



Republika e Kosovës • Republika Kosovo • Republic of Kosovo Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

Ex officio No. 401/2018

REPORT WITH RECOMMENDATIONS OF THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO

related to the

Administration and maintenance of cemeteries

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- Mr. Shpend Ahmeti-Mayor of Prishtina,
- Mr. Burim Berisha- Mayor of Fushe Kosova,
- Mr. Agim Aliu- Mayor of Ferizaj,
- Mr. Agim Veliu- Mayor of Podujeva,
- Mr. Ardian Gjini- Mayor of Gjakova,
- Mr. Lutfi Haziri- Mayor of Gjilan,
- Mr. Imri Ahmeti- Mayor of Lipjan,
- Mr. Zenun Elezaj- Mayor of Klina,
- Mr. Haki Rugova- Mayor of Istog,
- Mr. Gazmend Muhaxheri- Mayor of Peja,
- Mr. Bashkim Ramosaj- Mayor of Decan,
- Mr. Smajl Latifi- Mayor of Rahovec,
- Mr. Qëndron Kastrati- Mayor of Kamenica,
- Mr. Ragip Begaj- Mayor of Malisheva,
- Mr. Besim Ilazi- Mayor of Kacanik,
- Mr. Rufki Suma- Mayor of Hani i Elezit,
- Mr. Xhafer Gashi- Mayor of Obiliq,
- Mr. Shaban Shabani- Mayor of Dragash,
- Mr. Bali Muharremaj- Mayor of Suhareka,
- Mr. Agim Bahtiri- Mayor of South Mitrovica,
- Mr. Goran Rakić- Mayor of North Mitrovica,
- Mr. Vučina Janković- Mayor of Zvečan
- Mr. Svetislav Ivanović- Mayor of Novobrdo,
- Mr. Ramiz Lladrovci- Mayor of Drenas,
- Mr. Naim Ismaili- Mayor of Shtime,
- Mr. Bekim Jashari- Mayor of Skenderaj,
- Mr. Sokol Haliti- Mayor of Viti,

Prishtina, 25 October 2018

Purpose of the Report

1. This Recommendation Report aims to evaluate the situation of cemetery administration and maintenance in the municipalities of the Republic of Kosovo, with a particular focus on assessing the real situation of the cemeteries and issuing recommendations to the competent authorities on measures to be taken to improve the situation.

Authority of the Ombudsperson

- 2. According to Article 135, paragraph 3, of the Constitution, "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."
- 3. According to the Law No. 05/L-019 on Ombudsperson, the Ombudsperson has, *inter alia*, the following powers and responsibilities:
 - "The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights." (Article 16, paragraph 4).
 - "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, sub-paragraph 1.2).
 - "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, sub-paragraph 5)
 - "to publish notifications, opinions, recommendations, proposals and his/her own reports." (Article 18, paragraph 1, sub-paragraph 6)

Description of situation and actions of the Ombudsperson Institution

- 4. Considering that the administration and maintenance of cemeteries is a municipal activity of general interest, acting upon collected information on poor cemetery maintenance, the Ombudsperson on 21 June 2018, pursuant to Article 16, paragraph 4, of the Law No. 05/L-019 on Ombudsperson, undertook an investigation on his own initiative (*ex officio*) to assess the condition of cemeteries in the municipalities of the Republic of Kosovo.
- 5. In order to assess the condition of cemeteries and their maintenance, representatives of the Ombudsperson Institution of Kosovo (OIK) have visited several cemeteries of municipalities of the Republic of Kosovo. The purpose of these visits was to provide a description of their condition against a set of basic criteria to be met by a cemetery in order to be accessible, dignified and meets the citizens' needs.
- 6. During the visits in the field, OIK representatives have identified several basic issues which should be addressed by the competent municipal authorities in order to regulate

