



Prishtinë, 15 October 2019

Mr. Fitim Sadiku, Secretary General
Ministry of Foreign Affairs

Recommendation letter
Complaint No. 496/2019
Versus
Ministry of Foreign Affairs

Dear Mr. Sadiku,

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 6 June 2019, admitted a complaint of Mr. Ardit Kika, an independent journalist, lodged versus the Ministry of Foreign Affairs (MFA), due to the failure to respond on his request to access public documents. Complainant, on 24 April and 5 June 2019, through an e-mail addressed the MFA with the request for access to the latest declassified document in the MFA. Additionally the following questions were submitted by the complainant as well:

- 1. Has an information classification committee ever been established in the MFA?*
- 2. How many documents have been classified during 2018?*
- 3. Has the MFA approved lists of classified documents and lists of their dissemination?*
- 4. Can you confirm that the MFA receives classified documents from its embassies?*
- 5. Which are the levels of documents classified at MFA?*

On 20 June and 12 July 2019, the Ombudsperson addressed a letter to the Secretary General of the MFA requesting information on the actions taken by the MFA regarding the complainant's request for access to documents and required data. On 31 July 2019, the OI contacted the Office of the Secretary-General regarding the actions that the MFA has taken in relation to the complaint, but has not received a response.

The Ombudsperson reiterates that the Constitution of Republic of Kosovo, in Article 41, [The right to access public documents], 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*”

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.

authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification”

The right to be informed is the right guaranteed by the Universal Declaration on Human Rights, Article 19 of which determines: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”* 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...”*

The Ombudsperson observes that the failure of MFA, to respond on complainant's request, despite the fact that is in contradiction with the LAPD but 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.”*

Furthermore the Ombudsperson draws attention on the European Court on Human Rights (ECtHR) practice, 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 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

The Ombudsperson estimates that exceptions from the right of access to documents are stipulated in Article 17 of the LAPD. Information can be limited solely on the purpose of protection of public legitimate interests, of life or other private legitimate interests, determined by the legislation at force. Moreover, lack of a decision in the form prescribed by law draws with it the lack of notification of the party to the right to appeal, which also infringes the right to use legal remedies.

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

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.).

Legal obligation for cooperation with the Ombudsperson Institution

The Ombudsperson ascertains that the MFA, apart the failure to meet obligations which derive from the Constitution of Republic of Kosovo (Article 41 and Article 132, paragraph 3), has also failed to fulfill obligations which arise from the LAPD and 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.

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 transparence and accountability, the Ombudsperson, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo,

RECOMMENDS

The Ministry of Foreign Affairs

- ***To review complainant's request and to respond to his 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