



Republika e Kosovës • Republika Kosovo • Republic of Kosovo  
Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

---

## Ombudsperson's

### Report with Recommendation

**Complaint No. 694/2019**

**Versus**

**Municipality of Kllokot/Klokot**

*With regard to restriction of the right to access public documents*

Addressed to: Mr. Božidar Dejanović, Mayor  
Municipality of Kllokot/Klokot

Prishtinë, 15 June 2020

## **Purpose of the Report**

1. The purpose of this Report is to draw attention of the Municipality of Klllokot/Klokot regarding the complaint of Mrs. Albulena Nrecaj, Executive Director of the Non-Governmental Organization “Progress-INPO Initiative” (INPO), for access to public documents and for the duties and responsibilities of the relevant institutions deriving from Law no. 06 / L-081 on Access to Public Documents (LAPD) and from the Law no. 02 / L-37 on the Use of Languages.

## **Legal and Constitutional Base**

2. According to Article 135, paragraph 3 of the Constitution of Republic of Kosovo: “*The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed.*”
3. Also pursuant to the Law No. 05/L-019 on Ombudsperson, with the responsibilities stipulated by Article 18, paragraphs 1, 2, 4, 5, 6 and 8.

By delivering this Report to the responsible institutions, the Ombudsperson aims to fulfill the above-mentioned constitutional and legal responsibilities.

## **Description of the case**

Facts, evidence and information in the possession of the Ombudsperson provided by the complainant and gathered from the investigation conducted, are summarized as follows:

4. On 16 and 17 July 2019, INPO sent an e-mail to the Municipality of Klllokot/Klokot with the request to obtain the access to procurement contracts with numbers 660-18-7723-1-2-1 and 660-18-4659-5- 2-1, respectively for “*Supply of schools inventory*” and “*Construction of sewerage at the old school in Mogille, Mamusha*”. Specifically, INPO has requested access to: signed contracts; pre-measurement and pre-calculation of the economic operator bid winner; the decision to appoint the contract manager; Contract Management Plan; the declaration of needs and the determination of the availability of funds; execution security; payments including purchase order, commitment of funds and invoices of the economic operator; technical or final admission report; the contract manager's report; dynamic plan; the beneficiary analysis report for the entire period of contract implementation from free balance.
5. On 23 July 2019, the Municipality of Klllokot/Klokot, by e-mail, requested from INPO to send the request for access to public documents in Serbian language, so that the Municipality could respond to their request. On the same day, INPO responded to the Municipality of Klllokot/Klokot by referring to the Constitution and the Law on the Use of Official Languages in the Republic of Kosovo, in which case it notified the Municipality of Klllokot/Klokot of the inability for submission of the request in Serbian language since INPO staff did not speak Serbian language.
6. On 21 August 2019, INPO addressed the Municipality of Klllokot/Klokot with a request for access to procurement activities with numbers 660-19-3468-5-2-1 and 660-19-5047-5-3-6, entitled: “*Reconstruction and extension of public lighting for the municipality of Klllokot/Klokot*” and “*Supply with vertical and horizontal traffic signs and lighting*”

panels". INPO has received the same response as in the first case, requesting the request to be sent in Serbian, so that the Municipality can respond to their request.

7. On 30 August 2019, pursuant to Article 21 of Law no. 06 / L-081 on Access to Public Documents, INPO has filed a complaint with the Ombudsperson against the Municipality of Klllokot/Klokot.
8. On 2 October and 26 December 2019, the Ombudsperson addressed a letter to the Mayor of Klllokot/Klokot, requesting information on actions taken or planned to be taken regarding INPO's requests for access to public documents.
9. On 3 February 2020, the Municipality of Klllokot/Klokot provided the Ombudsperson with the response through which it notified on the manner how it had instructed INPO to address the persons responsible for access to public documents and those responsible for procurement.
10. On 16 April 2020, Ombudsperson's representative, by e-mail, addressed the human rights official regarding the complaint in question, but did not receive a response.

### **Legal instruments applicable in Kosovo**

11. Constitution of the Republic of Kosovo (henceforward the Constitution), in Article 41, paragraph 1, defines the right to access public documents: *"Every person enjoys the right of access to public documents".*
12. Paragraph 2 of the same Article of the Constitution stipulates that documents held by all institutions are accessible to all, except for those documents access to which 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."*
13. 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."*
14. 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..."*
15. International Convent on Political and Civil Rights and its Protocols, in Article 19, paragraphs 1 and 2, guarantees the right to freedom of expression, including the freedom to seek, receives and imparts information and ideas of all kinds: *"Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*
16. The spirit of Article 41 of the Constitution is conveyed also at Article 1 of the LAPD: *"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.”*

