



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

Prishtinë, 23 December 2019

Mr. Bahri Hyseni, Presider
Kosovo Prosecutorial Council
Str. "Luan Haradinaj". No. 16/1
Zone II. Category II

RECOMMENDATION LETTER

**Complaint No. 337 / 2019
Versus
Kosovo Prosecutorial Council**

Dear Mr. Hyseni,

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, ¹ on 16 April 2019, admitted a complaint of Mr. R.M, lodged versus Kosovo Prosecutorial Council (KPC), for the limited access to public documents.

On the basis of the information available to the Ombudsperson, the complainant has applied for a vacant position on 25 January 2019, announced by the KPC for the position: Victim Protection Officer, Victims' Advocates Office in Mitrovica. Following the announcement of final selection of the successful candidate, the complainant, on 14 March 2019, filed a request for access to official documents, namely *access to the written test, minutes of the verbal interview and points of the successful candidates*.

On 2 April 2019, the complainant was convened to the KPC offices and access to his written test has been granted to him, but not a copy of the test, as well as was denied access to the minutes of his interview, and in the total points of the shortlisted candidates in the given competition.

On 13 May 2019, the Ombudsperson addressed a letter to the KPC requesting information on actions it has taken and actions it plans to undertake in relation to the complainant's request.

As the KPC did not reply to this letter, on 24 June 2019 the Ombudsperson addressed again the KPC with another letter. On 10 July 2019, the Ombudsperson received a response from the KPC informing him of the actions taken by the KPC in addressing complainant's claim. Among other things, the KPC has informed that, upon receiving complainant's request for access to public documents, KPC contacted the complainant (applicant of the official

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.

document), informing him that he can come to the KPC Offices and have access to the document, but the complainant asked whether he can come at the KPC offices on 18 March 2019 at 10 pm, as he was abroad. But, the KPC further stated that the complainant did not appear on 18 March 2019 in KPC Office. However, the complainant was granted access on 1 April 2019, when the complainant came for an interview for another position advertised by the KPC. Also, by reply of the 10th of July 2019, the KPC also sent a copy of the complainant's request, in which the complainant wrote and signed that he had access on the written test, but a copy of it was not given to him as well as access to the minutes of accomplished interview.

On 26 August 2019, the Ombudsperson again addressed a letter to the KPC, noting that, what the applicant of the document wrote and signed in his request addressed to the KPC, after granting restricted access, was in fact the **very basis of the complaint lodged with the Ombudsperson**, by which the complainant claims that his right to access the requested documents was restricted. The Ombudsperson also requested to be notified of the legal basis for restricting access to the complainant's request.

On 11 September, 2019, the Ombudsperson received from the KPC almost the same response as that of 10th of July 2019, when it was reported that the KPC was based on Article 17, paragraph 2, subparagraph 2.6, and Article 14, paragraph 3.2, of Law no. 06 / L-081 on Access to Public Documents, and that the KPC considers that it has acted in full compliance with the law.

The Ombudsperson notes that the complainant's request relates to access *to the written test; as well as in the minutes of the interview and in the total points of successful candidates*, for the recruitment procedure in the competition of 25 January 2019, advertised by the KPC for the position: Victim Protection Officer, Victims' Advocates Office in Mitrovica. As can be seen, the request relates to access to documents and data belonging to the applicant, as well as to the final list of candidates with total points, which should be made public.²

The Ombudsperson also notes that the complainant's request for access to public documents was made at the time when the Law no. 03 / L-215 on Access to Public Documents (14 March 2019) was at force and that the KPC has failed to act according to Article 7 (paragraphs 8 and 9), Article 11 (paragraphs 1 and 2), and Article 13 (paragraph 2).), on the occasion of granting partial access to the complainant's written test, as well as refuse of access to the minutes of the interview. The KPC has also failed to comply with Law no. 06 / L-081 on Access to Public Documents, respectively Article 14, paragraphs 1, 2, 3, and Article 17, paragraphs 7 and 8.

The Ombudsperson notes that the KPC in its responses to the Ombudsperson's documents refers to the Law no. 06 / L-081, respectively, Article 17, paragraph 2.2.6, but in fact which do not prove implementation of this provision, because the final written decision is missing with the reasoning by which a damage and the public interest test is justified. Furthermore,

² The list can be published with codes without giving names of other candidates, except the name and surname of successful candidate selected.

the Ombudsperson finds that the KPC has failed to implement the Law no. 05 / L -031 on General Administrative Procedure as well, respectively Articles 5, 9, 13 and 92.

As the complainant's request relates to his information, the KPC should have taken into consideration the Law no. 06 / L-082 on the Protection of Personal Data, actually Article 11, by which transparent information is determined, communication and modalities for the exercise of the data subject's rights; and Article 14, which defines the right of access by the data subject.

As stated above and based on the fundamental principles of the right of access to public documents arising from the LAPD, the right of access to public documents of any person, guarantees and fulfillment of this right by public institutions constitutes one of the foundations of democratic and transparent institutions, consequently, the Ombudsperson

Recommends

Kosovo Prosecutorial Council

- *To decide upon complainant's request for Access to public documents pursuant to 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, ..., 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, Director of the Secretariat, Kosovo Prosecutorial Council.