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REPORT WITH RECOMMENDATIONS OF THE OMBUDSPERSON OF REPUBLIC OF KOSOVO

**Ex Officio
Case No. 421/2019**

Related to

**the absence of effective legal remedies for settling labor disputes
involving civil servants and candidates for admission to the civil service**

For: Mr. Kadri Veseli
President of the Assembly of the Republic of Kosovo

Prishtina, on June 18, 2019

PURPOSE OF THE REPORT

1. This report aims to draw attention on the absence of effective legal remedies for settling labor disputes involving civil servants and candidates for admission to the civil service, as a result of the non-appointment of the members of the Independent Oversight Board for Civil Service of Kosovo (IOBCSK) from the Assembly of the Republic of Kosovo and to provide the complainants with the constitutional and legal right to effective legal remedies for settling labor disputes.

Powers and responsibilities of the Ombudsperson

2. According to Article 135, paragraph 3, of the Constitution: *“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.”*
3. Also, according to Law no. 05 /L-019 on Ombudsperson, inter alia, the Ombudsperson has the following powers and responsibilities:
 - *“The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights.” (Article 16, paragraph 4).*
 - *“to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases.” (Article 18, subparagraph 1.2).*
 - *“to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination.” (Article 18, subparagraph 1.5).*
 - *“to publish notifications, opinions, recommendations, proposals and his/her own reports.” (Article 18, subparagraph 1.6).*

Case Summaries

4. On May 21, 2019, the Ombudsperson, pursuant to Article 16, paragraph 4, of the Law no. 05 / L-019 on Ombudsperson, has opened an ex officio investigation for Case No. 421/2019, based on the article published in the newspaper "Koha Ditore" dated 7 May 2019, entitled: *“IOBCSK is dysfunctional for five months and there are about 500 complaints not reviewed”*.
5. On 23 May 2019, the representative of the Ombudsperson contacted Mr. Eshref Shabani, chairman of the IOBCSK, for the purpose of providing information on the case.
6. On May 24, 2019, the representative of the Ombudsperson received a response from the chairman of the IOBCSK, Shabani, through which it was announced that:

- On 13 December 2018, the mandate of four members of the IOBCSK expired and that the chairperson of the IOBCSK, in accordance with its legal obligations, on 12 September 2018 has notified the Assembly of the Republic of Kosovo regarding the expiration of their mandate.
- On 21 January 2019, a member of the IOBCSK resigned from her position and the chairperson of the IOBCSK, in accordance with its legal obligations, on 30 January 2019, informed the Assembly of the Republic of Kosovo for her resignation.
- As a result of the expiration of the mandate of the four members of the IOBCSK and the resignation of the fifth member, the IOBCSK has been dysfunctional since 21 January 2019.
- Currently the number of complaints that have remained unresolved is 410 of them, because the IOBCSK is dysfunctional due to the non-appointment of new members of the IOBCSK by the Assembly of the Republic of Kosovo.

Legal analysis

7. The Constitution of the Republic of Kosovo (hereinafter referred to as "the Constitution"), of the country's highest judiciary authority, protects and guarantees human rights and fundamental freedoms, so the practical implementation and realization of these rights is in the interest of the rule of law. Constitutional guarantees serve the protection of human dignity and the functioning of the rule of law.
8. Article 21, paragraphs 2 and 3 of the Constitution defines the following: *"The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution"*; and: *"Everyone must respect the human rights and fundamental freedoms of others."* While Article 24, paragraph 1 of the Constitution defines the following: *"All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination."* Whereas article 32 of the Constitution defines: *"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."*
9. The Ombudsperson states that the right of judicial protection is guaranteed by Article 54 of the Constitution, which stipulates: *"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."*
10. According to Article 22 of the Constitution: *"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: (2)) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;"*

11. Article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms states: *“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal [...].”*
12. The Ombudsperson emphasizes that it is a constitutional obligation of the state to provide citizens with effective legal remedies. This right is also guaranteed by Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides: *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*
13. Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms directly reflects the obligation of the State that, initially to protect human rights through its legal system, thereby establishing an additional guarantee for an individual, enabling him / her to effectively enjoy rights. If viewed from this perspective, an individual's right to a fair trial within a reasonable time will be less effective if there is no opportunity to first submit this complaint to a local authority. The requirements of Article 13 support the requirements of Article 6 (see, *Kudla vs. Poland*). Thus, Article 13 guarantees an effective remedy to a local authority to review a court case within a reasonable time for a violation, as required by Article 6.
14. The Ombudsperson considers that the effective legal remedy, in the light of Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, should be able to prevent the alleged violation or the continuation of the same.
15. Law no. 06/L-048 on the Independent Oversight Board for Civil Service of Kosovo, in Article 6, paragraphs 1 and 1.1 defines:

