



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

---

Prishtinë, 11 January 2022

Mrs. Donika Gërvalla, Minister  
Ministry of Foreign Affairs and Diaspora  
Str. "Luan Haradinaj"  
10000 Prishtinë

## **Recommendation Letter**

**Complaint No.114/2021**

**Edina Elezi**

**Versus**

**Ministry of Foreign Affairs and Diaspora**

Dear Mrs. Gërvalla,

The Ombudsperson, pursuant to Article 16, paragraph 1, of Law no. 05 / L-019 on Ombudsperson, on 18 February 2021 received the complaint of Mrs. Edina Elezi, through her authorized representative, filed against the Ministry of Foreign Affairs and Diaspora (MFAD) for non-admission and the failure to register the request for notification.

According to the complainant's allegations and the documents submitted to the Ombudsperson Institution (OI), on 18 December 2020 Mrs. Elezi was interviewed for the position of Executive Assistant at the Consulate of the Republic of Kosovo in Zurich, Switzerland, based on the vacancy announced advertised by the Ministry of Foreign Affairs on 27 October 2020, for the position for which she applied. Mrs. Elezi claimed that she was not officially notified by the MFAD for her non-selection in the above mentioned position, so on 7 January 2021 she addressed the Consulate of the Republic of Kosovo in Zurich with a request for information, but did not receive a response. On 21 January 2021 Mrs. Elezi, through her representative authorized by the Bar Association "Sejdiu-Qerkini", addressed the MFAD with a request for notification regarding the selection of a candidate for the position of Executive Assistant in the Consulate of the Republic of Kosovo in Zurich, Switzerland, but the complainant's request was not admitted and was also not registered by the MFAD. Given that the request for notification was not admitted, the complainant sent also the request by mail, but again it has not been admitted by the MFAD and was returned back to her.

### **Actions undertaken by the Ombudsperson Institution**

On 11 March 2021, OI representative via e-mail, addressed a letter to the Secretary General of the MFAD, requesting information on the reason for the rejection of the request and the actions that the MFAD has undertaken or planned to undertake in respect of the complainant's case.

On 20 April 2021, the OI representative received a response from the Secretary General of the MFAD, through which was notified as follows: *“Referring to your request, please be informed that the Ministry of Foreign Affairs and Diaspora is not competent in terms of local staff complaints. Based on the Regulation (GRK) with No. 04/4014 on Amendment and Supplement of Regulation 02/2009 on the Foreign Service, Article 4 point 1.1 The Head of Mission is responsible and the highest authority of the Foreign Service hierarchy, in terms of requests, complaints from/and associated with locally recruited personnel at the Mission. To fulfil their rights, locally recruited personnel shall be subject to the receiving State’s legislation. Regarding the appeal procedure please consult the legislation of the state in which Mrs. Eldina Elezi has applied, if such a thing is foreseen.”*

On 20 April 2021, the authorized representative of the complainant was notified by e-mail of the MFAD response.

### **Aim**

The purpose of this Recommendation letter is to draw attention of the MFAD regarding non-admission and the failure to register the request for notification of Mrs. Elezi, from this Ministry, with regard to selection of the candidate for the position of Executive Assistant in the Consulate of the Republic of Kosovo in Zurich, Switzerland.

The Recommendation letter also aims to assess whether MFAD actions are in accordance with the principle of lawfulness, the principle of information and active assistance. Recommendation letter will provide specific and concrete recommendations regarding actions that the MFAD should take to fully comply with applicable laws and human rights.

### **Ombudsperson’s responsibilities**

Constitution of Republic of Kosovo in Article 132, paragraph 1, stipulates: *“The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.”* While in Article 135, paragraph 3, defines: *“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.”* Ombudsperson, according to the Law No. 05/L-019 on Ombudsperson, among others, has the following powers and responsibilities:

- *“to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international instruments of human rights, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority.”* (Article 16, paragraph 1);
- *“to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases”* (Article 18, paragraph 1, subparagraph 1.2);
- *“to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination”* (Article 18, paragraph 1, subparagraph 1.5);

- “to publish notifications, opinions, recommendations, proposals and his/her own reports” (Article 18, paragraph 1, subparagraph 1.6).

## LEGAL BASES

Article 21, paragraphs 2 and 3, of the Constitution of Republic of Kosovo (henceforward: Constitution) defines 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.*”

Law No. 05/L-031 on General Administrative Procedure, in Article 73, paragraph 1, determines: “*Except in cases when the law foresees a specific form, a request initiating an administrative proceeding may be done: 1.1. in writing; 1.2. by verbal declaration in front of public organ and to be recorded by the public organ; 1.3. in any other appropriate and possible form.*”

Paragraph 1 of Article 74 of the Law No.05/L-031 on General Administrative Procedure stipulates: “*A request may be submitted directly to public organ to which it is addressed as well as to any of its local branches or offices, if any.*” While paragraph 5 defines: “*A written request may be submitted also by mail or electronically, directly to the official address of the organ to which is addressed to. [...].*”

Paragraph 1 of the Article 75 of the Law No. 05/L-031 on General Administrative Procedure determines: “*When a public organ receives a written request for which it is not competent, it shall forward it without delay to the competent organ and notify the submitter about it.*”

Paragraph 1 of Article 76 of the Law No. 05/L-031 on General Administrative Procedure stipulates: “*The receipt of the statement shall be registered by the organ where it was submitted according to the order of submission. The statements that come in the same postal delivery are considered as submitted at the same time.*” While paragraph 2 determines: “*A certificate, which includes the receipt confirmation, date, object of the statement and a list of attached documents, if any, shall be issued to the submitter*”

## Findings

The Ombudsperson, in accordance with the above stated findings, considers that the refusal of admission, MFAD failure to register and provide response to Mrs. Elezi request for notification, addressed by Mrs. Elezi on 21 January 2021 to the Ministry of Foreign Affairs and Diaspora, with respect to candidate’s selection for the position of Executive Assistant at the Kosovo Republic Consulate in Zurich, Switzerland, is a clear indication of human rights violations for the fact that such deed is in contradiction with the Law no.05 / L-031 on General Administrative Procedure and also opposite to the basic principles of a democratic country, such as the principle of legality and the principle of information and active assistance.

The Ombudsperson finds that in the case of Mrs. Elezi, MFAD has failed to fulfill the legal obligations arising from Law no.05 / L-031 on General Administrative Procedure, Article 75, paragraph 1 and Article 76, paragraphs 1 and 2.

Furthermore, the Ombudsperson recalls that the purpose of good administration of public administrative bodies, among others, is the establishment of good practices, promoting an administrative culture, transparent, harmonized and focused on citizens.

Based on what has been stated above, the Ombudsperson, in accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 18, paragraph 1.2, of Law no. 05 / L-019 on Ombudsperson <sup>1</sup>,

### RECOMMENDS

The Ministry of Foreign Affairs and Diaspora:

- ***To undertake all necessary actions with regard to complainant's request and provide her with the response, in accordance with Law no.05 / L-031 on General Administrative Procedure.***

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,

Naim Qelaj

Ombudsperson

Copy for: Mr. Habit Hajredini, Director

Office of Good Governance – Office of Prime Minister

---

<sup>1</sup> Article 18, paragraph 1.2, of the Law No. 05/L-019 on Ombudsperson, Ombudsperson: “(...) has the responsibility to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases (...).”