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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

Prishtinë, 21 December 2020

Mr. Fehmi Mehmeti, Governor
Central Bank of the Republic of Kosovo

Recommendation Letter

Complaint No. 334/2020
Versus
Central Bank of the Republic of Kosovo

Dear Mr. Mehmeti,

The Ombudsperson, pursuant to Article 16, paragraph 1 of Law No. 05 / L-019 on Ombudsperson and based on Article 21 of Law no. 06 / L-081 on Access to Public Documents, on 2 June 2020, admitted a complaint of Mr. Besnik Krasniqi, a journalist of "Koha Ditore" newspaper filed against the Central Bank of Kosovo (CBK), with regard to limited access to public documents.

Based on the information available to the Ombudsman and complainant's allegations, on 9 December 2019, the complainant addressed the CBK with a request for access to: "*Decisions of the Central Bank of Kosovo for approval of external auditor for the following two Institutional categories: Insurers, insurance intermediaries, claim handlers and the Kosovo Insurance Bureau; as well as Banks, non-bank financial institutions and microfinance institutions.*" In response to his request, some information has been served to the complainant by CBK, but not the requested documents. On 25 February 2020, "Koha Ditore" again addressed the CBK with respect to requested documents, but no response has been provided to the complainant.

On 16 June 2020, the Ombudsperson addressed a letter to the CBK, through which he has required information on the actions taken by the CBK and / or the actions it planned to take regarding the complainant's request for access to the required documents, in accordance with applicable legal provisions.

On 1 July 2020 a response has been served to the Ombudsman by CBK, informing him that the CBK had granted the complainant access to the list of all names of external auditors, approved by the CBK, for insurers, insurance intermediaries, claim handlers, Kosovo Insurance Bureau (KIB), banks and financial institutions. CBK also informed that these data are public and can be found in the Annual Reports of all financial institutions where External Auditor report is published. Whereas, with regard to CBK decisions for the approval of external auditor for these categories of institutions, such as: insurers, insurance intermediaries, claim handlers and the Kosovo Insurance Bureau; as well as banks, non-bank financial institutions and microfinance institutions, in response was stated that they are confidential documents based on Article 74 of Law no. 03 / L-209 on the Central Bank of the Republic of Kosovo (Law on the CBK). Further, the CBK recalls that the Law on the CBK is a special law that defines the responsibilities and duties of the CBK.

On 4 September 2020 the Ombudsperson again addressed a letter to the CBK and requested information on the level of classification of the documents required by the complainant, according to Law no. 03 / L-178 on Classification of Information and Security Clearances. On 25 September 2020, the Ombudsman received a response from the CBK, which, inter alia, referred to the Law on the CBK and the provisions of this law on the confidentiality (Article 74) regarding non-public information of the CBK (Article 74, paragraph 1, paragraph 2 and sub-paragraph 2.1), the Internal Rule on Confidentiality, as well as Article 2 of Law no. 06 / L-081 on Access to Public Documents, and which concludes that the information requested by the complainant is confidential.

The Ombudsperson reminds that the requests for access to public documents addressed to public institutions by citizens, civil society, media, etc., are requests which are submitted based on the constitutional and legal guarantees in the country. The Constitution, in Article 41, paragraph 1, determines: *“Every person enjoys the right of access to public documents”* While paragraph 2 of the same Article stipulates: *“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, 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 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 impart 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...”

Handling of requests for access to public documents is a legal liability for all entities exercising public authority. Consequently, requests for access to public documents, submitted to institutions exercising public authority, cannot be treated otherwise than according to the legal provisions in effect and which fall within the scope of daily work of public and state administration. Furthermore, the complainant's request for access to public documents relates to documents which are in the interest of the general public and must be accessible documents / information, in accordance with the legal provisions in force. The documents required by the complainant are decisions for the approval of external auditors, that is, such documents are procedural documents related to CBK procedural actions.

Furthermore, the CBK has disclosed to the complainant the full list with all the names of external auditors approved for insurers, insurance intermediaries, claim handlers, KIB, banks and institutions. The CBK's finding that the decisions by which these categories of institutions have been approved are confidential is not based on legal provisions which determine the manner and level of classification.

The Ombudsperson points out that the CBK has not provided information as per the level of classification of documents according to Law no. 03 / L-178 on Classification of Information and Security Clearances. The failure to do classification of documents according to the legal provisions defined by Law no. 03 / L-178 on Classification of Information and Security Clearances paves the way for arbitrariness in deciding whether or not to grant access to public documents. The right of access to public documents is a right guaranteed by the Constitution, and the restriction should be an exception.

The Ombudsperson considers that exceptions to the right to access documents are defined by the Law on Access to Public Documents, while information can be limited only for the purpose of protecting legitimate public interests, life or other legitimate private interests, defined by the legislation in force.

The right of access to public documents of every person as well as the guarantee and fulfillment of this right by public institutions is one of the foundations of democratic and transparent institutions. Data disclosing and transparency in public sector serves for the accountability towards the public, for social, economic and democratic advancement and development.

The Ombudsperson finds that, in the given case, the CBK has failed to fulfill its liabilities regarding provision that is, allowing access to public documents in accordance with the request submitted by the complainant, which is a right guaranteed by local acts as well as international instruments.

In order to improve the respect for the right to access public documents, as a constitutional and legal right, so that citizens apply this right as a powerful tool for controlling the work of governmental 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

The Central Bank of the Republic of Kosovo:

- *To process complainant's request and provide him with access to the required documents, in accordance with Law no. 06 / L-081 on Access to Public Documents and in accordance with relevant legislation in effect.*
- *To decide regarding the classification or not of information / documents, as of the moment when such information is produced, according to liabilities deriving from the Law no. 03 / L-178 on Classification of Information and Security Clearances.*
- *To compile the list of documents / information already produced, based on classification criteria and other specifications of the Law no. 03 / L-178 on Classification of Information and Security Clearances.*

Pursuant to 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,

Naim Qelaj
Ombudsperson