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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

Ombudsperson,

Pursuant to Article 132 and 133 of the Constitution of the Republic of Kosovo, Article 37 of Law no. 05 / L-019 on Ombudsperson, (Official Gazette of the Republic of Kosovo no. 16/26 June 2015, Prishtine), Judgment of the Constitutional Court No. KO73 / 16, as well as Constitutional Court's Judgment No. KO203 / 19,

Promulgates:

**REGULATION NO. 02/2022 ON THE DISCIPLINE AND COMPLAINTS OF
EMPLOYEES OF THE OMBUDSPERSON INSTITUTE**

Chapter I
General provisions

Article 1
Purpose

This Regulation shall determine classification of violations of work assignments, procedures and disciplinary measures, as well as the complaining procedure in the Ombudsperson Institution (hereinafter OI).

Article 2
Scope

Provisions of this Regulation shall apply to OI employees.

Article 3
Subsidiary application

In matters which are not regulated by this Regulation, provisions of the Law on General Administrative Procedure shall apply appropriately.

Article 4
Procedure of principles

1. Main principles for conducting the procedure are:
 - 1.1. the principle of legality;
 - 1.2. the principle of proportionality;

- 1.3. the principle of equality and non-discrimination;
- 1.4. the principle of objectivity and impartiality;
- 1.5. the principle of information;
- 1.6. the principle of hearing the parties;
- 1.7. the principle of efficiency; and
- 1.8. the principle of the right to legal remedies.

Article 5

Definitions

1. For the purpose of this Regulation, the term "direct supervisor" shall mean the direct supervisor of the employee according to the relevant OI sublegal acts as well as the person within the OI, who, by decision delegates work assignments according to legal authorizations.
2. Terms used in this Regulation for male natural persons shall mean the same expressions for females.
3. For the purposes of this Regulation, the term "employed" shall mean the staff in accordance with the Law on Ombudsperson and OI sublegal acts.

Article 6

Procedures Implementation Bodies

1. The disciplinary procedure is implemented by the Disciplinary Commission, in compliance with this Regulation.
2. The complaining procedure is implemented by the Complaining Commission, in accordance with this Regulation.
2. Technical- administrative work for the Commissions from paragraph 1 and 2 of this Article is performed by the OI through the respective Human Resources Department (hereinafter: HRD).

Chapter II

ESTABLISHMENT AND COMPOSITION OF COMMISSIONS

Article 7

Establishment of the Disciplinary Commission

1. The Disciplinary Commission is established by OI Secretary General, with a three (3) year term with the possibility of re-election. In the course of establishing a Disciplinary Commission, gender and ethnic representation shall be taken into consideration.
2. Members of the Disciplinary Commission cannot be also members of the Complaints Commission in the OIK.
3. The Disciplinary Commission consists of three (3) members, one (1) managerial level employee, one (1) professional level employee and one (1) respective unit employee. One of the members of the Disciplinary Commission is appointed as a Chairperson.

4. At least one of the members of the Disciplinary Commission defined in paragraph 3 of this Article must be a jurist (legal adviser).
5. When disciplinary proceeding is initiated against the Chairperson or members of the Disciplinary Committee, the Secretary General of the OI shall replace him / her with another employee from the same functional category.
6. In case the Chairperson or Disciplinary Commission members have conflict of interest or when a conflict of interest arises in the meantime, OI Secretary General shall replace him in the following cases:
 - 6.1 when the Chairperson or member of the Disciplinary Commission is in a position of direct supervisor to the employee, who is presumed to have committed a disciplinary violation or vice versa;
 - 6.2. when the Chairperson or Disciplinary Commission member has been damaged by the employee, who is presumed to have committed a disciplinary violation; as well as
 - 6.3. when there are other circumstances of exclusion according to the provisions of the Law on General Administrative Procedure.

