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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution**

Prishtinë, April 23, 2019

Mr. Alush Musaj, Rector
University of Mitrovica “Isa Boletini”
Str. “Ukshin Kovaçica”, n.n.
40000 Mitrovicë

RECOMMENDATION LETTER

Complaint No. 30/2019

Shpetim Salihu

Versus

University of Mitrovica “Isa Boletini”

Dear Mr. Musaj,

Ombudsperson Institution (OI) based on Article 16, paragraph 1, of the Law No. 05/L-019 on Ombudsperson, on January 10, 2019, admitted a complaint of Mr. Shpëtim Salihu, lodged against the University of Mitrovica “Isa Boletini” (UMIB).

Based on information received by the complainant it is understood that, after completion of the competition and other procedures related to the vacancy in which the complainant has been elected for the position of Assistant in the Faculty of Mechanical and Computer Engineering, the UMIB Senate, through Decision no. Prot. 1564, of November 5, 2018 decided to postpone signing of the contract with Mr. Salihun until obtaining the opinion from Anti-Corruption Agency (ACA) regarding the possibility of conflict of interest in the present case.

On 24 December, 2018 the UMIB admitted notification from ACA regarding the possibility of conflict of interest in the present case.

Regarding the matter of concern, the Ombudsperson sent a letter to the UMIB on January 25, 2019, requesting to be informed on actions undertaken by the UMIB in the course of competition and election procedures of Mr. Shpetim Salihu; as per developments during the period when the issue raised by the UMIB was under consideration at ACA; as well as for the actions that UMIB plans to undertake in order to resolve this case.

On February 15, 2019, UMIB provided the Ombudsperson with response and informed that upon Mr. Shpetim Salihu’s case will be decided on one of UMIB Senate’s meetings, based also on notification provided by ACA.

Furthermore, on March 19, 2019, the complainant informed the OI representative that the UMIB Senate has removed the complainant from recruitment procedure, based entirely on ACA notification.

Regarding this issue, the Ombudsperson draw attention:

- The Constitution of Republic of Kosovo stipulates: *“Right to Work and Exercise of Profession is guaranteed.”* (Article 49); as well as: *“The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms.”* (Article 3, paragraph 2).
- Law No. 05/L-021 on the Protection from Discrimination 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.”*

Among others, the Ombudsperson reviewed ACA notification and has noticed that, through this notification, ACA has notified the UMIB that Mr. Shpëtim Salihu is in conflict of interest due to the prohibition determined with the University Regulation, No. prot. 1201, of 11 September 2018.

The Ombudsperson finds that, according to the given notification, ACA has provided with some findings which appears not persuasive. In this direction, the ACA has ascertained: *“Noting prohibition of the Regulation of University of Mitrovica, in the course while the case was under review by ACA, the list of liabilities for 2018/2019 of November 27, 2018 is changed **deliberately** resulting with the fact that Mr. Avdi Salihu’s liabilities in the Department of Economic Engineering are withdrawn, which is done **solely to avoid the prohibition** determined in the Regulation.”* The Ombudsperson deems that in both cases, the ACA has only ascertained but has not justified the ascertainment (**“deliberately”** and **“solely to avoid the prohibition”**) given related to the case, which leaves room to be understood that such ascertainments are unsteady.

Furthermore, the Ombudsperson draws attention on the Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of a Public Function, according to which is determined that: *“An official must avoid the conflict of interest regardless if the conflict is factual, potential or apparent.”* (Article 5, paragraph 8); as well as is stipulated that: *“In the exercise of a public function, the official, depending on the case and circumstances (...)takes measures for self-exclusion or prior exclusion from decision-making process, discussion and voting of the issue in conflict unless explicitly stated by law.”* (Article 19, paragraph 1, sub-paragraph 1.2).