- and advance the current administration and maintenance situation of the cemeteries in some of the municipalities of the Republic of Kosovo.
- 7. The city cemetery in Prishtina has fences but they are not complete and maintained, while in some parts the fence is completely missing. Maintenance of cleanliness and greenery at the cemetery is not satisfactory. There is garbage and some graves are covered by grass. In some parts of the cemetery there are no walking paths, while the existing paths are not well maintained. The location of the cemetery is not convenient as the terrain is quite steep. The Orthodox and Catholic cemetery has a fence, but it lacks the necessary maintenance of greenery. Some of the graved are covered with grass and shrubs and there are not enough walking paths.
- 8. The city cemetery in Podujeva is surrounded by a fence that is complete and maintained. There are not enough walking trails at the cemetery, while maintenance in terms of cleanliness and greenery is at a satisfactory level. The location of the cemetery is convenient but there is not enough parking space for vehicles. The Orthodox cemetery has a but it is very damaged; there are no walking paths; greenery is not maintained and grass and shrubs have covered the cemetery; no maintenance was observed.
- 9. The city cemetery of Ferizaj is surrounded by fences and there are walking paths. Maintenance of cleanliness and greenery is not satisfactory. The location of the cemetery is convenient but there is no parking space for vehicles. The Orthodox cemetery has a fence, but lacks walking paths. Greenery is not maintained and grass and shrubs have covered the cemetery; no maintenance was observed.
- 10. The city cemetery in Gjakova is fenced, has walking paths and there is maintenance of greenery and cleanliness. The location of the cemetery is convenient and the parking space for vehicles is sufficient. The Orthodox cemetery is fenced, but grass and shrubs have covered the cemetery and no maintenance was observed.
- 11. The city cemetery in Gjilan has complete and maintained fences. In the cemetery there are walking paths but in some parts greenery and cleanliness is not at a satisfactory level. The location of the cemetery is convenient and there is sufficient parking space for vehicles. In the Orthodox cemetery there are no walking paths, greenery is not maintained, grass and shrubs have covered the cemetery and no maintenance was observed.
- 12. In South Mitrovica, the city cemetery is surrounded by a fence over its entire surface area, there are walking paths and maintenance of greenery and cleanliness is at a satisfactory level. The location of the cemetery is convenient and there is sufficient parking space for vehicles. The Orthodox cemetery is fenced, but it lacks walking paths, greenery is not maintained, grass and shrubs have covered some of the cemetery and no maintenance was observed.
- 13. In Zvecan (village Rudare) cemeteries are surrounded by a fence over its entire surface area. The cemeteries have no sufficient walking paths and maintenance of greenery and cleanliness is at a satisfactory level. The location of the cemetery is convenient. In North Mitrovica, Muslim cemetery is fenced but is damaged and not maintained. It lacks walking paths, greenery and cleanliness is not at a satisfactory level.

