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Prishtinë, 19 February 2020

Mr. Agim Veliu, Minister  
Ministry of Internal Affairs  
Str. "Luan Haradinaj" n.n.  
10000 Prishtinë

**Recommendation letter**

**C.no.683/2019**

**Agron Hasanaj**

**Versus**

**Police Inspectorate of Kosovo**

Dear Mr. Veliu,

The Ombudsperson, pursuant to Article 16, paragraph 1, of Law no. 05 / L-019 on the Ombudsperson, received the complaint of Mr. Agron Hasanaj, filed against Police Inspectorate of Kosovo (PIK), related to allegations on violation of human rights and fundamental freedoms guaranteed by the Constitution, international instruments, as well as Kosovo Republic Criminal Procedure Code No. 04 / L-123 (CPC).

Based on the case file as well as information on our possession, on 26 June 2019, Mr. Hasanaj was interviewed by PIK investigators, in the capacity of a suspect, related to the allegations on committing criminal offense of "Deception", which interlinks with the financial benefit of the "KLA War Invalid". Further, upon accomplishing his statement in PIK, based on the legal provisions at force, Mr. Hasanaj required a copy of his statement, but was rejected with the reasoning that PIK Inspector spoke by phone with the case prosecutor and was informed that no copy of the statement is to be served to Mr. Hasanaj on this phase. Moreover, Mr. Hasanaj alleges that the PIK investigator, in the last page of his statement, wrote a note stating that: *"This copy can only be obtained in the prosecution."*

On 1 July 2019, Mr. Hasanaj, filed a complaint with the PIK through an email, by which he notified them on allegations for legal breach conducted by the PIK investigator on his case, and again requested a copy of the statement given.

On 17 July 2019, PIK issued the *Notification no. 03/116/1055/1*, through which it notified Mr. Hasanaj that PIK has admitted and reviewed his complaint against the PIK investigator. In this regard, PIK explained that the PIK Division on Human Resources has reviewed the complaint jointly with all the facts and evidence concerning the case and found that the PIK investigator had acted in accordance with instructions of the competent prosecutor, therefore PIK found that there are no elements of disciplinary violation through allegations raised by Mr. Hasanaj through his complaint.

On 26 July 2019, Mr. Hasanaj has filed a request with the Legal Department of the Ministry of Internal Affairs (MIA), by which requested Legal Opinion on the case:

1. *Should he been served with the copy of his statement after he had been interviewed in PIK?*
2. *Is this his legal right?*
3. *Does PIK investigator's action constitute legal violation?*
4. *Is PIK's standard that the prosecutor's statement prevails over legal norms?*

On 13 August 2019, the Legal Department of the MIA issued *Legal Opinion No. 165*, through which it quoted and explained the law, based on Article 24, paragraph 1, of the Constitution of the Republic of Kosovo, on Article 172, paragraph 4, of the CPC, as well as Article 17, paragraph 1, of Law no. 03 / L-231 for the Police Inspectorate of Kosovo. Furthermore, Legal Opinion reviewed law enforcement based on the facts and circumstances of the case and, in addition, has concluded:

1. *Every person in every proceeding before the competent bodies must be treated without distinction;*
2. *After the police record is signed by the party, it should be available to the party if he / she so requires,*
3. *PIK investigators exercise their independent powers without being influenced by anyone, in accordance with the Constitution, the CPC and the legislation at force.*

On 25 September 2019, Ombudsperson's representative conducted a joint meeting with the Head of the Inspection Department (*who was replacing the PIK Chief during this time*) and with the Head of the PIK Investigation Department, with whom OI representative discussed the issue of Mr. Hasanaj. They informed him about developments of the given case but were not informed about the Legal Opinion issued by the Legal Department of MIA. As the case investigator was not at work, PIK officials promised that the given inspector will be notified about the case as soon as he returns at work and, as it has been explained that no legal obstacles exists, they promised that a copy of the statement will be delivered to Mr. Hasanaj as well as the OI.

