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

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Prishtinë, July 23, 2019

Mr. Shekip Fazliu, Secretary  
Kosovo Telecom, J.S.C

## **RECOMMENDATION LETTER**

### **Complaint No. 29/2019**

**Kohavision  
Versus  
Kosovo Telecom**

Dear Mr. Fazliu,

Ombudsperson Institution (OI), based on Article 16, paragraph 1 of Law no. 05 / L-019 on the Ombudsperson as well as pursuant to Article 10 of Law no. 03 / L-215 on Access to Public Documents, on 8 January 2019, received the complaint of Ms. Ardiana Thaçi Mehmeti, KTV-Kohavision journalist / editor (hereinafter the *complainant*), filed against Kosovo Telecom (KT) concerning the failure to respond on her request for access to public documents.

Based on information owned by the Ombudsperson, it can be seen that the complainant, through on email, addressed several times KT with requests for access to public documents. On 8 June 2018, the complainant requested access to public documents, namely, she has requested access to the contract that KT has signed related to the KT premises located at "Mother Theresa" Square. On 12 June 2018, the complainant requested to gain access to public documents, actually requested access to all contracts that KT has signed regarding the premises rented, which are being used by Vala in the Municipality of Prishtina. On 24 October 2018, the complainant reiterated her request of 12 June 2018, also referring to the public announcement and the promise that the former KT Chief Executive has given to KTV's "Interactive" program, that access will be granted to documents required. But despite the promises given, no response has been served to the complainant.

On 11 February and 12 March 2019, the Ombudsperson addressed a letter to KT regarding the complainant's case and on April 3, 2019 received a response from Public Communication Officer at KT. Nevertheless, by this reply, the Ombudsperson has been notified only about the request of 8 of June 2018, but not about the request of 12 of June 2018. Therefore, on

May 15, 2019, the Ombudsperson again addressed the Secretary of KT requesting to be informed on actions that the KT has undertaken or plans to undertake according to the Law on Access to Public Documents, in response to the complainant's request for access to public documents.

On May 31, 2019, the Ombudsperson received a response from Public Communication Officer informing him of the complainant's requests for access to all contracts that KT has entered into regarding all premises taken on lease that Vala uses in the Municipality of Prishtina. In this response, KT considers that the request for access to all contracts that KT has entered into a contractual agreement for premises taken on lease for Vala, was not clear – cut and technically makes it impossible to identify and provide such information and considers that the complainant must specify and clearly define her request. Whereas regarding the access to a contract that Telecom has signed with Flexus, concerning marketing, KT considers that there are restrictions on providing information since it concerns protection of commercial and other economic interests of the corporation, with reference to Article 12.1 .7 of Law No. 03 / L-215 on Access to Public Documents.

The Ombudsperson, on this occasion, notes that the complainant's request was very distinct, “[...] *we request that Telekom grant us access to all contract agreements related to premises that Vala uses in the Municipality of Prishtina*”<sup>1</sup>, as well as the question addressed the very same day, “[...] .. *How much is the monthly rent of premises where Kosovo Telecom is located in*” *Mother Teresa "Square? .. [...]*”<sup>2</sup> is clear and specific. Furthermore, the Ombudsperson observes that KT did not respond on complainant’s requests for access to public documents, which is in contradiction with Article 7, paragraph 8, of the LAPD, under which public institution shall within seven (7) days of recording the request, issue a decision to grant access to the requested document or render a justified decision for the full or partial refusal and inform the applicant of the right to request reconsideration of his request as well when and where to submit such request. Refusal of the request is done by a written decision on its rejection.

The Ombudsperson also points out that the restriction of the right to access public documents should be an exception, as provided by Article 12, paragraph 1, of the Law on Access to Public Documents, which explicitly defines situations for refusal of the right of access to public documents. However, Article 12, paragraph 3, of the LAPD stipulates the possibility of restriction of any part of the requested document, for the reasons mentioned in paragraph 1 of Article 12, while the remaining parts of the document shall be released. Further, in cases when the request for access to public documents is denied, the public institution which refuses access to the document in whole or in part is obliged to issue a written ruling on the reasons for the refusal.<sup>3</sup>

However, restriction under Article 12 of the LAPD does not imply prohibition or denial of the right of access to the requested document, a right guaranteed by the Constitution and the Law. The Ombudsperson finds that the failure to issue a decision in an adequate form and

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<sup>1</sup> The request of 8 June 2018, at 09:41.

<sup>2</sup> The request of 8 June 2018, at 4:31 PD

<sup>3</sup> Law No. 03/L-215 on Access to Public Documents, Article 9 [Application for review of the issue].

with sound reasoning constitutes maladministration. Similarly, lack of a decision in the form prescribed by law also comes with the lack of notification of the party with the right to an appeal, which also constitutes a violation of the right to use legal remedies.

The Constitution of Republic of Kosovo (henceforward the Constitution), in Article 41, paragraph 1, foresees the right to Access Public Documents: *“Every person enjoys the right of access to public documents”*. While paragraph 2 of the same Article stipulates that: *“Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.”*

The spirit of Article 41 of the Constitution has been forwarded also on Article 1 of the LAPD, according to which: *“This Law shall guarantee the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions”*.

Freedom to hold and to give information is foreseen with Article 10, paragraph 1 of the European Convention on Human Rights (ECHR) - [Freedom of expression]: *“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”*

Furthermore the Ombudsperson draws attention on the practice of the European Court on Human Rights (ECtHR), which according to Article 53 of the Constitution, represents the bases for interpretation of human rights. In case *Observer and Guardian versus United Kingdom*, ECtHR deemed that: *“To deny information to the public on functioning of state bodies means to violate the basic right of democracy.”*<sup>4</sup>

Further, ECtHR in the case of *Stell and Morris v The United Kingdom*, of May 15, 2005, among others, considers, however, that in a democratic society even small and informal campaign groups must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest (paragraph 89).<sup>5</sup>

Bearing in mind the role of media and the public in a democratic society and bearing in mind that the constitutionally guaranteed fundamental rights and freedoms can be limited only to the extent necessary to achieve the objective in an open and democratic society for which the restriction is permitted, the Ombudsperson considers that the complainant's request for access to public documents, as such, is based on Law No. 03 / L-215 on Access to Public Documents.

Therefore, in order to improve the respect of the Right of Access to Public Documents, as a constitutional and legal right, as well as increase the transparency and accountability of institutions in relation to citizens' requests, so that they exercise this right as effectively as possible, the Ombudsperson:

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<sup>4</sup> Case of *Observer And Guardian V. The United Kingdom*, (Application no. 13585/88, 26 November 1991).

<sup>5</sup> *Rasti Stell and Morris v The United Kingdom*, (Aplikimi nr. 68416/01, 15 maj 2005).

## RECOMMENDS:

1. **Kosovo Telecom that pursuant to legislation at force grants access to the complainant to documents required.**

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, including disciplinary measures, 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