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

Prishtinë, 9 October 2019

Mr. Bahri Hyseni, Chairman
Kosovo Prosecutorial Council
Str. “Luan Haradinaj”. no. 16/1
Zona II Category II

**Recommendation letter
Complaint No. 448 / 2019
NGO “ADMOVERE”
Versus
Kosovo Prosecutorial Council**

Dear Mr. Hyseni,

Ombudsperson Institution (OI), 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,¹ on 23 May 2019, admitted a complaint of Ms. Rina Kika, in the capacity of an authorized representative of the Non-Governmental Organization “ADMOVERE”, lodged versus Kosovo Prosecutorial Council (KPC).

Based on information provided it derives that the NGO “ADMOVERE” is working on Report, "Professors before the Law", which aims to gain data on how cases are administered by the justice system in cases when suspected, accused or convicted persons are professors of University of Prishtina. The purpose of the report is also to gather data on whether measures are taken against academic staff for violating UP Code of Ethics. On 14 February 2019, NGO “ADMOVERE” conducted a meeting with representatives of Kosovo Prosecutorial Council – KPC regarding the project and requested access to the necessary data on which occasion the KPC representatives promised to provide such data. In this regard, on 21 February 2019, the NGO “ADMOVERE” through an e-mail, addressed the KPC with an application for access to public documents / statistical data for each year, since post-war, for the academic staff of UP. However, until the day it filed a complaint with the OIK, the NGO “ADMOVERE” has not received a response to the request for access to public documents.

On 18 June 2019, the Ombudsperson addressed the KPC with a letter requesting information on the actions it has taken and the actions the KPC plans to take in order to respond to the NGO “ADMOVERE” in questions directed on 21 February 2019.

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.

On 1 July 2019, the Ombudsperson received a response from the KPC, through which was notified that the statistical data requested by the NGO “ADMOVERE” are very specific and that the prosecutorial system is currently unable to classify them on that form in the current system of statistics collection. Further KPC stated that such a request could only be accomplished after CMIS system becomes functional. This information, according to KPC has also been provided to representatives of the NGO "ADMOVERE" at meetings that they had together. However, the NGO “ADMOVERE” has not received a written response from the KPC.

From what has been stated above and with the intention to handle the request of NGO “ADMOVERE”, the Ombudsperson states that the Constitution of Republic of Kosovo (henceforward: *Constitution*), in Article 41, paragraph 1, foresees the right to access to 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 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 further draws attention to the practice of the ECtHR, where according to Article 53 of the Constitution, which presents the basis for interpretation of human rights guaranteed by the Constitution. In its judgment *in Stoll and Morris v The United Kingdom* of 15 May 2005, the ECtHR 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).²

The Ombudsperson considers that the interest of informing the public on how cases are handled by the justice system, where suspected, accused or convicted are professors of the University of Prishtina, is essential to promoting and strengthening democracy and the proper functioning of the justice system. Important role in this aspect has also civil society as well as media.

Starting from basic principles of the right to access public documents which arise from the LAPD (Article 4), is determined that every person’s right to access public documents, and the guarantee and fulfilment of this right by public institutions, constitutes one of the foundations of democratic and transparent institutions (paragraph 1). While Article 11 of the LAPD stipulates: “*Requests for access to public documents or reuse of public documents shall be treated rapidly and according to the principle of objectivity and impartiality pursuant to the applicable Law on General Administrative Procedure.*”

The Ombudsperson also considers that, in the present case, the KPC should have acted in accordance with Article 13, paragraph 2, of Law no. 03 / L-215 on Access to Public Documents, which stipulates that the applicant has the right, upon filing the request, to obtain a reasoned written decision from that public institution regarding the refusal and to issue a

² Case *Stoll and Morris v The United Kingdom*, (Application No. 68416/01, 15 May 2005), paragraph 89.

ruling indicating reasons for refusing access to public documents. Respectively, with the entry into force of Law no. 06 / L-081 on Access to Public Documents, the KPC shall comply with Article 17, paragraphs 7 and 8, of this Law.

Based on what has been stated above, the Ombudsperson

RECOMMENDS

Kosovo Prosecutorial Council

- *To review request of NGO “ADMOVERE” for access to public documents and to provide with response this organization in conformity with the Law no. 06/L-081 on Access to Public Documents.*

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

Copy: Mr. Lavdim Krasniqi, Secretariat Director, Kosovo Prosecutorial Council