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Prishtinë, 1 March, 2019

Mr. Pleurat Sejdiu, President  
Kosovo Doctors' Chamber  
Str. Kosta Novaković  
Container No. 3, office no. 214  
10000 Prishtinë

## **RECOMMENDATION LETTER**

**Complaint No. 818/2018**

**NN**

**Versus**

**Kosovo Doctors' Chamber**

Dear Mr. Sejdiu,

Ombudsperson Institution (OI), based on Article 16, paragraph 1 of the Law No. 05/L-019 on Ombudsperson, on 6 November 2018 admitted a complaint versus the Kosovo Doctors' Chamber (KDCh).

Based on information received by the complainant it is understood that the KDCh, on July 5, 2018 issued the Decision No. 270/2018 on Setting Administrative Fee System. Further, the complainant claimed that by this Decision it was decided that " Administrative fee for initiation of disciplinary proceedings against doctors shall be in amount of 30 € (thirty Euros)". Moreover, the complainant alleges that such decision violates human rights, since the liability of paying the fee becomes an obstacle for patients to file a complaint when they consider that their human rights have been violated by medical personnel.

Related to this issue, on December 4, 2018, the Ombudsperson sent a letter and requested to be informed from KDCh regarding the legal bases as well as the purpose of the decision at question.

On December 7, 2018, the response from KDCh has been served to the Ombudsperson by which he was notified that the Decision No. 270/2018 on Administrative Fee System Setting is based on Article 19, paragraph 1, sub-paragraph 1.12 and 1.13 of the Law No. 04/L-150 on Chambers of Healthcare Professionals (henceforth *Law on Chambers of Healthcare Professionals*), as well as Article 22, paragraph 1, sub-paragraph 1.12 and 1.13 of the Statute of KDCh (henceforward the *Statute*).

The Ombudsperson observes that Article 19 of the Law on Chambers of Healthcare Professionals stipulates the competencies of the Assembly, while paragraph 1, sub-paragraph 1.12 and sub-paragraph 1.13 determines as follows:

*“...determines the membership fee for the members of the chamber (1.12);*

*“...determines the compensation amount (fee) for the members of the chamber, the licensing and re-licensing fee and the amount of the fee for the issuance of certificates, certification and other documents for which the chambers maintain official evidence” (1.13).*

The Ombudsperson observes that Article 22 of the Statute stipulates the *Competencies of the Assembly*, while paragraph 1, sub-paragraph 1.12 and 1.13 stipulate as following:

*“....the amount of membership fee for the members of the KDCh” (1.12);*

*“....regulation on compensation amount (fee) for the members of the KDCh, the licensing and re-licensing fee and the amount of the fee for the issuance of certificates, certification and other documents for which the KDCh maintain official evidence” (1.13).*

On this occasion the Ombudsperson draws attention on the Constitution of the Republic of Kosovo, Law no. 05 / L-031 on General Administrative Procedure, the Law no. 2004/38 on the Rights and Responsibilities of the Citizen on Health Care, as well as the Administrative Instruction 15/2013 the Charter on Patient Rights and Responsibilities.

The Constitution of Republic of Kosovo, Article 32, stipulates that: *“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.”*

Law No. 05/L-031 on General Administrative Procedure, Article 13, contains *“The principle of the right to legal remedies”* according to which *“ any person has the right to use the legal administrative and judicial remedies (...) against any administrative action or omission, which affects his subjective right or legitimate interests(...)”*, while Article 12 contains *“Principle of gratuity of the proceeding”*, according to which, paragraph 1 determines : *“For the party, administrative proceedings are free, unless otherwise provided by law (...).”*

Furthermore, the Law No. 2004/38 on the Rights and Responsibilities of the Citizen on Health Care, Article 24, regulates the right to lodge a complaint, according to which it is stipulated that:

*“Any citizen is entitled to lodge a complaint against the health institution regarding the health care service provided to him, no later than 60 days after the incident has occurred.” (24.1.)*

*“The health care institution shall investigate the complaint and shall inform the citizen in writing of the findings of the investigation, within 10 working days.” (24.2).*

While Administrative Instruction 15/2013 Charter on Patient Rights and Responsibilities, Annex 1, Article 13, determines:

*“Every citizen has the right to complain whenever he suffers physical, moral and psychological harm. He is also entitled to receive a response to his complaint. ”*

The Ombudsperson points out that the initiation of disciplinary proceedings against the health institution is an administrative procedure, which can be adjusted by internal rules, but they ought to be in full compliance with the general legal provisions.

As stated above, Law on General Administrative Procedure determines that *“For the party, administrative proceedings are free, (...)”*

The Ombudsperson ascertains that the liability of citizens to pay a fee for lodging a complaint to a health institution constitutes a violation of the constitutional right to use legal remedies and also breaches provisions of the Law on General Administrative Procedure and violates the right to file a complaint, which is guaranteed with provisions of the Law No. 2004/38 on the Rights and Responsibilities of the Citizen on Health Care, as well as the Administrative Instruction 15/2013 Charter on Patient Rights and Responsibilities.

The Ombudsperson, based on the abovementioned provisions, estimates that patients should be free to file complaints with the health institution / or the staff of the health institution in case they consider that their rights have been breached.

The Ombudsperson estimates that the legal bases on which the Decision No. 270/2018 on Administrative Fee System Setting is based does not contain any provision which permits KDCh setting of such rules, which are opposite with the abovementioned legal and constitutional provisions.

The Ombudsperson ascertains that the KDCh can set any fees for KDCh members, but under no circumstances can restrict citizens to file complaints towards health institution staff by paying the fee.

The Ombudsperson emphasizes that citizens should be given opportunity to freely submit complaints against health care personnel in case they consider that their rights, guaranteed by the Constitution and laws have been infringed.

Consequently, the Ombudsperson:

## **RECOMMENDS**

### **Kosovo Doctors Chamber**

- 1. To immediately suspend enforcement of paragraph 8 (eight) of the Decision No. 270/2018 on Setting Administrative Fee System, of 7 July 2018.*
- 2. To amend the Decision No. 270/2018 on Setting Administrative Fee System of 7 July 2018, by deleting entirely paragraph 8 (eight), which stipulates: “Administrative fee for initiation of disciplinary procedure against doctors in amount of 30.00 (thirty) Euros”.*

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