Article 8

Establishment of the Complaints Commission

1. The Complaints Commission is established by the Secretary General of the OI for a term of three (3) years with the possibility of re-election. Gender and ethnic representation should be taken into account when establishing a Complaints Commission.
2. Paragraphs 2, 3, 4, 5 and 6 of Article 7 of this Regulation shall apply accordingly to the Appeals Commission.
3. The Complaint Commission has the powers to decide on the complaint filed against the decision of the Disciplinary Commission and the complaint according to Article 29, paragraph 2 and 3 of this Regulation. The Complaint Commission decides within the limits of the complaint and examines the merits of the complaint allegations, in relation to the case against which the complaint has been filed.

Chapter III

CLASSIFICATION OF VIOLATIONS, MEASURES AND DISCIPLINARY PROCEDURE

Article 9

Disciplinary responsibility

Employees will be subject to disciplinary action for breach of job assignments, which occurred as a result of their fault, as provided by this Regulation.

Article 10
Violations of job assignment

1. Violations of job assignments are divided into:

1.1. minor violations and

1.2. serious violations.

Article 11
Minor violations

1. Minor disciplinary violations are considered:

1.1. unexcused absence from work for up to two (2) working days;

1.2. violation of ethics rules;

1.3. disclosing misconduct, during working hours, with supervisors, colleagues, subordinates and the public;

1.4. performing actions that affect OI employees, during or out of official working hours.

Article 12
Serious violations

1. Serious disciplinary violations are considered:

1.1. failure to accomplish assigned work liabilities;

1.2. failure to abide with certain deadlines in fulfillment of tasks, which have resulted with serious consequences;

1.3. failure to implement legal provisions for fulfillment of functional duties;

1.4. benefiting directly or indirectly from gifts, favors, promises or preferential treatments, which are provided due to work assignment;

1.5. abandonment of work or unreasonable absence for more than two (2) working days;

1.6. repeated violation of the code of ethics rules;

1.7. damage to state property, its use outside the official definition or misuse of state property;

1.8. repeated performance, during or out of official working hours, of actions that affect OI employee;

1.9. violation of the rules for maintaining the classified or confidential information on data deemed as such;

1.10. violation of the liabilities defined by the legislation in effect;

1.11. use of narcotics as well as other psychotropic substances or alcohol at workplace and coming drunk at work.

Article 13
Disciplinary measures

1. Disciplinary measures, which can be applied to OI employee, are:
 - 1.1. remark;
 - 1.2. withholding from 20% to 40% of salary for a period of up to six months;
 - 1.3. prohibition of promotion, including increase in the salary scale for a period of two to five years;
 - 1.4. dismissal from the work.

Article 14
Decision on minor violations

1. Disciplinary measure defined in Article 13, paragraph 1, sub-paragraph 1.1 of this Regulation, is provided by the direct supervisor of the employee, if the employee has committed a disciplinary violation defined in Article 11, paragraph 1, sub-paragraphs 1.1, 1.2, 1.3 and 1.4 of this Regulation.
2. The decision for imposing disciplinary measure according to paragraph 1 of this Article shall contain the elements defined in Article 25, paragraph 3 of this Regulation.

Article 15
Powers of the Disciplinary Commission for serious violations

1. Disciplinary Commission has the following powers:
 - 1.1. to hear and review the evidence regarding the alleged violation;
 - 1.2. to decide, on the basis of evidence, whether the violation has been committed; and
 - 1.3. to determine the disciplinary measure to be imposed.
2. Disciplinary measures defined in Article 13, paragraph 1, sub-paragraphs 1.2, 1.3 and 1.4 of this Regulation shall be given by the Disciplinary Commission, if the employee has committed a disciplinary violation defined in Article 12, paragraph 1, sub-paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10 and 1.11 of this Regulation.
3. Disciplinary Commission may suspend the disciplinary procedure, in the following circumstances:
 - 3.1. the employee, who is alleged to have committed a disciplinary violation, is absent in the procedure due to a serious illness;
 - 3.2. the employee, who is alleged to have committed a disciplinary violation, is absent in the procedure due to maternity leave; and
 - 3.3 there are other circumstances which are evaluated by the Disciplinary Commission according to the legislation in force.

4. If there is reason to believe that continuation of exercising of work assignments by the employee, against whom a disciplinary procedure has been initiated, hinders the disciplinary investigation or may impair the proper exercise of his work, the Disciplinary Commission may decide to suspend the employee or take any other appropriate action, pending a final decision.