17. Law No. 05/L-031 on General Administrative Procedures puts emphases on principle of open administration, in Article 9, paragraph 1, which stipulates: *“Public organs shall act with transparency.”*
18. The Constitution in its Article 5, stipulates Albanian Language as well as Serbian language as official languages in Republic of Kosovo, while the Law No. 02/L-37 on Use of Languages, in Article 2, paragraph 2.1, determines Albanian Language as well as Serbian language and their alphabets as official languages in Republic of Kosovo with equal status in Kosovo Institutions.
19. According to the Law No. 02/L-37 on Use of Languages, in municipal institutions applies the equality of the official languages of the municipality (Article 7). Languages have equal status and translation services must be provided from one language to another, if required.
20. Administrative Instruction no. 2011/02 on Determinations of Procedures for Implementation of the Law on Use of Languages, in Article 5, stipulates : *“Members of the community, whose language enjoys the status of the language in official language, shall have the right to file a request and documents in two ways, in both verbal and in writing to all representatives and executive bodies of the municipality and shall have the right to receive the response in their language..”*
21. Article 5, paragraph 2.7, of the LAPD determines the obligation of each public institution to have an official e-mail address, especially for communication with the public and to charge a person to regularly check the received data.

### **Case analyses**

22. The Ombudsperson notes that INPO's requests for access to public documents addressed to the Municipality of Klllokot/Klokot are related to documents that are in the public interest and should be accessible in accordance with applicable law. Moreover, even after the response that the Municipality of Klllokot/Klokot delivered to the Ombudsperson, through which it instructed INPO to address the persons responsible for access to public documents and those responsible for procurement, contact with those officials was impossible. In addition, the LAPD explicitly stipulates that requests for access to public documents or reuse of public documents shall be treated rapidly and according to the principle of objectivity and impartiality pursuant to the applicable Law on General Administrative Procedure. (Article 11.6).
23. The Ombudsperson draws attention to the ECtHR case law which, under Article 53 of the Constitution, provides a basis for the interpretation of human rights guaranteed by the Constitution. The ECtHR, in the judgment on the case: *Observer and Guardian versus United Kingdom* stipulates: *“To deny the public information on the functioning of state bodies is to violate the fundamental right to democracy.”*<sup>1</sup>
24. ECtHR practice has consistently recognized the important contribution of civil society to the discussion of issues of public interest. (*Application 37374/05*, paragraph 27).

---

<sup>1</sup> Case Of *Observer And Guardian V. The United Kingdom*, (*Application no. 13585/88*, 26 November 1991)

25. Further, the ECtHR, in the case of *Stell and Morris versus the United Kingdom*, of 15 May 2005, considers, among other things, that in a democratic society even small and informal groups must be able to perform their activities effectively and that there is a strong public interest that enables external groups and individuals to contribute to the public debate by providing information of general interest (paragraph 89). In the given case we deal with a Non-Governmental Organization, where their role and that of civil society is important in monitoring the work of government bodies.
26. Taking into account the legal obligations, responsibilities and competencies that municipalities have according to the legal provisions in effect, the Ombudsperson recalls the Administrative Instruction (MLGA) no. 01/2015 on 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 the municipal bodies to make the 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).
27. Also, the Ombudsperson emphasizes that the use of official languages in public institutions, respectively at the local and central level, should be done according to the Constitution and the legal provisions in force. According to Law no. 02 / L-37 on the Use of Languages, in municipal institutions the equality of official languages is applied. While Administrative Instruction no. 2011/02 on determining the procedures for the implementation of the Law on the Use of Languages stipulates that members of a community whose language enjoys the status of a language in official use, have the right to submit requests and documents in their own language, as well as get the answers in their own language (Article 5.1).
28. Furthermore, Regulation 01/2011 on the use of the official language in the territory of the municipality of Kllokot/Klokot-Vërboc stipulates that the Serbian language and the Albanian language have equal status in their use in all municipal bodies. Therefore, the request of the Municipality of Kllokot/Klokot for INPO to address its request for access to public documents in Serbian language is contrary to all legal and sub-legal acts applicable in the country.
29. The Ombudsperson finds that, in the present case, the Municipality of Kllokot/Klokot 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, a right guaranteed by national acts, and with international instruments.
30. Additionally, the Ombudsperson ascertains that the Municipality of Kllokot/Klokot should do more to increase the capacity of its officials in relation of handling requests for access to public documents and on implementation of the LAPD, as well as it should designate a person in charge for admission of requests for access to public documents and notify on its webpage about that person.
31. The Ombudsperson emphasizes that the public interest on how the public money is used as well as the accountability, is essential in promoting and strengthening democracy and good governance. Citizens, civil society and the media play an important role in this regard.

32. In order to improve the respect for the right to access public documents, as a constitutional and legal right as well as increase of accountability and transparency so that citizens apply this right as a powerful tool for controlling the work of governmental bodies, the Ombudsperson

## RECOMMENDS

### Municipality of Kllokot/Klokotit

- *To handle INPO's request, to respond to it 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