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

Prishtinë, 17 June 2020

Mr. Shpend Ahmeti, Mayor
Prishtina Municipality

**Recommendation letter
Complaint No. 508/2019
Non-Governmental Organization- “EcoZ”
Versus
Municipality of Prishtina**

Dear Mr. Ahmeti,

The Ombudsperson, pursuant to Article 16, paragraph 1, of the Law no. 05 / L-019 on Ombudsperson as well as pursuant to Article 10 of Law no. 03 / L-215 on Access to Public Documents¹, on 10 of June 2019, admitted the complaint of Mrs. Egzona Shala, the Coordinator in the Non-Governmental Organization "EcoZ", filed against the Municipality of Prishtina, for municipality's failure to respond to the request for access to public documents.

Based on allegations provided by the complainant and the information in the possession of the Ombudsperson Institution (OI), the complainant, on 25 April, on 13 and 31 of May 2019, addressed the Municipality of Prishtina² through an email with a request for access to the decisions with respect to granted permission for running of a club / pub-bar "Soma Book Station" in the building "Villa Lira", in Germia Park.

On 12 July and 19 August 2019, the Ombudsperson addressed a letter to the Mayor of Prishtina, requesting information from him about actions taken by the Municipality or planned to be undertake, in order to responds to the complainant to her request for access to public documents³. However, the Municipality of Prishtina failed to provide the Ombudsperson with the response.

On 2 September and 3 December 2019, the representative of the OI had a communication with the Municipality of Prishtina spokesperson regarding the complaint, however, apart claims that the complainant will be served with the response, such promise failed to be accomplished by the municipality.

On this occasion, the Ombudsperson emphasizes that the requests for access to public documents addressed to public institutions by citizens, civil society, the media, etc., are

¹ Law No. 06/L-081 on Access to Public Documents has entered into force in July 2019.

² Complainant's request was sent to the following address mediapr@rks-gov.net and Miranda.mullafazliu@rks-gov.net

³ Attached to the letter of 12 July 2019, the Ombudsperson has submitted copies of complainant's requests.

requests which are based on constitutional and legal guarantees. Constitution, in Article 41, paragraph 1, determines: *“Every person enjoys the right of access to public documents.”*; and paragraph 2 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.”*

While the Law No. 06/L-81 on Access to Public Documents (LAPD), in Article 1, conveys the spirit of Article 41 of the Constitution: *“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 right to be informed is a right guaranteed by the Universal Declaration of Human Rights, Article 19 of which provides: *“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.”*

Article 10, paragraph 1, of the European Convention on Human Rights [ECHR] also provides for the freedom to receive and provide information. - [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...”*

Furthermore, Law No. 05/L-031 on General Administrative Procedures places the emphases on principle of open administration, by obliging public organs to act with transparency (Article 9, paragraph 1).

Taking into account the legal obligations, responsibilities and competencies that the municipalities have according to the legal provisions in effect, the Ombudsperson recalls the Administrative Instruction (MLGA) no. 01/2015 for the Transparency in Municipalities, which regulates the promotion and advancement of transparency of municipal bodies and municipal administration in informing citizens and other interest groups. Also, this Administrative Instruction obliges municipal bodies to make activities of the municipality transparent and accessible to the citizens and interested parties and to guarantee access to public documents for natural and legal persons (Article 9).

Handling of requests for access to public documents is a legal obligation for all entities that exercise public authority. Consequently, the requests for access to public documents, submitted to institutions exercising public authorizations, cannot be treated otherwise than according to the legal provisions in force that enter the field of daily affairs of public and state administration. In this case, complainant’s request for access to public documents relates to documents which must be accessible through proactive publication by public institutions. Furthermore, from the investigations that the OI conducted regarding the given complaint it derives that in the report with which the Municipality of Prishtina reported to the Office of the Prime Minister, based on Articles 19 and 20 of Law no. 03 / L-2015 on Access to Public Documents (which was in force until 19 July 2019), for April-June 2019 period⁴, it appears

⁴ https://prishtinaonline.com/uploads/formular_per_raportim_tm2_2019.pdf. (12/06/2020)

that complainant's request was not included. Report stated that the total number of requests received in the Municipality of Prishtina was 56, only 3 of which have been rejected and in others cases access has been granted. (Part II, table no.1, p.3). Report also stated that the access allowed in 53 requests was timely, according to the law (ibid, Table no. 2). Whilst 3 requests were refused completely (ibid. Table no.3).

The Ombudsperson estimates that exceptions to the right to access documents are set out in Article 17 of the LAPD. While information can only be restricted for the purpose of protecting legitimate public interests, life or other legitimate private interests, defined by the legislation at force.

The Ombudsperson finds that in complainant's case, Municipality of Prishtina has failed to fulfill the liability as per to enable, that is to permit access to public documents in accordance with the submitted request of the complainant, the right guaranteed by national acts, and by international instrument..

The right for access to public documents of each person and the guarantee and fulfillment of this right by public institutions is one of the foundations of democratic and transparent institutions. Disclosing of data and transparency in the public sector serves for accountability to the public, for social, economic and democratic development and advancement.

In order to increase the respect for the right to access public documents, as a constitutional and legal right, so that citizens use this right as a powerful tool for overseeing the work of government bodies, which would affect improving the work of state bodies and increasing transparency and accountability, the Ombudsperson, in accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo,

RECOMMENDS

Prishtina Municipality:

- ***To handle complainant's request, of 25 April 2019, to respond to the NGO and provide access to requested documents pursuant to the Law No. 06/L-081 on Access to Public Documents as well as pursuant to relevant legislation at force.***

Pursuant to Article 132, paragraph 3 of the Constitution of the 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 the actions you will undertake regarding this issue.

Warmly submitted,

Hilmi Jashari
Ombudsperson