5. Criminal or misdemeanor liability does not exclude disciplinary liability, if the offense with which he has been convicted is related to the performance of work assignments.

Article 16

Initiation of disciplinary proceedings

1. The disciplinary procedure is initiated by the direct supervisor of the employee.
2. Exceptionally from paragraph 1 of this Article, the disciplinary procedure can be initiated by the employee when he is aware or has suspects of a disciplinary violation, committed by another employee within the OI. The case must be reported in writing to the immediate supervisor of the employee who is alleged to have committed the violation.
3. Cases initiated from paragraph 2 of this Article shall not be accepted if they are anonymous.
4. When the initiator of the submitter of disciplinary violations has whistleblower status, in that occasion rules of the Law on Protection of Whistleblowers and the sublegal acts deriving from it shall apply.
5. If the notification taken from paragraph 2 of this Article, does not turn out to have elements that can be classified as disciplinary violations, the direct supervisor shall decide not to initiate the disciplinary procedure, by justifying in writing the decision on not commencement of the procedure and for this shall notify the complainant of the alleged violation and the employee against whom the initiation of disciplinary proceedings has been requested, through formal notification as defined by the Law on General Administrative Procedure.
6. In case the information obtained from paragraph 2 of this Article, turns out to have elements such as disciplinary violations, the direct supervisor qualifies the violations according to Articles 11 and 12 of this Regulation.

Article 17

Initiation of disciplinary proceedings

1. Disciplinary procedure guarantees the right of the employee to be notified about the commencement of the procedure, to be informed about the alleged factual violation and the evidence for its commission, on the right to be heard, to present evidence, the right to have access to the documents related to the proceedings, the right to legal protection and the right to be assisted, as well as the right to appellate final decision.
2. The employee shall be assisted during the disciplinary proceedings by a representative of the trade union of which he is a member or by a lawyer.

3. In case the violation is classified according to Article 11, paragraph 1, sub paragraphs 1.1, 1.2, 1.3 and 1.4 of the Regulation, the direct supervisor initiates the disciplinary procedure according to Article 14 of this Regulation, without applying the provisions of Articles 18, 19, 20, 21, 22, 23 and 24 of this Regulation.
4. In case the violation are qualified according to Article 12, paragraph 1 under paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10 and 1.11 of this Regulation, the direct supervisor shall request the Disciplinary Commission to initiate disciplinary proceedings.
5. If the direct supervisor requests the initiation of disciplinary proceedings from the Disciplinary Commission according to paragraph 4 of this Article, the proposal for initiation of disciplinary proceedings must contain the data set out in paragraph 7 of this Regulation.
6. The proposal for initiation of disciplinary proceedings in the Disciplinary Commission is sent to the HRD. Disciplinary procedure is considered to have started on the day of submission of the proposal for the disciplinary procedure to the Disciplinary Commission by the HRD.
7. The proposal for initiation of the disciplinary procedure contains the following data:
 - 7.1. name and surname of the employee against whom the initiation of disciplinary proceedings has been requested;
 - 7.2. the disciplinary violation allegedly committed by the employee;
 - 7.3. the facts and evidence on which the proposal is based;
 - 7.4. the proposal for the evidence, which must be examined in the disciplinary procedure;
 - 7.5. the name, surname and signature of the submitter of the proposal for initiation of the disciplinary procedure;
 - 7.6. data on the injured party, if any.
8. If the proposal for initiation of disciplinary proceedings is incomplete, the responsible HRD official shall request the proposer to complete the proposal within three (3) days, in accordance with paragraph 7 of this Article.
9. After receiving the proposal, the case is framed, which is registered according to the date of admission in the register and receives its number.
10. HRD, within five (5) days from the day of admission of the proposal, shall send to the Disciplinary Commission the proposal jointly with all received materials, notwithstanding whether or not it is served with the response.

Article 18

Preliminary session

1. The Chairperson of the Disciplinary Commission, within eight (8) days, shall summon the members of the Disciplinary Commission for the preliminary assessment of the proposal for initiation of the disciplinary procedure.