- 14. The city cemetery in Prizren has complete and maintained fences, greenery in the cemetery is maintained and cleanliness is satisfactory. Walking paths in the cemetery are regulated, cemetery location is convenient, but there is no parking space for vehicles. The Orthodox cemetery is located near the city cemetery and it has fences, walking paths and maintenance of cleanliness and greenery is at a satisfactory level.
- 15. In Lipjan, the city cemetery was regulated in 2016. It has sufficient walking paths, it is surrounded by a fence that is complete, and the maintenance of cleanliness and greenery is at a satisfactory level. The location of the cemetery is convenient and provides parking space for vehicles. The Orthodox cemetery has a fence but it lacks walking paths and there is no noticeable maintenance of greenery and cleanliness.
- 16. The city cemetery in Obiliq is surrounded by a complete fence, but walking paths are not sufficient and maintenance of greenery is not satisfactory. Maintenance of cleanliness is at a satisfactory level. The cemetery location is convenient and there is sufficient parking space for vehicles. The Orthodox cemetery is fenced, but it lacks walking paths, and there is no noticeable maintenance for this cemetery.
- 17. In Fushe Kosova, there are shortcomings in terms of maintenance of cleanliness and greenery of the city cemetery. The cemetery does not have sufficient walking paths and it is not properly maintained. The location is convenient, the cemetery is surrounded with a properly maintained fence and there is sufficient parking space for vehicles. The Orthodox cemetery is not maintained. It is fenced, but lacks walking paths, and grass and shrubs have covered a part of the cemetery and no maintenance was observed.
- 18. The city cemetery in Drenas is fenced and maintenance of cleanliness in the cemetery is at a satisfactory level. There are no walking paths and greenery is not maintained properly; some parts of the cemetery are covered by grass. The cemetery is located in a convenient location and there is sufficient parking space for vehicles.
- 19. In Rahovec, the city cemetery is partially fenced, but there are no walking paths and the maintenance of cleanliness and greenery is not at a satisfactory level. The location of the cemetery is not convenient, as the terrain is quite steep and there is no parking space for vehicles. The Orthodox cemetery has no walking trails, the fence is damaged, grass and shrubs cover a part of the cemetery and no maintenance was observed.
- 20. The city cemetery in Peja is properly fenced and cleanliness of the cemetery is satisfactory. There are walking paths but they are not sufficient, and maintenance of greenery is not satisfactory. The location of the cemetery is convenient and provides sufficient parking space for vehicles. The Orthodox and Catholic cemetery is fenced but it lacks sufficient walking paths. In addition, maintenance of greenery is not satisfactory, as grass and shrubs cover a part of the cemetery and no maintenance was observed.
- 21. The city cemetery in Klina is fenced, but the fence is neither complete nor maintained. Maintenance of cleanliness and greenery is not satisfactory. There is garbage at the cemetery and some parts thereof are covered by grass. In some parts of the cemetery there are no walking paths, while the existing paths are not well maintained. The location of the cemetery is convenient but there is no parking space for vehicles. The Orthodox cemetery is in a similar condition, and there is no noticeable maintenance.

- 22. The city cemetery in Kamenica is surrounded by a fence, which is complete and maintained, but there are no walking trails and greenery at the cemetery is not maintained properly. The location of the cemetery is not convenient as the road to the cemetery is very narrow and access is difficult, especially during mortuary ceremonies, and there is no parking space for vehicles. The Orthodox cemetery is fenced but does not have enough walking trails and there is no maintenance of greenery.
- 23. The city cemetery in Viti is fenced, but the fence is damaged in several parts and is not maintained. Maintenance of cleanliness and greenery is satisfactory, but there are no walking paths. The location of the cemetery is convenient and it provides sufficient parking space for vehicles. The Orthodox cemetery is fenced, but it does not have sufficient walking paths and greenery is not maintained.
- 24. The city cemetery in Junik is fenced, and maintenance of cleanliness and greenery in the cemetery is satisfactory. It has walking paths which are properly maintained. The location of the cemetery is convenient and it provides sufficient parking space for vehicles.
- 25. The city cemetery in Decan is fenced, but it lacks walking paths. Maintenance of cleanliness and greenness in satisfactory. The location of the cemetery is convenient and it provides sufficient parking space for vehicles.
- 26. The city cemetery in Istog is fenced but the fence is neither complete nor maintained. Maintenance of cleanliness and greenness in the cemetery is unsatisfactory. There was garbage at the cemetery and some graves were covered by grass. In some parts of the cemetery there are missing walking paths, while the existing paths are not well maintained. The location of the cemetery is convenient but there is no parking space for vehicles.
- 27. In Malisheva, the city cemetery is fenced, but it lacks walking paths. Maintenance of greenery and cleanliness is unsatisfactory. The location of the cemetery is convenient but there is no parking space for vehicles.
- 28. In Suhareka, the city cemetery is properly fenced and maintained in terms of cleanliness and greenery. However, it lacks walking paths and parking space. The Orthodox cemetery does not have walking paths, grass and shrubs have covered a part of the cemetery and no maintenance was observed.
- 29. In Gracanica, the municipality has allocated a new location for the cemetery as the capacity in the old cemetery was not sufficient. The new location is convenient and has begun to be used for funerals, even though in some cases the citizens still bury relatives in the old cemetery due to its proximity to the town. The cemetery is properly fenced, has walking paths, maintenance of cleanliness and greenery is satisfactory and there is sufficient parking space for vehicles.
- 30. The city cemetery in Dragash is fenced but it lacks walking paths and maintenance of greenery. The location of the cemetery is very inconvenient, as the terrain is very steep and it is very difficult to carry out mortuary ceremonies in such a terrain. In addition, there is no parking space for vehicles.

