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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS OF THE OMBUDSPERSON OF REPUBLIC OF KOSOVO

Concerning the

*Law No. 06/L-012 on the Capital City of Republic of Kosovo, actually Article 7,
paragraph 1, sub-paragraph 1.1, which regulates public safety as the
competency of the Capital City*

Case

C. no. 683/2018

**For: Mr. Kadri Veseli, President
The Assembly of Republic of Kosovo**

Mr. Nait Hasani, President

Committee on Public Administration, Local Governance and Media

**Members of the Committee on Public Administration, Local Governance and
Media**

For notification:

Mrs. Albulena Haxhiu, President

**Committee on Legislation, Mandates, Immunities, Rules of Procedure of the
Assembly and the Oversight of the Anti-Corruption Agency**

**Mr. Ekrem Mustafa, Minister
Ministry of Internal Affairs**

**Mr. Rashit Qalaj, General Director,
Kosovo Police**

**Mr. Shpend Ahmeti, President
Municipality of Prishtina**

Prishtinë, 13 February 2019

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PURPOSES OF THE REPORT

1. Law No. 06/L-012 on the Capital City of Republic of Kosovo, Prishtina (henceforth referred to: the Law on Capital City), Article 7, paragraph 1, sub-paragraph 1.1, among others, **public safety** issue foresees as the competency of the Capital City, [**added emphases**].
2. This Report has three aims:
 - (1) To evaluate whether this competency of the Capital City is in compliance with the Law No. 04/L-076 on Police (henceforward in the text: *Law on Police*);
 - (2) To evaluate which law is to be considered special law in the concrete situation;
 - (3) This Report aims to deliver specific and concrete recommendations to the competent institutions as per amending and supplementing the Law no. 06 / L-012 on the Capital of the Republic of Kosovo, respectively article 7, paragraph 1, sub-paragraph 1.1, which regulates public safety as the competence of the capital city.

LEGAL BASES

3. Article 135, paragraph 3 of the Constitution of Republic of Kosovo reads: *“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. Law No. 05/L-019 on Ombudsperson, in Article 16, paragraph 1 stipulates: *“The Ombudsperson has the power 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.”*
5. Furthermore, Law No. 05/L-019 on Ombudsperson, in Article 18, paragraph 1 stipulates that the Ombudsperson, among others, has the following responsibilities:
 - *“To publish notifications, opinions, recommendations, proposals and his/her own reports;”* (Article 18, par. 1, sub-para. 6);
 - *“To recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo”* (sub-paragraph 1.7);
 - *“To recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation”* (sub-paragraph 1.9).
6. By delivering this Report to the responsible institutions the Ombudsperson aims to accomplish the following legal and Constitutional liabilities.

LEGAL BACKGROUND

In order to draw a conclusion regarding allegations of the complainant, the Ombudsperson has reviewed relevant provisions of the Constitution, the Law on the Capital City and the Law on Police.

The Constitution of Republic of Kosovo

7. Article 128, paragraph 1 stipulates: *“The Police of the Republic of Kosovo shall be responsible for the preservation of **public order and safety** throughout the territory of the Republic of Kosovo”*. While paragraph 3 determines: *“(…). Internal organization of the Kosovo Police shall be provided by law.”*

Law on Capital City

8. Article 1 of the Law on Capital City determines: *“This law regulates the organization and functioning of the Capital City of the Republic of Kosovo, which has a special legal status under the Constitution of the Republic of Kosovo.”*
9. Article 7, paragraph 1, sub-paragraph 1.1 regulates **public safety**, as Capital City’s competency and determines:
 - *“1.1.1. The police establishes the Police Directorate of the Capital City, whose organization and functioning is regulated by the Law on Police, which exercises its competences only in the territory of the Capital City;*
 - *1.1.2. The Mayor of the Capital City, after adoption by the Assembly of the Capital City, shall propose to the General Police Director at least two (2) candidates for the Director of the Police Directorate of the Capital City;*
 - *1.1.3. The Capital City Assembly exercises supervision of local safety policies falling within the competence of the Capital City;;*
 - *1.1.4. The Assembly of the Capital City has the right to ask the Police Director of the Capital City to provide information on the safety situation;*
 - *1.1.5. Upon request of the Mayor of the Capital City, the Kosovo’s Police, in compliance with the Law on Police, establishes special units based on the needs of the Capital City;*
 - *1.1.6. Safety Community Council of the Capital City is an advisory body responsible for inter-institutional coordination of matters related to safety in the Capital City, whose duties and responsibilities are stipulated by sub-legal acts.”*

