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

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Prishtinë, March 15, 2019

Mr. Avni Gashi, Acting Director  
Kosovo Accreditation Agency  
Str. “Agim Ramadani”  
Students’ Centre, II floor  
10000 Prishtinë

## **RECOMMENDATION LETTER**

**Complaint No. 522/2018  
Versus  
Kosovo Accreditation Agency**

Dear Mr. Gashi,

The Ombudsman Institution (OI) based on Article 16, paragraph 1, of the Law No. 05/L-019 on Ombudsman as well as based on Article 10 of the Law No. 03/L-125 on Access to Public Documents, (LAPD), on July 26, 2018, received a complaint of Mr. Leonis Gashi, in the capacity of General Secretary of ISPE College, versus Kosovo Accreditation Agency (KAA).

The complainant claims that on August 6, 2018, the ISPE College addressed the KAA with two requests. The first request relates to withdrawal of the Public Announcement as per decisions issued at the 58<sup>th</sup> State Council of Quality (CSC) Meeting; and the second request relates to the request for Access to Public Documents, actually on the Minutes of the 58th CSC Meeting, for which no response has been provided to him.

Regarding this issue, on October 26, 2018, the Ombudsman addressed the letter to the Acting Director of the KAA and requested to be informed on actions undertaken and those planned to be undertaken by KAA, in order to respond to the requests submitted by the ISPE College. On November 13, 2018, the Ombudsman received a response for the KAA through which, among others, was informed: “[...] *KAA Announcements have been published with the aim to notify citizens [...] for withdrawal of accreditation of study programs [...].*”

*[...] this request has been reviewed from State Council of Quality in its 59 meeting but with regard that the minutes contain the stands of the SCQ members regarding certain issues, [...], SCQ has reviewed this issue in compliance with Article 10 of the Law No.. 03/L – 215 on October 7, 2010 [...].”*

The Ombudsperson reiterates that the Constitution of Republic of Kosovo, in Article 41, paragraph 1, determines the Right of Access to Public Documents, according to which: *“Every person enjoys the right of access to public documents”*, and paragraph 2 of the same Article determines: *“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 Article 55 of the Constitution, stipulates: *“Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.”*

The spirit of Article 41 of the Constitution has been carried 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.”*

The Ombudsperson points out that the restriction of the right of Access to Public Documents should have an exception, as defined by Article 12, paragraph 1 of the LAPD, which defines explicitly situations for refusing of access to public documents. Anyway, Article 12, paragraph 3, stipulates the possibility of limitation of any part of the requested document, for the reasons mentioned in paragraph 1 of Article 12, while other remained parts of the document can be released. Further, in cases when request for Access to Public Documents is refused, public institution, which refuses the access to the entire or a part of the document, is obliged to issue a justified decision in writing for the reasons of refusal.<sup>1</sup> Furthermore, Law No. 03/L-172 on the Protection of Personal Data (LPPD), in Article 5 [Lawful processing of personal and sensitive data], paragraph 1, sub-paragraph 1.6, stipulates: *“The processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject.”*

The Ombudsperson observes that failure to respond on complainant’s request, apart that it is in contradiction with the LAPD as well as with the LPPD<sup>2</sup>, it is also opposite to the Law No. 05/L-031 on General Administrative Procedure (LGAP), actually with the principle of open administration, stipulated by Article 9, paragraph 1: *“Public organs shall act with transparency.”*

Regarding this issue, respectively complainant's first request, the Ombudsperson considers that the KAA had to act in accordance with the legal provisions of the LGAP and provide the complainant with the response on request submitted, without prejudging its content. Whereas, as per complainant's second request is concerned, the Ombudsperson considers that access to the requested document can be handled in accordance with Article 11, paragraph 2 of the LAPD and Article 5, paragraph 1, sub-paragraph 1.6 of the LPPD .

Thus, in order to improve the respect of the Right of Access to Public Documents, as a constitutional and legal right, so that the citizens exercise this right as a powerful tool for controlling authorities’ work, which would effect on improvement of state bodies’ work accomplishment and increase the transparency and accountability, the Ombudsperson, in

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<sup>1</sup> Law no. 03/L-125 for Access to Public Documents, Article 13 [Refusal of access to official documents].

<sup>2</sup> Law no. 03/L-172 on Protection of Personal, Article 22 [Right of Access].

accordance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 27 of Law no. 05 / L-019 on the Ombudsperson,

## **RECOMMENDS**

### **Kosovo Accreditation Agency**

- ***To review the request of ISPE College for access to public documents and to provide response pursuant to the Law on Access to Public Documents as well as to the relevant legislation at force.***

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