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

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Prishtinë, September 23, 2019

Mr. Burim Berisha, Mayor  
Municipality of Fushë Kosovë

## **RECOMMENDATION LETTER**

**Complaint No. 203/2019  
Versus  
Municipality of Fushë Kosovë**

Dear Mr. Berisha,

The Ombudsperson, pursuant to Article 16, paragraph 1, of the Law No. 05/L-019 on the Ombudsperson and according to Article 10 of the Law No. 03/L-215 on Access to Public Documents (LAPD),<sup>1</sup> on March 4, 2019, admitted a complaint of Mr. F.M., lodged versus the Municipality of Fushë Kosovë, due to inability of granting access to public documents.

Based on information available to the Ombudsperson Institution (OI), the complainant, on 19 December 2018 and January 16, 2019, addressed the Directorate of Urban Planning (DUP) of the Municipality of Fushë Kosovë, with the request on access to the minutes of technical inspection conducted to the investing building, of September 30, 2014, pursuant to which Decision 06. no.300, of October 23, 2014 has been issued; as well as the main project and ground floor (basement) project according to Urban Permit 06.no.233, of July 19, 2012 and Construction Permit no. 06/235, of July 25, 2012.

On January 25, 2019, the complainant received a notification from an in-charge officer for Access to Public Documents of the Municipality of Fushë Kosovë, through which was informed the following: “[...] *Your request is under consideration by the Directorate. So far we have submitted all the documents - copies requested by the party except the main project, which together with majority of technical documents, due to lack of space, have not been transferred to the new building... [...] We are unable to access them at their current location. But during next week we will try to ask the investor to provide us with a copy of the basement (at party’s request) and will inform you on the response gained. [...]*” Despite the promise made in the 25 January 2019 notice, the complainant was not provided with the access to requested documents even after more than one month. He addressed the OI on 4 March 2019.

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<sup>1</sup> 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 April 15, 2019, the Ombudsperson addressed a letter to the Mayor of Municipality of Fushë Kosovë, requesting to be informed on actions taken by the Municipality or those planning to be undertake in order to respond on complainant's request for access to public documents. Since no response has been served to the Ombudsperson on a letter sent, the Ombudsperson Institution, on May 16, 2019, through email, contacted the Information Officer of the Municipality of Fushë Kosovë. On May 17, 2019, the Ombudsperson received a reply on the sent email which contained the same information which has been provided from the Municipality of Fushë Kosovë to the complainant on 25 January 2019. On 1<sup>st</sup> of August 2019, the Ombudsperson again addressed a letter to the Mayor of Fushë Kosovë regarding the complaint, but has not received any response.

Constitution of Republic of Kosovo (henceforward the *Constitution*), in Article 41, paragraph 1, foresees the right to Access Public Documents: *"Every person enjoys the right of access to public documents"*. Paragraph 2 of the same Article of the Constitution stipulates that documents held by all institutions are accessible to all, with the exception of those documents whose access is restricted by Law: *"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 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 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 natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions."*

Furthermore, the Constitution in Article 52, paragraphs 2 and 3, determines the responsibility for the Environment: *"Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live"*; and: *"The impact on the environment shall be considered by public institutions in their decision making processes..."*

While Law No. 03 / L-025 on Environmental Protection, Article 6, paragraph 12, provides: *"Principle of Public Access to Information - All natural and legal persons have rights to be informed on environmental state and participation on decision making process."*

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..."*

The Ombudsperson estimates that exceptions from the right of access to documents are stipulated in Article 12 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.

The Ombudsperson finds that, in the complainant's case, Municipality of Fushë Kosovë 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.

In light of this, lack of the 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.

### ***Legal obligation for cooperation with the Ombudsperson Institution***

The Ombudsperson ascertains that the Municipality of Fushë Kosovë, 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 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**

### **The Municipality of Fushë Kosovë**

- ***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