



Prishtinë, January 17, 2019

Mr. Nehat Idrizi, Presider
Kosovo Judicial Council

RECOMMENDATION LETTER

Complaint No. 839/2018

Versus

Kosovo Judicial Council

Dear Mr. Idrizi,

The Ombudsman, based on Article 16, paragraph 1 of the Law No. 05/L-019 on Ombudsman as well as based on Article 10 of the Law No. 03/L-125 on Access to Public Documents, on 15 November 2018, received a complaint of Mr. [REDACTED] lodged versus the Kosovo Judicial Council (KJC) for the failure to respond on his request for Access to Public Documents.

Based on information on Ombudsman's disposal, Mr. [REDACTED], on October 31, 2018, through an e-mail, addressed the KJC with request for Access to Public Documents, respectively to access his own file, as a candidate in recruitment process for a judge. On November 1, 2018, he sent a hard copy of the same request by post as well.

On December 6, 2018, representative of the Ombudsman met with the KJC General Director and the Head of Assessment and Verification Office, regarding the actions that the KJC has undertaken with regard to the complainant's request for access to the document requested, in accordance with the Law on Access to Public Documents.

On December 7, 2018, the representative of the Ombudsman was notified through an e-mail with the response that the KJC has addressed to the complainant. Through this response, the KJC has rejected complainant's request for Access to Public Documents, referring to Article 27 of the Regulation on Recruitment, Examination, Appointment and Re-appointment of Judges (hereinafter the *Regulation*), while on this occasion the complainant was notified about the documents that has been submitted by him in the application procedure on the recruitment process for judges, which was not complainant's request in this case. In this regard, the Ombudsman has reviewed the given Regulation and notes that Article 27 [Exam and File Storing] defines:

“1. Exam shall be stored and archived together with the files of the candidates that have passed the Exam; and it shall be done based on the rules of storing and archiving of official documents.

2. *Files of the candidates that have not passed the Exam shall be returned to them following the registration of the relevant data that shall be stored.*

3. *Access in stored documents as per paragraph 1 and 2 of this Article shall be in accordance with legal provisions in force.”*

While Article 28 [Data disclosure liability] determines:

“Disclosure of any data or information regarding the recruitment and exam process in an unauthorized manner, and in contradiction with Laws in force and this Regulation from the persons that administer the process, shall be treated as serious violation of job duties and disclosure of official confidentiality.”

Law No. 03/L-125 on Access to Public Documents (LAPD), in Article 12, paragraph 1 explicitly stipulates situations for rejections from the right of access to documents; and in paragraph 3 of this Article determines the possibility when only a part of the requested document is covered by any of the exceptions listed in paragraph 1 of this Article, the remaining parts of the document shall be released. In cases when the request for access is refused, the public authority refusing a total or partial access to a document shall state the reasons for refusal and issue a justified decision in writing for this refusal.¹

While the Law No. 03/L-172 on Protection of Personal Data (LPPD), in Article 22 defines the right of data subject, which are processed by the data controller, in the present case the KJC, respectively the applicant of the document, based on this provision, is entitled to a full access to all his personal data. Article 23 of the LPPD stipulates tasks and liabilities of data controller, in the current case the KJC, that for any requested information from the data subject, a full access shall be granted.

As per this regard, the Ombudsperson reiterates that the Constitution of Republic of Kosovo, in Article 41, paragraph 1, determines the Right of Access to Public Documents, according to which: *“Every person enjoys the right of access to public documents”*. While paragraph 2 of the same Article determines: *“Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification”*.

The spirit of Article 41 of the Constitution has been forwarded also on Article 1 of the LAPD, according to which: *“This Law shall guarantee the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions”*.

Consequently, the Ombudsperson finds that refusal of complainant's request for access to his file as a candidate in the recruitment procedure for a judge, denies the complainant the right to access public documents, a right that is guaranteed by the Constitution as well as by Law.

Thus, in order to improve the respect of the right of access to public documents, as a constitutional and legal right, so that the citizens exercise this right as a powerful tool for controlling authorities' work, which would effect on improvement of state bodies' work accomplishment and increase the transparency and accountability, the Ombudsperson, in

accordance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 27 of Law no. 05 / L-019 on the Ombudsperson,

RECOMMENDS

Kosovo Judicial Council

- *To review complainant's request and to provide with the response in compliance with the Law on Access to Public Documents as well as with relevant legislation at force.*

In compliance with Article 132, paragraph 3, of the Constitution of 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”), You are kindly asked to inform us on steps to be undertaken regarding this issue.

Warmly submitted,

Hilmi Jashari

Ombudsperson

Copy: Mr. Shkëlzen Maliqi, KJC General Director

¹ Law No. 03/L-125 on Access to Public Documents, Article 13 [Refusal of access to official documents]