Law on Police

10. Article 1 of the Law on Police [Purpose] determines:

*“This law regulates the authorizations and duties of Police of the Republic of Kosovo, its **organization** and other issues related to activities and actions of the Police of the Republic of Kosovo.”*

11. Article 10 on Police lists general duties and powers of Police, among them, prevention of risk towards citizens and maintain the **public order and safety**, determined by paragraph 1, sub-paragraph 1.3.
12. Article 32 of the Law on Police [Organization of the Police of Republic of Kosovo], paragraph 1 stipulates:

“Police shall be organized in central and local levels. The General Police Directorate shall be the central headquarters responsible for all of Kosova. The local level shall include the Regional Police Directorates, responsible for regions comprising specified municipalities, Police Stations, which shall be responsible for local policing within each municipality, and police substations, if any, responsible for local policing within specific areas of a municipality.”

While paragraph 3 of the same Law reads:

“The internal organizational structure of Police of the Republic of Kosova shall be established by the General Director, subject to approval by the Minister. The General Director may also establish, subject to the approval of the Minister, police units to perform specific, temporary duties.”

ASSESSMENT

13. The Ombudsperson, having in regard the constitutional basis revealed above, observes that the constitutional provisions have plainly designated that the Police is responsible for the public safety and that the issues of its internal organization is regulated by the law.
14. In this direction, this narrative spirit has been conveyed on the Law on Police, by which the issues of Police organization is regulated. (Article 1).
15. The Ombudsperson notes that the Law on Police was adopted by the Assembly of the Republic of Kosovo on 2 March 2012, and was published in the Official Gazette 4/2012 on 19 March 2012, resulting that this Law is being implemented for more than six (6) years and a half.
16. Further, the Ombudsperson observes that the Law on Capital City, adopted by the Assembly of Kosovo on 17 May 2018, published in Official Gazette 10/2018 on 6 June 2018, aims to regulate the organization and functioning of the Capital City of the Republic of Kosovo, which has a special legal status under the Constitution of the Republic of Kosovo (Article 1).
17. Further, this Law regulates also the issues of public safety and organization of the Police (Article 7, paragraph 1, sub-paragraph 1.1).
18. In this regard, the Ombudsperson notes that the Law on Police, among others, aims organization of the Police, which is not the subject of the Law on the Capital City.

