



**Republika e Kosovës • Republika Kosovo • Republic of Kosovo
Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution**

Prishtinë, 10 October 2019

Mr. Bekim Jashari, Mayor
Municipality of Skenderaj

Recommendation Letter

Complaint No. 275/2019

Versus

Municipality of Skenderaj

Dear Mr. Jashari,

The Ombudsperson, pursuant to Article 16, paragraph 1, of the Law No. 05/L-019 on Ombudsperson and according to Article 10 of the Law No. 03/L-215 on Access to Public Documents (LAPD)¹, on 2 April 2019, admitted a complaint of Mrs. Blerta Ibërdemaj, on behalf of Balkan Investigative Reporting Network (BIRN), lodged versus the Municipality of Skenderaj, due to the failure to respond on her request to access public documents. Complainant, on 23 August 2018, through the e-mail, submitted requested for access to invoices spent for official meals in the Municipality of Skenderaj for the period December 2017- August 2018. Until the day of complaint submission at the OI, the response has not been served to the complainant.

The Ombudsperson, on 25 of April 2019, addressed a letter to the Mayor of Municipality of Skenderaj, requesting to be notified on actions that the Municipality has taken or is planning to take in order to respond to the complainant's request for access to public documents. As the Ombudsperson did not receive a response to this letter, on 23 May 2019, Ombudsperson's representatives contacted the Information Officer of the Municipality of Skenderaj regarding the complainant's request for access to public documents and the Ombudsperson's letter. On 2 July 2019, the OI official contacted the Chief of Cabinet of the Mayor of Skenderaj, on which occasion was informed that they were notified regarding complainant's request. On 29 July 2019, the Ombudsperson again sent a letter to the Mayor of Skenderaj regarding the complaint, but no response has been served to him.

In view of the actions taken by the OI in relation to the Municipality of Skenderaj and with regard to handling complainant's request, the Ombudsperson states that, Article 41, paragraph 1, the Constitution of the Republic of Kosovo defines the Right of Access to Public Documents, according to which: *“Every person enjoys the right of access to public*

¹ Law No. 06/L-081 on Access to Public Documents has entered into force on July 19, 2019, while the request addressed from the complainant was lodged prior to entrance of the new Law in effect.

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 person, without discrimination on any grounds, to access public documents produced, received, maintained or controlled by public institutions, as well as the right to re-use the public sector documents.*"

The Ombudsperson observes that the failure of Municipality of Skenderaj to respond on complainant's request, despite the fact that is in contradiction with the LAPD, it is also opposite with the Law No. 05 / L-031 on General Administrative Procedure, actually the principle of open administration, set out in Article 9, paragraph 1: "*Public organs shall act with transparency.*" Additionally, lack of decision in the form prescribed by law draws also the lack of notification of the party to the right of appeal, which also constitutes a violation of the right to use legal remedies.

The Ombudsperson reiterates that European Court on Human Rights (ECtHR) practice, according to Article 53 of the Constitution, represents the bases for interpretation of human rights. Furthermore, the Ombudsperson observes that ECtHR in its practice continuously has judged that: "*Freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph (2) of Article 10 of the ECHR and is applicable not only to 'information' or 'ideas' that are favourably received or regarded [...] Not only does the press have the task of imparting such information and ideas but the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'*".² Furthermore, in case *Lingens v. Austria*, the ECtHR recalls: "[...] *Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'*". *These principles are of particular importance as far as the press is concerned.*"[...].³

Furthermore, the Basic Court in Prishtina (BCP) with its Judgment A.nr.1335 / 12, of 26.05.2015, approved the claim of the "Balkan Investigative Reporting Network - BIRN", in the administrative dispute against the Office of the Prime Minister of the Republic of Kosovo by which has obliged the Office of the Prime Minister to grant BIRN access to all required documents and information.

The Ombudsperson finds that, in the complainant's case, Municipality of Skenderaj has failed to comply with positive obligations related to permitting, namely granting access to public documents in accordance with the request filed by the complainant, which is sanctioned by domestic acts as well as international instruments.

Legal obligation for cooperation with the Ombudsperson Institution

The Ombudsperson ascertains that the Municipality of Skenderaj, apart the failure to meet obligations which derive from the Constitution of Republic of Kosovo (Article 41) and

² Case of *Observer and Guardian V. The United Kingdom*, (Application no. 13585/88, 26 November 1991. Paragraph 59 (a and b).

³ Case of *Lingens V. Austria* (Application no. 9815/82), 8 July 1986, paragraph 41.).

LAPD, regarding access to public documents, it has also failed to meet liabilities arising from the Constitution (Article 132, paragraph 3), as well as the Law on Ombudsperson (Article 25), based on which, all authorities have the liability to respond on Ombudsperson's request for conducting investigations as well as provide appropriate assistance according to his requests. Refusing of civil servant, public official or public authority to cooperate with the Ombudsperson is a reason why the Ombudsperson may request, from competent authority, initiation of administrative proceedings, including disciplinary measures undertaking, dismissal from a workplace or civil service. In case the institution refuses to cooperate or intervenes into the investigation process, the Ombudsperson has the right to request from the competent prosecution, initiation of legal proceedings for intrusion in accomplishing official duties.

Furthermore, the Ombudsperson considers that the purpose of well-administration of public administration bodies should, inter alia, be the setting of good practices, by promoting a harmonized and citizen-centered administrative culture which learns from interacting with citizens and civil society.

With the aim to increase respect of the right to access public documents, as an constitutional and legal right, so that citizens and civil society exercises this right, as a firm tool for overseeing the work of authorities that would influence on improving the work of state bodies and increase transparency and accountability, the Ombudsperson, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo, as well as with Article 27 of the Law No. 05/L-019 on Ombudsperson,

RECOMMENDS

Municipality of Skenderaj

- ***To review complainant's request and to respond to her requirement, in consistency with the Law No. 06/L-081 on Access to Public Documents and in conformity with relevant legislation at force.***
- ***To respond to Ombudsperson's requirements.***

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