On 3 October 2019, OI was informed that again the issue of Mr. Hasanaj statement has been discussed within the structures of PIK leadership and has been concluded not to serve Mr. Hasanaj with the copy of his statement to PIK, stating that he could request a copy of his statement at the Basic Prosecution in Prishtina.

On 5 November 2019, the Ombudsperson sent a letter to PIK Chief Executive through which he requested to be informed regarding the complaint of Mr. Hasanaj, as well as the actions taken by the PIK, in terms of the practical application of Article 23 and Article 24, paragraph

1, of the Constitution of the Republic of Kosovo, Article 172, paragraph 4, of the CPC, of Article 5, paragraphs 2 and 5, and of Article 17, paragraph 1, of Law no. 03 / L-231 on Police Inspectorate of Kosovo.

On 20 November 2019, the Ombudsperson received a reply from the PIK, which among others stated: *“As of the matter of Mr. Agron Hasanaj statement, who, in the case which is under investigation by PIK on Prosecution’s authorization, please be informed that it is not PIK’s decision not to serve Mr. Hasanaj with the copy of his statement, but PIK in this case has acted on suggestions of the case prosecutor, consulted upon Mr. Hasanaj’s request for obtaining a copy of the statement, the same has suggested the investigator, that if it had not been the practice to serve other suspects with the copy of their statements, the same practice should be applied in this case as well but only to find out that the suspect doesn’t want to sign the statement. As per this issue Mr. Hasanaj has been informed from the PIK Investigator himself. Since PIK is investigating the case in question under the Prosecution’s Authorization and each investigative action is made on the basis of this authorization and prosecution’s suggestions, we will therefore again get in touch with the Prosecutor as per serving Mr. Hasanaj with a copy of his statement.”*

Article 21, paragraphs 2 and 3 of the Constitution of Republic of Kosovo (henceforth the Constitution) stipulates as follows: *“The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution, Everyone must respect the human rights and fundamental freedoms of others.”*

Article 22 of the Constitution determines: *“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions.”* Article 23 reads: *“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms”*, while paragraph 1, of Article 24 stipulates: *“All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.”*

Further, Article 53 regulates Interpretation of Human Rights and Freedoms, guaranteed by this Constitution, by pointing out: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

Paragraph 2 of Article 172 of the Code No.04/L-123 on Criminal Procedure of the Republic of Kosovo determines: *“The police shall keep a written record of any examination of the arrested person, including the time of beginning and concluding the examination and the identity of the police officer who conducted the examination and any other persons present. If the defense counsel was not present, this shall be duly noted.”* While paragraph 4 of this Article stipulates: *“The written records under paragraphs 1 and 2 of the present Article shall be made available to the arrested person and his or her defense counsel on their request and in a language that the arrested person understands.”*

Article 3 of the Law No. 03/L-231 on Police Inspectorate of Kosovo provides: *“The Mission of the Police Inspectorate of Kosovo is that through exercising its duties to ensure an accountable, democratic and transparent police service in accordance to the legislation in power and required standards.”* While Article 5 of this Law contains basic principles, some of them mentioned here, which determine as follows:

- Paragraph 2 stipulates: “*PIK employees while conducting their duties shall respect applicable law; human rights and freedoms guaranteed by the Constitution of the Republic of Kosovo and shall contribute in their promotion.*”
- Paragraph 3 determines: “*PIK is guided by the principles of professionalism, objectivity, political impartiality and nondiscrimination.*”
- Paragraph 5 stipulates: “*During the exercise of its activity PIK is independent.*”
- Paragraph 7 stipulates: “*PIK shall conduct its investigation promptly and in an expeditious manner in order to maintain confidence in the rule of law.*”
- Paragraph 8 plainly stipulates: “*While performing their duties, PIK investigators shall comply with the Criminal Code and Criminal Procedure Code.*”

