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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

**LEGAL OPINION OF THE OMBUDSPERSON OF REPUBLIC OF KOSOVO IN
THE CAPACITY OF FRIEND OF THE COURT (AMICUS CURIAE)**

Addressed to the

Basic Court in Prishtinë

C. No 620/2018

Strike Council

Versus

The Government of Republic of Kosovo

Related to allegations on the right on equal, dignified and not-discriminatory treatment at work

Prishtinë, 31 May, 2019

The purpose of Legal Opinion

1. This legal opinion, in the capacity of friend of the Court (*amicus curiae*), is focused on explaining the legal bases and analyses regarding the Strike Council, which represents Civil Servants' Staff employed in the Office of the Prime Minister of Kosovo, related to their allegations on their right to equal, dignified and non-discriminatory treatment at work.
2. Hence, for this reason, The Ombudsperson presents this legal opinion to the Basic Court in Prishtina in the capacity of friend of the Court (*amicus curiae*).

I. Legal bases of Ombudsperson's actions in the capacity of Friend of the Court

3. Constitution of Republic of Kosovo, Article 132, paragraph 1, stipulates: "*The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.*"
4. Article 135, paragraph 3, stipulates: "*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.*"
5. Law No. 05/L-019 on Ombudsperson, Article 16, paragraph 9, reads: "*The Ombudsperson may appear in the capacity of the friend of the court (amicus curiae) in judicial processes dealing with human rights, equality and protection from discrimination.*"
6. Article 18, paragraph 1, sub-paragraph 1.6, determines: "*The Ombudsperson has the responsibility to publish notifications, opinions, recommendations, proposals and his/her own reports.*"

II. Summary of facts

7. Ombudsperson Institution, in accordance with Article 16, paragraph 1, of the Law no. 05/L-019 on Ombudsperson, on September 6, 2018, received a complaint of Strike Council, in the capacity of Civil Servants' Staff representatives employed in the Office of the Prime Minister of Kosovo, against the Office of Prime Minister regarding the right on equal, dignified and non-discriminatory treatment at work.
8. The Government of the Republic of Kosovo, at its meeting held on 20 December 2017, has taken the Decision No. 04/20 on salary increase that, consequently, apart from the political staff, selectively benefited a part of the civil service staff within the framework of the Office of the Prime Minister, such as: the Office of the Secretary-General (also selectively), the Legal Office, the Coordination Secretariat and the Office for Public Communication, while out from this decision are left employees with the status of civil servants such as: Office for Good Governance, the Office for Strategic Planning, the Office for Central Administration, Office of Budget and Finance, Office of Procurement, the Office of Publication of Official Gazette, the Office of the Language Commissioner, the Office for Communities, the Office for Regional Cooperation, the Archives Unit and the Unit of Governmental Commission for Missing Persons.

9. Furthermore, the complainants allege that this Decision of the Government of the Republic of Kosovo did not take into consideration the legal basis at force, which governs the work and functioning of the state administration, actually the civil service, being opposite with the Law on Civil Service at force, with the Law on Salaries of Civil Servants, the Regulation on the Internal Organization of the Office of the Prime Minister, the Law on Protection from Discrimination, etc.
10. Also, the complainants state that the Decision no. 04/20 on salary increase, selectively including civil servant staff of the Office of the Prime Minister, has put them in an unequal treatment and has caused problems in well-functioning of the Prime Minister's Office, making the administrative staff (which is part of the abovementioned Decision) to have higher salaries than the Directors of professional offices, who are part of the Prime Minister's Office. As a consequence, assistants' basic gross salary, with this Decision, is to become 680 euro, on the other hand, Directors of offices, who are not part of this Decision, have coefficient 10, with gross monthly salary from 582.73 euro.
11. Unsatisfied with this Decision, on 21st of December 2017, the complainants filed a request with Kosovo Prime Minister, Mr. Ramush Haradinaj, but until now, no official response has been served to them. Their dissatisfaction, the complainants have exposed even with the strike. However, up until now, no solution has been made as per their case.
12. In November 9, 2018, the Ombudsperson sent an official letter to the Prime Minister of the Republic of Kosovo, Mr. Ramush Haradinaj, requesting to be informed on the phase of the procedure of complainants' complaint, of 21 December 2017, and actions undertaken or planned to be undertaken from the Government of the Republic of Kosovo so that this case is proceeded within the time limits, in harmony with the legal provisions at force. Further in this letter the Ombudsperson pointed out other complaining claims according to the Decision no. 04/20 through which, Kosovo Government, apart the political staff, increases salaries of one part of its civil servants of Prime Minister's Office of the Republic of Kosovo.
13. On November 23, 2018, the Ombudsperson received a response from the Prime Minister of the Republic of Kosovo, Mr. Ramush Haradinaj, through which was informed that the Decision no. 04/20, of 20 December 2017, has been issued having in consideration the need for increasing the efficiency at work for the selected political staff and for the relevant staff of the selected units of the Office of Prime Minister, defined with the aforementioned Decision, as well as due to job features and scope of relevant units of the Office of the Prime Minister. This Decision is based on in Article 35, paragraph 5, the Law no. 03/L-189 Public Administration of the Republic of Kosovo, which clearly defines that the organizational structure of the Prime Minister's Office will be defined through a special regulation - Regulation No.16/2013 on the Organizational Structure of the Office of the Prime Minister, approved on 123 meeting of the Government of the Republic of Kosovo with the Decision No.06/123, date 05.04.2013) and signed by the Prime Minister on 17 June 2013. Furthermore, on Kosovo Republic PM's response is stated: *"The Government of the Republic of Kosovo, during its deliberations and decision-making in the present case, has taken into consideration the immediate need for the further improvement and advancement of policies and legislation, where also during*