In this direction, the Ombudsperson believes that ACA ascertainment, which states that changing of the list of liabilities was done purposely and solely to avoid the prohibition in the Regulation, is in contradiction with Article 5, paragraph 8 as well as with Article 19, paragraph 1, sub-paragraph 1.2 of the Law No. 06/L-011 on Prevention of Conflict of Interest

in Discharge of a Public Function, in which actions that official should take for avoidance and prevention of conflict of interest is regulated.

Furthermore, according to this notification, ACA claims that UMIB should develop policies in protection of general interests and to avoid from policies which can establish nepotism in the institution. The Ombudsperson fully abides by this stand of the ACA, since this has great impact on appropriate functioning of UMIB.

UMIB Code of Ethics stipulates nepotism as follows: *“Nepotism is when a professor, a researcher, or a member of the technical or administrative staff, directly or indirectly (even using third party funding) uses his/her reputation or compelling ability to offer favors to adapt job advertisements and contracts, to influence competition outcomes or selection procedures, particularly those relating to career start-up or continuation (this also affects scholarships, contracts, contracts for research assistants), as well as the admission of children, members of the family and relatives (in the form of cohabitation and friendship).”*

The Ombudsperson deems that the ACA did not justify that Mr. Avdi Salihu has influenced in any form on employment of his son in the University of Mitrovica and the fact that Mr. Avdi Salihu lectures in another Department should not be taken as a circumstance for elimination of Mr. Shpëtim Salihu from election as a regular and honorarium Assistant in the Faculty of Mechanical and Computer Engineering for a group of subjects on Production Technology at Economics Engineering program.

Regarding such issues, the Ombudsperson, on February 12, 2018, published a Report with Recommendations No. 853/2016 regarding discriminatory criteria in job vacancies at the University of Prishtina (UP). In this Report, the Ombudsperson has ascertained that he specifically recognizes the problem of nepotism, as a special form of conflict of interest, which is extremely common while getting a job in public sector. However, suppression of nepotism does not mean absolutely excluding relatives, but means prevention of misuse of civil servant’s position in order to ensure a post for a family member. The goal is not to prevent family members from working together, but to prevent the possibility of a civil servant being biased, to favor or use his/her influence and position for the family member in exercising discrete powers to recruit qualified civil servants.

The Ombudsperson considers that the purpose of a public vacancy is reflected in the principle of equal access of all citizens that under same conditions are entitled to apply equally for each position in public sector. Equality in employment is a fundamental requirement of equality before the law.

Therefore, a person due to some personal characteristics, or in the present case, because of close family relations or working relations that they have within UP department or program, cannot be deprive from the right to work, position which is available to others and is fully recognized, because, by this, this person is placed on a disadvantage position, compared to other candidates, and the same is not allowed, that in equal conditions of the vacancy, to participate in the competition during the recruitment procedure, but should be mentioned that in such cases the recruitment procedure requires complete transparency.

The Ombudsperson draws attention that employment and promotion in public Universities in the Republic of Kosovo should be done equally for all on equal conditions, by fully respecting the constitutional principle of equality and equal access to public services.

The Ombudsperson considers that as per vacancies, the criteria set, requested qualifications as well as working skills of the person applying for the position, should be respected.

In all cases of employment or promotion, preferential treatment should not happen at any case due to family relations or similar connections and for the same reason should not happen neither for more unfavorable or exclusion treatment.

On the other hand the Ombudsperson finds that elimination of Mr. Salihu in this manner violates his right to work and exercise of profession as well as discriminates him on recruitment procedures.

Therefore, the Ombudsperson

RECOMMENDS

The University of Mitrovica “Isa Boletini”

- *To review the case of Mr. Shpetim Salihut, having in regard the constitutional right as per the right to work and exercise of the profession as well as the right of equality before the law by avoiding any form of discrimination, pertaining to which Ombudsperson’s Recommendation Report No. 853/2016 concerning discriminatory criteria entailed in UP job vacancies can serve as reference as well.*

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

- Attached: Report with Recommendations Ex Officio No. 853/2016 concerning discriminatory criteria entailed in UP job vacancies.