Law on Protection from Discrimination is based on is the principle of equal treatment, which *“shall mean that there shall be no discrimination, direct or indirect in the sense of any of the grounds set out in ...the Law¹”*.
22. The Ombudsperson finds that the Law No. 05/L-021 on Protection from Discrimination, which applies for all actions or inactions of all local and public institutions, of legal and natural persons, of public and private sector, who violate, have violated or might violate rights of each legal and natural person or persons, in all fields of life, among conditions anticipated specifically, has foreseen also conditions related to employment and work².
23. Taking into account the analysis conducted, the unequal position of graduates in the five-year education before Bologna system, compared with those graduated under the Bologna system, both in terms of employment conditions as well as at the level of salary compensation, the Ombudsperson, brings to your attention the Article 4, paragraph 1, subparagraph 1.1 of the Law on Protection from Discrimination, which specifies that: *„ Direct discrimination shall be taken to have occurred where one person is treated less favorably than another is, has been or would be treated in a comparable situation based on one or more grounds such as those stated in Article 1 of the Law”*.

Findings

24. The Ombudsperson, upon case analyses, observes that even though the Law no. 04 / L-037 on Higher Education in the Republic of Kosovo, specifies exactly the credits for obtaining the Master's Degree, Article 5 of the Administrative Instruction (MEST) no. 11, Comparability and Equivalence of Diplomas and Study Programs before the Bologna and Bologna System, which predicts that: *„ Diplomas of university studies 4.5 (four and a half years) and 5 (five years) years, who have*

¹ Law no. 05/L-021 on Protection from Discrimination, Article 3, paragraph 1

² Law on Protection from Discrimination, Article 2, paragraph 1.3,

completed with public protection of the topic in the technical system areas before Bologna are equivalent with 300 ECTS “ leaves legal gap, by failing to plainly clarify the equivalence of the credits obtained during the studies with the respective qualification degree.

25. The Ombudsperson is of the opinion that the abovementioned Article, by failing to be understandable and predictable, is positioned opposite to the principle of legal certainty, as an important element of the rule of law. The gap has caused restriction of rights and legal expectations, which should have been produced by the provision in question.
26. Moreover, the abovementioned Article positions the complainant, as well as others, in an unequal position, who have accomplished the undergraduate studies in the technical fields according to before Bologna system, within the period of 5 (five) years, 10 (ten) semesters, and have obtained a total of 300 ECTS, equally with graduates according to Bologna system.
27. The Ombudsperson finds that the Instruction, subject of this review, has well-regulated and explained the issue of equivalency of credits obtained during the studies and the conditions to be met for acquiring specific titles on programs and other fields of studies.
28. From the case analysis, the Ombudsperson considers that the issue at question restrains the interests and rights of a significant number of persons graduated in the technical field, according to the five-year study system, applicable according to before Bologna system.
29. The failure to recognize relevant qualifications gained before the Bologna system has resulted with discrimination and unequal treatment in employment and salary compensation of a significant number of graduates in this system, who are engaged in teaching process, compared to others.
30. Upon reviewing, investigation and analyzing of case details, the Ombudsperson finds that the discrepancy between the Law on Higher Education and the Administrative Instruction no. 11, which regulates the issue of Equalization of Diplomas and Study Programs before the Bologna System and the Bologna System, which does not explicitly clarify the equivalence of titles in relation with ECTS credits obtained during the five-year technical study program, has resulted with unequal treatment effect.

Therefore, the Ombudsperson, based on above mentioned proves and facts,

RECOMMENDS

1. The Ministry of Education, Science and Technology:

To undertake necessary steps and actions with the purpose of amending and rephrasing of Article 5 of the Administrative Instruction no. 11 for Comparability and Equivalence of Diplomas and Study Programs before and under the Bologna system, in order to enable recognition of the Master's degree for all those graduated in the five-year system of studies in the technical field before the Bologna system.

2. University of Prishtina „Hasan Prishtina”:

Upon adoption of the given Administrative Instruction by MEST, undertake necessary preparatory actions, with the aim of issuing Diplomas for recognition of Master Degree.

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo and Article 28 of the Law on Ombudsperson, You are kindly asked that within 30 days inform us on actions to be taken by your side regarding this issue.

Kindly submitted,

Hilmi Jashari
Ombudsperson