review has taken in consideration various reasonable treatment provided for in Article 6 of the Law on Protection of Discrimination where the same principle is further elaborated in the Manual of the Agency for Fundamental Rights of the European Union for European Legislation on Protection from Discrimination.”

14. Furthermore, in this reply it is noted that Decision No. 04/20 of 20 December 2017, issued by the Government of the Republic of Kosovo, refers to Article 92, paragraph 4 and Article 93, paragraph 4, of the Constitution of the Republic of Kosovo; Article 4 of Regulation No. 02/2011 on Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries, amended and supplemented by Regulation no. 14/2017, with Regulation No. 15/2017 and with Regulation no. 16/2017, as well as Article 19 of Regulation no. 09/2011 on the work of the Government of the Republic of Kosovo, the legal bases which is going to be discussed in the following parts of this Report.
15. Decision No. 04/20 of the Government of Republic of Kosovo for salary increase of 20 December 2017, has been included also in the Annual Report of the Independent Oversight Board for Civil Service of Kosovo for 2017, where for the given decision it is ascertained that: “ *it is contradictory to legal provisions because it has selectively included only part of the civil service within the Office of the Prime Minister as well as setting fixed salaries for these employees, while with the Law on Salaries of Civil Servants, the salaries of civil servants are paid on the basis of coefficients respectively the same job should be paid equally and being selective for only certain posts, therefore, other servants of public administration institutions are thus excluded.*”
16. On January 21, 2019, the representative of the Ombudsperson Institution (OI) met with one representative of the Strike Council, from whom was informed that civil servants who did not benefit from salary increases from Decision No. 04 / 20 of the Government of the Republic of Kosovo, of 20 December 2017, received into their bank accounts the sum of 300 Euros for holidays of the end of the year.

III. Legal Bases

17. Article 21, paragraphs 2 and 3, of the Constitution of Republic of Kosovo (hereinafter the *Constitution*) stipulates as follows:

- “*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.*”

Article 24, paragraph 1, guarantees: “*1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination*”, while paragraph 2 stipulates: “*No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*”

While Article 32 of the Constitution stipulates: *“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law..”*

Further, Article 49, paragraph 1, of the Constitution determines: *“The right to work is guaranteed”*. While Article 53 of the Constitution stipulates: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

Additionally, Article 54 of the Constitution (Judicial Protection of Rights), reads: *“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.”*

Article 14 of the European Convention on Protection of Human Rights and Fundamental Freedoms, of 4 November 1950 (henceforward the *Convention*), stipulates: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status..”* Article 92, paragraph 4, of the Constitution of Republic of Kosovo stipulates: ***“The Government makes decisions in accordance with this Constitution and the laws, proposes draft laws, proposes amendments to existing laws or other acts and may give its opinion on draft laws that are not proposed by it.”*** While Article 93, paragraph 4, determines: ***“Makes decisions and issues legal acts or regulations necessary for the implementation of laws.”***

18. Law No. 05/L-021 on the Protection From Discrimination, Article 2, stipulate the scope: *“This law applies to all acts or omissions, of all state and local institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life, especially related to:*