19. From this definition it is observed that there are two laws currently at force, which regulate in different manner the issues of police and its organization, which causes uncertainty as to which law should be taken in consideration in cases of organization of police in the territory of Prishtina (the Capital City).
20. In cases when an issue is regulated in different ways by two laws, for the Ombudsperson, of great importance is determining which law should be taken in consideration in that situation.
21. Regarding this issue, the Ombudsperson, on 28 September 2018, has published an *Ex Officio* Report with Recommendation No. 441/2018 (hereinafter in the text: the *Report*), related to three general principles for interpretation of normative acts and implementation of these principles on protection of human rights as well as in detail manner has provided explanations which interlinks with the concept of Special Law versus the General Law.
22. According to this Report, the principle *lex specialis derogat legi generali* (henceforward "*lex specialis*") stipulates that when a given factual situation falls under the scope of two normative acts, priority is given to the *special act* over the *general act*. (§ 6 of the Report).
23. Among others, in Report it has been determined that *lex specialis* is considered as normative act that addresses factual circumstances in more specific manner, to which priority is given versus that act which has more general nature. (ibid § 20).
24. It is important in this case to mention also the Judgment No. 04/L-093 of the Constitutional Court KO97/12, of 12 April 2012, which deals with constitutional review of the Law on Banks, Microfinance Institutions as well as Non-Bank Financial Institutions, in case of which the Court discloses a significant stand as per uniform law implementation. According to the Court: "*A new law cannot overrule the provisions of an existing law without amending the relevant provisions which set out the general principles..., because this would put at stake the principles of legal certainty and rule of law*". (see paragraph 128 of the Judgment KO97/12). This Court in the same ruling stipulates: "*The court recalls that the authorities have a constitutional obligation to ensure the uniform application of law, therefore this constitutional obligation may be impeded by introducing provisions which completely contradicts other existing relevant provisions of the law ...without changing those provisions at the same time*". (see paragraph 130 of the Judgment KO97/12).
25. The Ombudsperson notes also that, as per this issue, while the Law on Capital City was in the course of approving procedure in the Assembly of Kosovo, the Committee for Legislation, Mandates, Immunities, the Rules of Procedure of the Assembly and the Supervision of Anti-Corruption Agency, of the Assembly of the Republic of Kosovo (hereinafter referred to as "*Committee on Legislation*"), in its meeting held on 24 April 2018, approved the Report no. 20/06 for the Draft Law no. 06 / L-012 on the Capital City of the Republic of Kosovo, Prishtina, according to which it is recommended that the Commission does not support the Report with Amendments to the Functional Committee on Public Administration, Local Government and Media (hereinafter referred to as "*the Committee on Public Administration*") related to the draft law in question.

26. Further, in the reasoning of this report, it is noted that the Committee on Legislation, as a Permanent Commission, provided remarks and reminded the functional Committee for Public Administration that the contents of the Draft Law no. 06 / L-012 on the Capital City of the Republic of Kosovo, Prishtina, is in contradiction with Article 128 of the Constitution of the Republic of Kosovo and by Law no. 04 / L-076 on Police, since by this law organizational structure is being organized, the manner of proposing and selection of directors of directorates which function according to the Law on Police.
27. The Ombudsperson notes that, despite remarks provided by the Legislative Committee, the content of provisions of the given draft law did not change from the functional Committee on Public Administration and that the same text of the draft law was approved by the Assembly on 17 May 2018, and entered into force on 21 June 2018.
28. Therefore, having in regard the legal analysis and the practices outlined above, the Ombudsperson observes that the issue of Police organizing has been regulated by the Law on Police in a more specific and direct way and as such, the Law on Police should prevail over the Law on the Capital City.
29. Given the above mentioned, the Law on the Capital City should be in full compliance with the Law on Police, specifically with provisions which regulate the issues of police organization.

OMBUDSPERSON'S FINDINGS AND RECOMMENDATIONS

A. Findings of the Ombudsperson

30. Based on above mentioned assessment, the Ombudsperson finds:

- 1. The Law on Police is considered a Special Law, which in a direct and special manner regulates the issues of Police organization.*
- 2. The Law on Capital City does not comply with the Law on Police in terms of definitions regarding Police organization.*
- 3. Provisions of relevant Article of the Law on Capital City, as they are in present, create area for doubts and conflict of competencies.*

B. Recommendations of the Ombudsperson

31. Based on these findings and pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 16, paragraph 1 of the Law No. 05/L-019 on Ombudsperson, the Ombudsperson:

RECOMMENDS

The Assembly of Republic of Kosovo

- 1. To undertake legal initiative for amending and supplementing of the Law No. 06/L-012 on Capital City of Republic of Kosovo, Prishtina, actually Article 7, paragraph 1, sub-paragraph 1.1, to bring into line with the Law No. 04/L-076 on Police.*

2. *Till harmonization of the Law No.06/L-012 on the Capital City of Kosovo, Prishtina with the Law No. 04/L-076 on Police, in conflict situations over public security competence, priority to be given to the Law on Police as a Special Law.*

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