- 31. The city cemetery in Mamusha is fenced and has walking paths. Greenery and cleanliness are maintained, the location is convenient, but there is no parking space for vehicles.
- 32. In Shtime, the city cemetery is fenced but it lacks walking paths. Maintenance of greenery and cleanliness is satisfactory. The location is convenient and has parking space for vehicles. On the other hand, the Orthodox cemetery does not have walking paths, the fence is damaged, grass and bush have covered part of the cemetery and no maintenance was observed.
- 33. In Kacanik and Hani i Elezit, the city cemeteries have a complete fence, but there are no walking paths and the maintenance of greenery and cleanliness is not satisfactory. Their location is convenient and they provide sufficient parking space for vehicles.
- 34. In Shterpce, the city cemetery is fenced and has walking paths. Maintenance of greenery and cleanliness is average. The location is convenient but there is no parking space for vehicles.
- 35. In Zubin Potok, the cemetery has walking trails, greenery maintenance and cleanliness is relatively good and the location of the cemetery is convenient. In Leposavic, the old cemetery is closed and a new cemetery has been provided in a new location and it is in a good condition.
- 36. The city cemetery in Vushtri is surrounded by a complete and maintained fence. Greenery and cleanliness are maintained and are satisfactory. Walking paths in the cemetery are regulated and there is sufficient parking space for vehicles.
- 37. In Skenderaj, during 2016, the municipality allocated a new cemetery for the village of Polac. The new cemetery is fenced but it lacks walking paths. Maintenance of greenery in the cemetery is not satisfactory, whereas the cemetery location is convenient.
- 38. In Kllokot and Partesh, the cemeteries are fenced and the maintenance of greenery and cleanliness in them is satisfactory. The location of the cemetery is convenient and provides parking space for vehicles. The cemetery in Ranilug is fenced and maintenance of greenery and cleanliness is relatively good.
- 39. The city cemetery in Novo Brdo is fenced but it lacks walking paths; maintenance of cleanliness is satisfactory, but not so the maintenance of greenery. The road to the cemetery is very narrow and inadequate and access is difficult especially during funerals. The Orthodox cemetery is fenced and its cleanliness properly maintained; however, maintenance of greenery is unsatisfactory. The location is convenient and there is sufficient parking space for vehicles.

Legal analysis

40. The obligation to respect the dignity of each person derives from the Constitution of the Republic of Kosovo and is the basic principle laid down in the main international documents for the protection of human rights. The Constitution of the Republic of Kosovo states in Article 23 that "Human dignity is inviolable and is the basis of all human rights and fundamental freedoms". On this basis, the Ombudsperson recalls that the actions and decisions of all public bodies should be in the spirit of this definition, as

the fundamental principle and frame of interpretation of the fundamental rights of each individual.