- *1.1. conditions for access to employment, self-employment and occupation, including employment conditions and selection criteria, regardless of activity and at all levels of the professional hierarchy, including promotions;*
- *1.2. access to all types and levels of vocational guidance, vocational training, advanced vocational training and re-qualifications, including internship experience;;*
- *1.16. any other rights provided for by the legislation in force;.”*

Article 3, paragraph 1, determines the concept of discrimination: *“The principle of equal treatment shall mean that there shall be no discrimination, direct or indirect in the sense of any of the grounds set out in Article 1 of this Law*, while paragraph 2 stipulates: *“Discrimination is any distinction, exclusion, restriction or preference on any ground specified in Article 1 of this law, which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislations of the Republic of Kosovo.”* While procedures to responsible authorities, according to article 12, paragraph 1, stipulates: ***“Any person or group of persons may file a complaint to the***

Ombudsperson regarding the discriminatory behaviour on the grounds mentioned in Article 1 of this law.”

19. Law No. 05/L-021 on the Protection From Discrimination, Article 20, paragraph 1, determines: “*When persons who consider that the principle of equal treatment has not been applied to them, submits before an administrative authority or a competent court, proofs from which it may be presumed that there has been direct or indirect discrimination*”; paragraph 2 reads: “***Burden of proof shall be upon the respondent, who should prove that there has been no breach of the principle of equal treatment..***”
20. Law No. 03/L-149 on Civil Service of the Republic of Kosovo, in Article 43, stipulates: “*Civil Servant have the right to be treated to receive fair and equitable treatment in all aspects of personnel management career development, rewards, **compensation and legal protection**, without regard to sex, race, religious affiliation or belief, political affiliation, physical disability, conditions, marital status, age and ethnic origin.*”(Paragraph 1).
“It is the duty of the public administration to remove those administrative obstacles which limit the freedom and equality of Civil Servants, impede their full professional development and constrain their opportunities to effective participation in the attainment of the scopes set for the Civil Service.”(Paragraph 2).
21. Article 50 of this Law stipulates: “*Civil Servants shall have the right to appeal against administrative decision or any violation or omission of the general administrative rules or procedures that affect or are related to their working relationship.*” (Paragraph 1).
“Civil Servants shall have the right to protect themselves in cases of any violation of their rights as a result of the action of the public administration through internal administrative or judicial procedures.” (Paragraph 2).
22. Law No. 05/L-031 on General Administrative Procedure, Article 13, determines: “*Except when explicitly excluded by law, any person has the right to use the legal administrative and judicial remedies, as provided by law against any administrative action or omission, which affects his subjective right or legitimate interests*”. Article 98, paragraph 1, of this law determines: “*An administrative proceeding, instituted upon request, shall be terminated as soon as possible, but no later than within the deadline established by law for that type of proceeding*”; while paragraph 2 determines: “*In case the special law provides no deadline, as provided under paragraph 1. of this Article, the general deadline applicable to the conclusion of administrative proceedings shall be forty five (45) days from the date of its institution.*”
23. Regulation No.16/2013 on the Organizational Structure of the Office of the Prime Minister, approved on 123 meeting of the Government of the Republic of Kosovo with the Decision No.06/123, date 05.04.2013, in Article 6, paragraph 2, determines: “*Prime Minister shall exercise his/her executive authority in compliance with the Constitution and other legislation in force.*” Article 47, paragraph 1, of this Regulation stipulates: “*Duties and responsibilities of civil servants at the Office of the Prime Minister shall be provided for by the legislation on civil service in force.*”
24. Article 4 of the Regulation no. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries, amended and supplemented with

Regulation No. 14/2017, with Regulation No. 15/2017 and with Regulation No. 16/2017, where the following powers of the Government of Republic of Kosovo are determined:

Article 4, paragraphs:

1. Government shall exercise its executive power in accordance with Constitution and legislation in force dealing with the Government;

2. Government in order to exercise its competences determined by the Constitution and legislation in force:

- *2.1. makes decisions on the proposal of the higher authorities of state administration;*
- *2.2. issues legal acts or regulation, necessary for the implementation of laws;*
- *2.3. discuss problems or other issues that it considers important within the frame of its competency;*
- *2.4. decide on appointments and dismissals within its competency, and*
- *2.5. performs all duties and responsibilities set forth in the Constitution and legislation in force..*

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25. Article 19 of the Regulation No. 09/2011 of the Rules and Procedure of the Government of the Republic of Kosovo which regulates issues related to decision making process, according to below stated determinations:

1. The Government may adopt a decision – if it has previously been prepared in accordance with this Regulation.

2. Decisions in the Government meeting shall be taken with the majority vote of members present in the meeting where such decision is voted.