Furthermore, Article 6 of the same Law reads: “*PIK is an executive institution under the Ministry of Internal Affairs, independent from the Kosovo Police and under direct subordination of the Minister.*” While paragraph 1 of Article 17 provides: “*PIK investigators, while performing their duties, have police powers and shall exercise them in accordance with the Constitution, Criminal Code, Criminal Procedure Code, this law, other laws and sublegal acts in power.*”

In the meaning of the provision of Article 14 of the European Convention on Human Rights, the Ombudsperson reiterates that the Convention stipulates that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. In the complainant's case, it is noted that the complaint has started from a police officer who requested nothing more than the enforcement of his legal rights, namely the applicable criminal law. Denial of exercising of this right under general law may be considered violation of human rights, actually of the legal right of the suspect and breach of the principle of legal certainty, as a general principle of the right on human rights. The Ombudsperson insists that the law is applicable for everyone and that no one is exempt from the law and that on one is above the law.

European Court on Human Rights (henceforth ECtHR) has reiterated its already recognized practice, according to which the principle of legal certainty means that the law should be accessible and predictable. These requests have been repeated in ECtHR case law by explaining: “*Foreseeability implies that the law must be predictable in its effect, as formulated. The formulation sufficiently precise will enable the citizen to regulate his/her matter.*” (See ECtHR Judgment on the case of *Sunday Times versus United Kingdom*, 6538/74, of 26 April 1979 § 46 ff and the ECtHR Judgment *Rekvényi versus Hungary* 25390/94, of 20 May 1999 § 34 ff).

ECtHR points out also: “*It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.*” (See ECtHR Judgment on the case of *Malone versus United Kingdom* of 2 August 1984 § 68).

As an integral part of the principle of legal certainty the principle of legitimate expectation is guaranteed as well. “Based on the doctrine of legitimate expectation, those who act in confidence and in conformity with the law need not be frustrated from their legal expectations. This doctrine applies not only to legal proceedings but also to the issuance of decisions in individual cases by the public authority.” (See ECtHR Judgment on the case of *Anhaeuser-Busch Inc. versus Portugal*, 73049/01, of 11 January 2007 § 65).

Legal certainty requires, among other things, that promises made to individuals by the state (legitimate expectations) must be respected. Also, legal certainty means that the law is clear and practicable in practice<sup>1</sup>.

The principle of rule of law state, as a fundamental principle of the Constitution as well as the Convention, obliges state bodies to respect / enforce legislation approved by country's legislation. Constitutional guarantees for human rights are fundamental values of a democratic society, which serve to protection of human dignity, freedom and equality, since these values are fundamental to state functioning and the rule of law, as well as are preconditions of the respect of separation of powers principle. In this manner, general principles of setting the guarantees arising from the principle of legality have been set, through which, an efficient legal system, which provides legal certainty for citizens is established.

From the aforementioned it is clearly seen that the overall situation created concerning Mr. Hasanaj's case had come since PIK had explicitly rejected the validity of legislation approved by the Assembly of the Republic of Kosovo and without support on prosecutors' adequate legal bases and therefore "nudum ius" situation has been established, where laws are at place but failed to be enforced.

The Ombudsperson, based on what has been stated above, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo as well as on Article 18 of the Law on Ombudsperson, recommends the Minister of the Ministry of Internal Affairs:

- ***That pursuant to the powers and authorities deriving from the law, to issue an Instruction through which PIK, in the course of exercising its activity, shall be required to act in conformity with the Constitution, the Criminal Code, the Criminal Procedure Code, as well as the laws and sublegal acts at force, so that such situations are not repeated in the future.***
- ***To undertake all necessary measures to increase professional capacities of PIK officials, in terms of practical implementation of the law as well as respect for human rights and fundamental freedoms.***
- ***Within the legal mandate, to require from PIK responsible officials, to deliver to Mr. Hasanaj a copy of his statement given to PIK on 26 June 2019, without further delays.***

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

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<sup>1</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)REPORT ON THE RULE OF LAW Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011) (44-51).

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 in the future by You regarding this issue.

Warmly submitted,

Hilmi Jashari  
Ombudsperson