- 41. Lack of adequate actions by local authorities in the area of cemetery administration and maintenance and the current unsatisfactory condition of the cemeteries directly results in the violation of the dignity of all persons visiting the graves of their relatives, especially considering their sensitivity and emotional state during such visits.
- 42. Administration and maintenance of public spaces is the competence of the Municipality, as defined in Law No. 03/L-040 on Local Self Government¹, Article 17, point p, which stipulates as follows: "Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation in the following areas:.....p) provision and maintenance of public parks and spaces;". Obligations of municipalities in the area of cemetery maintenance and administrations are also defined by municipal statutes and municipal regulations.
- 43. In most municipalities in Kosovo, based on Article 12, paragraph 12.1 and paragraph 12.2, point c, of the Law No. 03/L-040 on Local Self Government and the Statutes of Municipalities, the administration and maintenance of cemeteries is governed by special regulations or by the Regulation on Public Services. All these Regulations provide for general conditions for the provision of burial services, administration and maintenance of cemeteries and the body responsible for the implementation of these regulations, which in most cases is the Directorate of Public Services.
- 44. The Regulation on the management of the cemetery and commemorative building in the Municipality of Prishtina², approved by the Municipal Assembly of Prishtina, on 24 March 2014, in Article 32, regarding the maintenance of the cemetery, *inter alia*, sets out as follows:

Cemetery maintenance implies:

- a) construction and maintenance of cemeteries, tiles, memorials, etc. .;
- b) maintenance of greenery and flowering in cemeteries;
- c) maintenance of the cemetery fence;
- *d)* construction and maintenance of roads and paths at the cemetery;
- e) keeping cleanliness in the cemetery;
- f) maintenance of infrastructure (electricity, water, sewerage, lighting, facilities, etc.);
- g) maintenance of the commemorative object; and
- h) clearing trails and removing snow and ice from them.

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¹ https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530

² https://gzk.rks-gov.net/ActDetail.aspx?ActID=11865

- 45. The Regulation on the maintenance, regulation and preservation of the cemeteries of the Municipality of Istog, approved by the Municipal Assembly of Istog, on 29 May 2015, in Article 11 lays down activities which are prohibited in the cemetery, such as: entry and exit outside the time when the cemeteries are open for visitors if the public peace and order is broken; entrance of children under the age of 10 without the escort of adult persons; passage of the cemetery fence; trespassing of green areas; breaking of trees; plucking flowers and other decorative plants; treading on, staining and damaging built graves and their surroundings, breaking the silence in the cemetery, feeding and grazing animals in the cemetery, burning garbage and other things, and so on.
- 46. Almost all municipal regulations on the administration and maintenance of cemeteries define, *inter alia*, the responsibilities of municipalities regarding cemetery administration and maintenance, especially in terms of: cemetery fences and their maintenance, maintenance of exit entrances, maintenance of walking paths, maintenance of greenery in the cemetery, keeping cleanliness and order in the cemetery, convenient location, infrastructure maintenance, parking lots for vehicles, and so on.
- 47. According to international practices, depending on individual cemetery locations, cemetery maintenance includes, *inter alia*, the following: care and cleaning of walking access roads and means of transport, maintenance of cemetery boundaries, gates and internal walls, removal of garbage, maintenance of signs and announcements, leveling of the terrain as needed, maintenance of greenery, planting and storage of flowering areas, cutting and care of trees and shrubs, maintenance of auxiliary facilities in cemeteries, and so on.
- 48. Regarding the legislative aspect, some states regulate this area with a special law, such as the Republic of Croatia. The Croatian Law on Cemetery³ regulates the issue of construction, use and administration of cemeteries which, according to this law, are municipal facilities owned by the local self-government unit in the territory of which they are located. The law also defines the obligations of local self-government units in ensuring cemetery administration and maintenance by fulfilling the criteria and rules established by law, as well as the deadlines for issuing bylaws related to the administration and maintenance of cemeteries.

Conclusion of the Ombudsperson

49. The Ombudsperson, taking into account the cemetery administration and maintenance situation elaborated above, concludes that: The current situation of cemeteries in some of the municipalities of the Republic of Kosovo, in terms of administration and maintenance, violates human dignity, guaranteed by Article 23 of the Constitution of the Republic of Kosovo, namely the dignity of relatives of the deceased persons. In addition, the current situation regarding cemetery administration and maintenance constitutes a failure of municipal authorities to implement competencies vested in them by the Law No. 03/L-040 on Local Self Government as well as a failure to fulfill the obligations set forth by the municipal regulations approved by the municipal assemblies, which clearly define

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³ https://narodne-novine.nn.hr/clanci/sluzbeni/full/1998 02 19 2290.html

responsibilities and obligations of municipalities in the area of administration and maintenance of cemeteries.