3. If the Government has an even number of members a decision shall be adopted if at least half of the members of the Government voted for it provided the Prime Minister also voted for it, respectively the Deputy Prime Minister in cases where the Prime Minister is absent.

4. Voting at a meeting of the Government shall be open.

5. The result of the voting shall be established by the Prime Minister.

26. Law No. 03/L-147 on Salaries of Civil Servants in Kosovo, Article 3, paragraph 1, determines: **“Civil Servants’ right to a fair and regular pay shall be guaranteed according to the terms and conditions established in this Law and the Law on Civil Service.”** While Article 3, paragraph 2, specifies: **“Public administration institutions in the Republic of Kosovo are obligated to pay equal salary for the work with the same value.”**

27. Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Article 1, paragraph 2, stipulates: **“For the purposes of this law, the institutions of the central and municipal administrations that are subject to this law include: the administration of Assembly, the administration of the Office of the President, the Office of the Prime Minister and ministries, executive agencies, independent and regulatory agencies and municipal**

administrations.” While Article 5, determines some of basic principles of the civil service in the course of performing their duties, among them, paragraph 1.2 (Principle of Non-discrimination) which stipulates: “*no one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status*”. While Article 44 denotes the right to the salary and stipulates: “*The job of Civil Servants shall be compensated according to a payment system that shall be regulated with a special law.*”

IV. Legal analyses

28. The Ombudsperson draws attention on the fact that the Constitution, as the highest legal act of a country, protects and guarantees the fundamental human rights and freedoms. It is therefore in the interest of the functioning of the rule of law the implementation and practical realization of these rights. Constitutional guarantees serve the protection of human dignity and the functioning of the rule of law. The Constitution, in Article 21, explicitly stipulates the liabilities of all bodies to respect human rights and freedoms. Therefore, this principle is a necessity of time and must be respected by all, including, in this case as well, the Government of the Republic of Kosovo, actually the Office of Prime Minister.
29. Article 22 of the Constitution of Republic of Kosovo determines: “*Human rights and fundamental freedoms guaranteed by the following international agreements and instruments [...] are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions.*” European Convention on Protection of Human Rights and Fundamental Freedoms is among these international instruments. While Article 24, paragraph 1 of the Constitution guarantees: “*All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination*”; as well as paragraph 2: “*No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*”
30. The Ombudsperson observes that, pursuant to Article 53 of the Constitution, human rights and fundamental freedoms guaranteed by this Constitution are interpreted in accordance with the decisions of the European Court of Human Rights (hereinafter: the *European Court*).
31. The Law No. 05/L-021 on Protection from Discrimination stipulates: “*When persons who consider that the principle of equal treatment has not been applied to them, submits before an administrative authority or a competent court, proofs from which it may be presumed that there has been direct or indirect discrimination and that **burden of proof shall be upon the respondent, who should prove that there has been no breach of the principle of equal treatment.***” Therefore, the Ombudsperson on November 9, 2018, requested response from the Prime Minister of Republic of Kosovo, Mr. Ramush

Haradinaj, regarding complainants' allegations on salary discrimination and on November 23, 2018 received a response.

