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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

Opinion of the Ombudsperson

regarding

the provision of access to information for the category of persons with hearing disabilities within the TV debates for the 2019 national elections

To:

- Mr Muja Ferati, chairman of the Independent Media Commission
- All TV channels in Kosovo

Copy:

- Mr Habit Hajredini, Director, Office of Good Governance/Office of the Prime Minister

Prishtina, on September 26, 2019

PURPOSE

1. Given that no certified *Sign Language*¹ (mother tongue of the deaf) interpreters have been observed in the current shows in various television channels in Kosovo on the occasion of extraordinary elections for MPs of the Assembly of the Republic of Kosovo, in order for the category using the Sign Language be informed about political programs so as to evaluate the best political offer for voting candidates for MPs in the Assembly of the Republic of Kosovo, the Ombudsperson presents this Opinion.

LEGAL BASIS

2. Constitution of the Republic of Kosovo, Article 135 (3): "*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. Law Nr. 05/L-019 on Ombudsperson, Article 18 (1.2): "*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*"; and Article 18 (1.6): "*To publish notifications, opinions, recommendations, proposals and his/her own reports.*"

4. Law Nr. 05/L-021 on the Protection from Discrimination, Article 9 (2.7): "*Provides advices, guidance and support to subjects of public and private sector, on best practices in the promotion of equality, adapting to diversity and combating discrimination on the grounds covered by the relevant Law on Gender Equality and this Law, and shall provide recommendations to take measures to promote equality, adapting to diversity and/or combating discrimination.*"

FACTUAL SITUATION

5. The Ombudsperson Institution (OI), pursuant to Article 16, paragraph 4 of Law No. 05/L-019 on Ombudsperson, on 26 September 2019, has opened an ex officio case for the Independent Media Commission (hereinafter: IMC) and for all TV channels regarding the lack of engagement of certified *Sign Language* Interpreters, known as the mother tongue of the deaf, on the TV channels, in which the candidates for future MPs of the Assembly of the Republic of Kosovo are presented.

6. The Ombudsperson has attentively followed the latest developments in pre-election activities by the candidates for future MPs of the Assembly of the Republic of Kosovo for this year's extraordinary elections. From information and monitoring of TV debates, so far it has been noted that no certified interpreters have been engaged in Sign Language.

LEGAL FRAMEWORK

7. Constitution of the Republic of Kosovo, Article 21, paragraph 2, provides: "*The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution*", paragraph 3: "*Everyone must respect the human rights and fundamental freedoms of others.*"

¹ According to the Regulation (GRK) No. 15/2014 on Provision of Services in Sign Languages in the Republic of Kosovo, Article 3, paragraph 1.7: " "Sign language" – shall mean the sign language which has its own grammar rules, sentence structure and cultural differences"

8. Constitution of the Republic of Kosovo, Article 24, provides: *"All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination. 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."*

9. The Ombudsperson, in accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo: *"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."*

10. Article 14 of the European Convention on Human Rights, provides: *"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."*

11. Convention on the Rights of Persons with Disabilities, Article 2, defines: **"Language"** includes spoken and signed languages and other forms of non spoken languages"; This Article also defines: **"Discrimination on the basis of disability"** means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."

12. Law No. 05/L-021 on the Protection from Discrimination (LPD), Article 1, paragraph 1, provides: *"The purpose of this law is to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment."*

13. Article 3, paragraph 1, of the LPD, provides: *"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 expressly states: *"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."*

14. Also, Law No. 05/L-019 on the Ombudsperson, Article 18, paragraph 1, determines that the Ombudsperson, among others, has the following responsibilities:

- *"To investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them"* (point 1).
- *"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" (point 2).

- *"To inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media"* (point 4).
- *"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"* (point 5).
- *"To publish notifications, opinions, recommendations, proposals and his/her own reports"* (point 6).
- *"To prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo"* (point 8).

15. Law No. 04/L-44 on the Independent Media Commission, in Article 1, sets out the purpose of the respective law: *"The purpose of this Law shall be to establish the powers of the Independent Media Commission (hereinafter "IMC") in order to promote the development of a viable market of audiovisual media services, serving all citizens of the Republic of Kosovo."*

16. Article 3, paragraph 1 of this law, provides: *"Independent Media Commission shall be an independent body for regulation, management, and oversight of the broadcasting frequency spectrum. IMC shall regulate the rights, obligations and responsibilities of natural and legal persons that provide audio and audiovisual media services."*

17. Article 34 of this law provides: *"IMC shall encourage audiovisual media service providers to provide that their services gradually become accessible for humans or **persons with hearing and seeing disabilities.**"*

18. On 29 September 2010, the Government of the Republic of Kosovo issued Decision No. 06/14 on making Sign Language official in the Republic of Kosovo.²

19. Regulation (GRK) No. 15/2014 on Provision of Services in Sign Languages in the Republic of Kosovo, Article 1, provides: *"The purpose of this regulation is to define rules and procedures on provision of services in sign languages in the Republic of Kosovo and the access to interpretation services through Sign Language Interpreters for Deaf Persons in the Republic of Kosovo."*

20. Article 2, paragraph 1, of the respective regulation, provides: "This regulation applies to all public institutions of the Republic of Kosovo, at central and local level" While paragraph 2 provides: *"All public institutions of the Republic of Kosovo, at central and local level, are obliged to provide appropriate services to deaf persons and persons from the deaf community to provide appropriate services and based on needs and requests in sign languages."*

²See Decision No. 06/146 on making Sign Language official, issued by the Government of the Republic of Kosovo, dated 29 September 2010:
http://kryeministri-ks.net/wp-content/uploads/docs/Vendimet_e_Mbledhjes_se_146-te_te_Qeverise_2010.pdf

LEGAL ANALYSIS

21. The Ombudsperson would like to draw attention to the fact that the Constitution, as the highest legal act of the country, protects and guarantees fundamental human rights and freedoms, and therefore the implementation and practical application of these rights is to the best the interest of the rule of law. The Constitutional guarantees serve to the protection of human dignity, and the functioning of the state. Article 21 of the Constitution, expressly determines the obligation of all bodies to respect human rights and freedoms.

22. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination. 2. No one shall be discriminated against on grounds of race, colour, 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. Therefore, this principle is imperative and shall be respected by everyone, including the IMC and all television channels in Kosovo, in relation to the present case.

23. Pursuant to Article 14 of the European Convention on Human Rights, the Ombudsperson recalls that 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.

24. Like the European Convention on Human Rights, the Convention on the Rights of Persons with Disabilities also prohibits discrimination. Article 2 of this Convention defines the term: “*Discrimination on the basis of disability*” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

25. The Ombudsperson has attentively followed the latest developments in pre-election activities by the candidates for future MPs of the Assembly of the Republic of Kosovo for this year's extraordinary elections. Further on, from information and monitoring of TV debates, where it is discussed about candidates for MPs of the Assembly of the Republic of Kosovo, at least so far, it has been noted that no certified interpreters have been engaged in *Sign Language*, as a mother tongue of the deaf, in order for the category using this language to be informed on the political programs, so as to evaluate the best political offer for voting these candidates. The lack of provision of the opportunity to understand the debates to this category of persons with disabilities is considered as discrimination on the basis of disability. This finding of the Ombudsperson has legal basis also in Law no.05/L-021 on Protection against Discrimination, which is in force and which also prohibits discrimination, as in the present case.

26. Law no. 04 / L-44 on the Independent Media Commission establishes the powers of the IMC, in order to promote the development of a viable market of audiovisual media services, serving **all citizens of the Republic of Kosovo**. IMC shall regulate the rights, obligations and responsibilities of natural and legal persons that provide audio and audiovisual media services. In this regard, based on the current state of the lack of engagement of certified Sign Language Interpreters, as mother tongue to deaf persons, from television channels for the 2019 elections, which provide information regarding the candidates for MPs of the Assembly

of the Republic of Kosovo, IMC should encourage audio-visual service providers to make their services accessible to deaf persons in Kosovo as well. Precisely, such a legal obligation has been determined for the IMC also in Article 34 of the applicable law for this institution, which provides that IMC shall encourage audiovisual media service providers to provide that their services gradually become accessible for humans or persons with hearing and seeing disabilities.

27. Among others, on 29 September 2010, the Government of the Republic of Kosovo rendered Decision No. 06/146, making the Sign Language official in the Republic of Kosovo. Therefore, the Ombudsperson considers that the use of Sign Language in our country is of a compulsory nature for everyone and, in this regard, this language enjoys adequate legal support for its implementation in practice, which at least so far has not been implemented, as in the present case.

28. Furthermore, Regulation (GRK) no. 15/2014 on the Provision of Services in Sign Language in the Republic of Kosovo aims to define rules and procedures on provision of services in sign languages in the Republic of Kosovo and the access to interpretation services through Sign Language Interpreters for Deaf Persons in the Republic of Kosovo. As such, this regulation applies to all public institutions of the Republic of Kosovo, at central and local level. All public institutions of the Republic of Kosovo, at central and local level, are obliged to provide appropriate services to deaf persons and persons from the deaf community to provide appropriate services and based on needs and requests in sign languages. Although the Regulation in question is mandatory only to public institutions, however, in the broader meaning, Article 2 of the Convention on the Rights of Persons with Disabilities defines the term: *“Language includes spoken and signed languages and other forms of non spoken languages”*. Thus, as such, this Convention recognizes the Sign Language the same as the Spoken Language. Moreover, as mentioned above, since 2010 Kosovo has made the Sign Language official, thus it recognizes it as a language. Therefore, in this regard, the fact that the Regulation in question provides legal obligations only to public institutions, deaf persons also have the right to vote. The Ombudsperson draws attention to the fact that television channels should establish enforcement and use practices in Sign Language, as an opportunity for this category of society in our country to be properly and accurately informed.

Based on the above analysis, the Ombudsperson, pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 18 (paragraph 1.6) of the Law no. 05/L-019 on the Ombudsperson, as well as the evaluation of the factual situation, renders this:

OPINION

Pursuant to assessments and facts collected, legal framework in force and the powers deriving from Law no. 05/L-021 on Protection from Discrimination, through this Opinion, the Ombudsperson presents the following instructions, aiming to *promote equality, adapting to diversity and preventing discrimination on the basis of hearing disability*.

1. The Ombudsperson considers that, inter alia, television media intend to provide accurate and complete information to the general public. Consequently, in order to achieve this goal, equally and without discrimination towards to any social group, concretely, on the basis of disability, it is more than necessary to provide the category of persons with hearing

disabilities with the opportunity to constantly be informed during the debates within the electoral campaign, in order to exercise their right to vote based on their independent judgment.

2. The Ombudsperson considers that **all televisions channels**, which during the pre-election activities hold debates with candidates as people's representatives (candidates for Prime Minister and MP), should engage certified Sign Language interpreters, in order for citizens with hearing disabilities to have the opportunity to be informed and evaluate their potential representatives in the future legislature of the Assembly of the Republic of Kosovo.

3. The IMC, based on its mandate and legal powers, shall undertake measures that affect and encourage audio-visual service providers at adapting to diversity and combating discrimination, ensuring that their services gradually become completely accessible for different groups of persons with disabilities.

Respectfully,

Hilmi Jashari
Ombudsperson