50. The Ombudsperson, based on the assessment of the cemetery administration and maintenance situation in the municipalities of the Republic of Kosovo, acting according to the principle of law enforcement and aiming to improve the current situation of cemeteries, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 18, paragraph 1.2, of the Law No. 05/L-019 on Ombudsperson, hereby issues the following:

RECOMMENDATIONS

To the Municipality of Prishtina

- Open new walking paths in the cemetery.
- Complete and maintain fences of the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.

To the Municipality of Rahovec

- Open new walking paths in the cemetery.
- Complete and maintain fences of the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.

To the Municipality of Klina

- Open new walking paths in the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.
- Complete and maintain fences of the cemetery.

To the Municipality of Istog

- Open new walking paths in the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.
- Complete and maintain fences of the cemetery.

To the Municipality of Viti

- Open new walking paths in the cemetery.
- Complete and maintain fences of the cemetery.
- Ensure regular maintenance greenery in the cemetery.

To the Municipality of Peja

- Open new walking paths in the cemetery.
- Ensure regular maintenance of greenery in the cemetery.

To the Municipality of Fushe Kosova

- Open new walking paths in the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.

To the Municipality of Kamenica

- Open new walking paths in the cemetery.
- Ensure regular maintenance of greenery in the cemetery.

To the Municipality of Novobrdo

- Open new walking paths in the cemetery.
- Ensure regular maintenance of greenery in the cemetery.

To the Municipality of Obiliq

- Open new walking paths in the cemetery.
- Ensure regular maintenance of greenery in the cemetery.

To the Municipality of Dragash

- Open new walking paths in the cemetery.
- Ensure regular maintenance of greenery in the cemetery.

To the Municipality of Drenas

- Open new walking paths in the cemetery.
- Ensure regular maintenance of greenery in the cemetery.

To the Municipality of Malisheva

- Open new walking paths in the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.

To the Municipality of Skenderaj

- Open new walking paths in the cemetery.
- Ensure regular maintenance of greenery in the cemetery.

To the Municipality of Kacanik

- Open new walking paths in the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.

To the Municipality of Hani i Elezit

- Open new walking paths in the cemetery.
- Ensure regular maintenance of cleanliness and greenery in the cemetery.

To the Municipality of Podujeva

- Open new walking paths in the cemetery.
- Ensure general maintenance of the cemeteries.

To the Municipality of Shtime

- Open new walking paths in the cemetery.
- Ensure general maintenance of the cemeteries.

To the Municipality of Suhareka

- Open new walking paths in the cemetery.
- Ensure general maintenance of the cemeteries.

To the Municipality of Ferizaj

- Ensure regular maintenance of cleanliness and greenery in the cemetery.
- Ensure general maintenance of the cemeteries.

To the Municipality of Gjilan

- Ensure regular maintenance of cleanliness and greenery in the cemetery.
- Ensure general maintenance of the cemeteries.

To the Municipality of North Mitrovica

• Ensure general maintenance of the cemeteries.

To the Municipality of Zvecan

• Open new walking paths in the cemetery.

To the Municipality of Decan

• Open new walking paths in the cemetery.

To the Municipality of Gjakova, South Mitrovica and Lipjan

• Ensure general maintenance of the cemeteries.

Pursuant to Article 132, paragraph 3, of the Constitution of the Republic of Kosovo ("Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.") and Article 28 of the Law No. 05/L-019 on Ombudsperson ("Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions...must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question."), we kindly ask you to inform us of the actions you will take regarding this matter.

Respectfully, Hilmi Jashari Ombudsperson