“1. For the supervision of the implementation of rules and principles of the Civil Service legislation, the Board shall have the following functions:

1.1. reviews and determines appeals filed by civil servants and candidates for admission to the civil service.”
16. Article 21, paragraph 1, of the same law provides:

“Board’s decision is a final administrative decision and is implemented by the senior management level official or the responsible person from the institution that made the first decision towards the party.”
17. The composition of the IOBCSK is regulated by Article 8 of Law no. 06 / L-048 on the Independent Oversight Board for Civil Service of Kosovo, which stipulates that the Board shall be composed of seven (7) members appointed by the Assembly of the Republic of Kosovo. Currently, the IOBCSK has only two mandated members, because on 13 December 2018, the mandate of four members of the IOBCSK expired, while on 21 January 2019, a member of the IOBCSK resigned from her position.

18. Article 10, paragraphs 1, 2 and 3 of Law no. 06 / L-048 on the Independent Oversight Board for Civil Service of Kosovo defines appointment procedures of the members of the Board:

“1. Chairperson of the Board shall notify the Speaker of the Assembly in writing at least ninety (90) days prior the regular mandate termination of the Board’s member, as well as within seven (7) days for any case of the completion or termination of the mandate of the member of the Board.”

“2. The Assembly of the Republic of Kosovo, pursuant to its Rules of Procedure, shall publish the public announcement of application for the member of the Board, at least sixty (60) days prior the regular mandate termination of the member of the Board.”

“3. For other cases of completion or termination of the mandate of a member of the Board, the Assembly shall publish a public announcement of application for a member of the Board within a period of fifteen (15) days from the day of receipt of the notification by the Chairperson of the Board.”

19. As a result of the non-appointment of the members of the IOBCSK, the decision-making deadline in the IOBCSK could not be respected, the deadline which is regulated by Article 17, paragraphs 1 and 2, of Law no. 06/L-048 on the Independent Oversight Board for Civil Service of Kosovo, determines:

“1. Within forty-five days (45) from the receipt of your complaint, the Board issues a decision by justifying the legal and factual basis of the decision taken.”

“2. In exclusion from paragraph 1. of this Article, in cases when the subject is of a specific nature, Chairperson of the Board has the right to extend the decision-making deadline for another ten (10) working days.”

20. The Ombudsperson notes that in the present case, the IOBCSK is dysfunctional since 21 January 2019, as from this date there are only two mandated members and, consequently, IOBCSK has not issued any decision and no complaint filed by civil servants or candidates for admission to the civil service has been reviewed, as provided by Law no. 06 / L-048 on the Independent Oversight Board for Civil Service of Kosovo.

21. The Ombudsperson considers that, as a result of the non-appointment of the members of the IOBCSK by the Assembly of the Republic of Kosovo, civil servants and candidates for admission to the civil service were denied the right to effective legal remedies, a right guaranteed by the Constitution of the Republic of Kosovo, the European Convention on Human Rights and the laws in force.

22. The Ombudsperson draws attention to the fact that the issue of rights deriving from the employment relationship, given the importance of all decision-making bodies, should be treated as a matter of priority.

Conclusion of the Ombudsperson

23. Based on the above assessment, the Ombudsperson finds that: Due to the inability to review the complaints of civil servants and candidates for admission to the civil service and the impossibility for issuing decisions by the IOBCSK, which is contrary to the right guaranteed for effective legal remedies and contrary to the right to a trial

within a reasonable time, The Assembly of the Republic of Kosovo finds necessary to appoint members of the Board as soon as possible and make it functional.

24. The Ombudsperson, based on what was stated above, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo: “*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*”. According to the meaning of Article 18, paragraph 1.2 of the Law 05/L-019 on Ombudsperson, the Ombudsperson has the responsibility “*to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases;*”

Therefore, the Ombudsperson,

RECOMMENDS

The Assembly of the Republic of Kosovo:

- **So that in accordance with the legal powers, give priority to the appointment of members of the Independent Oversight Board for Civil Service of Kosovo.**

Pursuant to Article 132, paragraph 3, of the Constitution of the 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 Law no. 05/L-019 on Ombudsman (“*Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question*”), please kindly inform us of the actions you will take regarding this issue.

Respectfully submitted,

Hilmi Jashari

Ombudsperson