32. The Ombudsperson exposed his concern that the reasoning provided by Prime Minister of the Republic of Kosovo, in his reply of 23 November 2018, did not provide sufficient justifications that Decision no. 04/20 of 20 December 2017, issued by the Government of the Republic of Kosovo, is not discriminatory, given that the legal basis of this Decision did not contain any Article or provision of the Law on Protection from Discrimination, which is at force. Therefore, the Ombudsperson considers that such practice, as is in the current case, by bringing *ad-hoc* decision for salary increase for employees in a selective manner, issued by the Government of Republic of Kosovo and *justified by a legitimate aim and the existence of a reasonable relationship of proportionality between the means employed and the aim sought to be realized*, without any legal bases previously determined and included in the Decision, establishes ambiguity and presents violation of legal provisions stipulated by the Constitution of Republic of Kosovo (*see case of Burden versus UK, of 29 April 2008*), where the ECtHR found: *“The difference in treating persons in similar situations...is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized.”*
33. Furthermore, in the reply of the PM of the Republic of Kosovo is stated that the Article 92, paragraph 4 of the Constitution of Republic of Kosovo has been taken into consideration, which stipulates: *“The Government makes decisions in accordance with this Constitution and the laws, proposes draft laws, proposes amendments to existing laws or other acts and may give its opinion on draft laws that are not proposed by it”*; Article 93, paragraph 4, stipulates: *“Makes decisions and issues legal acts or regulations necessary for the implementation of laws”*; also Article 4 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries, is mentioned, amended and supplemented with Regulation No. 14/2017, with Regulation No. 15/2017 and with Regulation No. 16/2017, where, among others, points out these powers of the Government of Republic of Kosovo: *“Government shall exercise its executive power in accordance with Constitution and legislation in force dealing with the Government”* and; *“Government in order to exercise its competences determined by the Constitution and legislation in force: makes decisions on the proposal of the higher authorities of state administration; issues legal acts or regulation, necessary for the implementation of laws.”* The Ombudsperson, initially reminds that the Decision No. 04/20, of December 20, 2017, does not contain any legal reference of Civil Service of Kosovo and secondly, although above stated legal bases recognizes the right to decision –making to the Government of Republic of Kosovo, they should be in compliance with the Constitution and the Laws, in the meaning that they are not discriminatory, as is in the current case concerning complainants' case.
34. Moreover, the Ombudsperson considers that the mean used in this case, including involvement of some civil servants in salary increase by excluding others, does not in any way justify reaching the aim sought to be of realized by the Government of the Republic of Kosovo, as claimed in the reply of November 23, 2018.

35. In the meaning of Article 14 of the European Convention on Human Rights, the Ombudsperson reiterates that the Convention determines that enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth **or other status**. Decision No. 04/20, of 20 December 2017, through which the salaries of some political posts are increased and in selective manner to some civil servants within the Office of prime Minister, is in contradiction with the Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, which in Article 43 stipulates: “**Civil Servant have the right to be treated to receive fair and equitable treatment in all aspects of personnel management career development, rewards, compensation and legal protection, without regard to sex, race, religious affiliation or belief, political affiliation, physical disability, conditions, marital status, age and ethnic origin.**” (Paragraph 1). On other case of the ECtHR (*Kechko versus Ukraine*), The Court considers that it is within the State’s discretion to determine what benefits are to be paid to its employees out of the State budget. The State can introduce, suspend or terminate the payment of such benefits by making the appropriate legislative changes¹. Therefore, such Court’s ascertainment should also be applicable in actual complainants’ case as well.
36. Duties and responsibilities of civil servants in the Office of the Prime Minister are defined by the Civil Service legislation. Such a rule is also foreseen under Regulation no. 16/2013 on the Organizational Structure of the Office of the Prime Minister, approved on 123 meeting of the Government of the Republic of Kosovo, according to the Decision No.06/123, of April 5, 2013, where Article 6, paragraph 2, stipulates that the Minister exercises his executive power in accordance with the Constitution and other applicable legislation; and Article 47, paragraph 1, stipulates that the duties and responsibilities of civil servants in the Office of the Prime Minister shall be determined by the legislation in force for the civil service.
37. Also, the Decision No. 04/20, of 20 December 2017, of the Republic of Kosovo, is based on Article 19 of the Regulation No. 09/2011 on Rules and the Procedures of the Government of Republic of Kosovo, which governs the issue related to decision- making, based on following legal determinations: “*The Government may adopt a decision – if it has previously been prepared in accordance with this Regulation, Decisions in the Government meeting shall be taken with the majority vote of members present in the meeting [...]*”, etc., Ombudsperson ascertainments stipulated in the above given paragraph apply also for this legal bases. .
38. Law No. 03/L-147 on Salaries of Civil Servants in Kosovo, in Article 3, paragraph 1, determines: “**Civil Servants’ right to a fair and regular pay shall be guaranteed according to the terms and conditions established in this Law and the Law on Civil Service**”. The Ombudsperson reiterates that the regular and direct payment shall be guaranteed to the complainant solely on the *bases of legal conditions*, actually of the law at force and any other deed comprises illegal action.

¹ Kechko versus Ukraine, no. 63134/00, 8 November 2005.

39. Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Article 1, paragraph 2, reads: *“For the purposes of this law, the institutions of the central and municipal administrations that are subject to this law include: the administration of Assembly, the administration of the Office of the President, **the Office of the Prime Minister** and ministries, executive agencies, independent and regulatory agencies and municipal administrations.”*; while Article 5 stipulates some of principles of Civil Servants while performing their duties, among them, paragraph 1.2 (Principle of Non-discrimination) determines: *“no one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.”* The Ombudsperson states that the complainants have signed the contracts for establishing the employment relationship in the Office of the Prime Minister and the right of civil servants is to be recognized to them according to the aforementioned legal reference of the applicable law for the Civil Service of the Republic of Kosovo. They should therefore be treated equally and without discrimination.
40. Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, Article 44, stipulates: *“The job of Civil Servants shall be compensated according to a payment system that shall be regulated with a special law.”* While the Law No. 03/L-147 on Salaries of Civil Servants in Kosovo, as a specific Law, in Article 3, paragraph 2, determines: *“**Public administration institutions in the Republic of Kosovo are obligated to pay equal salary for the work with the same value**”*. Therefore, the Ombudsperson draws attention that in the current case, the Decision No.04/20, of December 20, 2017, issued by the Government of Republic of Kosovo for Selectively Increase of Salaries for a specific part of civil servants in the Office of Prime Minister, is in contradiction with the above mentioned law.
41. On December 21, 2017, the complainants filed a protocolled letter no. 3759 in the Office of the Prime Minister of the Republic of Kosovo. However, no response was served to them. The Ombudsperson considers that the failure of the Office of the Prime Minister of the Republic of Kosovo to respond to the complainants' letter within the deadlines set by the legislation at force has impacted on violation of their rights and at the same time constitutes a violation of Law no. 05 / L-031 on the General Administrative Procedure, as well as complainants' right to an administrative proceeding without delays. The Ombudsperson recalls that all institutions, including the Office of the Prime Minister, are obliged to respond to the requests of the parties within the foreseen legal deadlines, so that the parties are informed of their rights and eventually use the means of effective legal remedies, guaranteed by Article 32 of the Constitution, which sets out: *“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.”* The Ombudsperson recalls that "effective means" within the meaning of Article 13 should be able to prevent the alleged violation, to prevent its continuation, or to provide an adequate remedy for any violation that had already occurred (see Judgment the aforementioned Kudla versus. Poland, paragraph 158).

CONCLUSION

42. The Ombudsperson deems that the Decision No. 04/20, of December 20, 2017, issued by the Government of Republic of Kosovo, is a selective decision, which establishes inequalities as well as presents violation of Article 24, paragraph 1, which guarantees: “*All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination*”; and paragraph 2: “*No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status*”, stipulated in Constitution of Republic of Kosovo.
43. The Ombudsperson deems that the Decision No. 04/20, of December 20, 2017, issued by the Government of Republic of Kosovo, for increase of salaries on selective manner for civil servants within the Office of Prime Minister, violates Article 43 of the Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, which stipulates: “*Civil Servant have the right to be treated to receive fair and equitable treatment in all aspects of personnel management career development, rewards, compensation and legal protection, without regard to sex, race, religious affiliation or belief, political affiliation, physical disability, conditions, marital status, age and ethnic origin.*”(Paragraph 1). “*It is the duty of the public administration to remove those administrative obstacles which limit the freedom and equality of Civil Servants, impede their full professional development and constrain their opportunities to effective participation in the attainment of the scopes set for the Civil Service.*”(Paragraph 2).
44. The Ombudsperson considers that *ad-hoc* decisions, which represent the willingness of the Government of the Republic of Kosovo for increase of salaries, in a selective manner, for the civil servants, as is the present case, constitutes a violation of Article 3, paragraph 1 of the Law No. 05 / L-021 on Protection from Discrimination, which defines the concept of discrimination: “*The principle of equal treatment shall mean that there shall be no discrimination, direct or indirect in the sense of any of the grounds set out in Article 1 of this Law..*”; paragraph 2, which reads: “*Discrimination is any distinction, exclusion, restriction or preference on any ground specified in Article 1 of this law, which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislations of the Republic of Kosovo.*”, interlinked with Article 2, paragraph 1.1, which determines: “*access to all types and levels of vocational guidance, vocational training, advanced vocational training and re-qualifications, including internship experience.*”
45. The Ombudsperson deems that the failure to obtain the response by the Office of Prime Minister of the Republic of Kosovo on the letter no.prot.3759, submitted by complainants on December 21, 2017, represents violation of the Principle of the Right to Legal Remedies, guaranteed also by Article 32 of the Constitution, which stipulates: “*Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.*”

Warmly submitted,

Hilmi Jashari

Ombudsperson