2. After receiving the proposal, the Disciplinary Commission within eight (8) days rejects the proposal as:
 - 2.1. incomplete, if it fails to contain all the data from paragraph 7 of article 17 of this Regulation;
 - 2.2. not permitted, if it has not been presented by the persons authorized to initiate the disciplinary proceedings.
3. If the Disciplinary Commission within eight (8) days from the day of admission of the proposal does not reject the proposal, a copy of the proposal with attachments shall be sent to the employee, who within five (5) days, has the right to be declared in writing to the Disciplinary Commission regarding his responsibility as well as may reveal facts or arguments to support his legal position.
4. Disciplinary procedure against the employee must be accomplished within thirty (30) days from the day of submission of the proposal to the Disciplinary Commission.

Article 19 **Hearing session**

1. The hearing is held in the appropriate premises of the OI.
2. The summons for the hearing for the parties is made in writing and contains the name and surname of the person who is summoned, time and place of the hearing, the reasons for the summoning and the capacity for what is summoned.
3. The call according to paragraph 2 of this Article can be made in writing or through electronic communication.
4. Before the beginning of the hearing, the Chairperson of the Disciplinary Commission shall verify whether all the convened persons are present and shall verify their identity. The hearing may be held in the absence of the employee and his defense counsel if they are duly invited, while are absent for unreasonable reasons.

Article 20 **Exclusion and opposition**

1. The Chairperson and members of the Disciplinary Commission are obliged to disclose whether there is a possible conflict of interest. In case such a situation exists, then they are obliged to immediately notify the Secretary General of the OI.
2. The parties to the proceedings shall have the right to request disqualification of one or more members on the basis of a potential conflict of interest. Such a request is submitted to the Disciplinary Commission. The Disciplinary Commission shall adjourn the session and shall send the case to the Secretary General of the OI.
3. In case the existence of a conflict of interest is attested, the OI Secretary General, with a decision shall decide on the recuse of the Chairperson or members of the Disciplinary Commission.

4. The OI Secretary General within two (2) days shall decide on the exemption or rejection of the Chairperson or members of the Disciplinary Commission.

Article 21

Recording of the disciplinary hearing

1. Disciplinary hearings are audio or visually recorded. The recording of disciplinary hearings shall be transcribed, which shall serve as an official minutes of the proceedings.
2. Exceptionally from paragraph 1 of this Article, in certain cases, the disciplinary session can be held even without recording the disciplinary session, for which the consent of the majority of the members of the Commission is required.
3. Textual recording of the minutes shall be confidential, except when required for procedural purposes.

Article 22

Opening of the Hearing

1. If the circumstances for holding the hearing are met, the Chairperson of the Disciplinary Commission shall claim the hearing open and shall declare:
 - 1.1 name of the case;
 - 1.2 file number;
 - 1.3 date, time and place of the hearing;
 - 1.4 composition of the Disciplinary Commission;
 - 1.5 parties to the proceedings;
 - 1.6 representatives of the parties present in the proceedings, if any, and
 - 1.7 other participants in the procedure.
2. The Chairperson of the Disciplinary Commission shall ascertain whether the parties agree on the composition of the Disciplinary Commission and are ready to continue the disciplinary hearing.
3. The Chairperson of the Disciplinary Commission shall provide the employee the opportunity to state whether or not he accepts the disciplinary responsibility. In such a case the Disciplinary Commission may take as a mitigating circumstance in the case of imposing a disciplinary measure.
4. The Chairperson of the Disciplinary Commission shall give the floor to the employee or his defense counsel, and then to the witnesses and other summoned persons, in which case he shall take care of keeping the disciplinary procedure in order.
5. The Chairperson and members of the Disciplinary Commission may ask questions and request explanations from the employee, the proposer of the disciplinary procedure or their defense counsel and others who assist them. After the statement of the employee, the proposer of the disciplinary procedure or their defense counsel, the Disciplinary Commission

shall proceed to review the proposed evidence. Evidence is examined by reading or questioning the witnesses.

6. The Disciplinary Commission shall perform any other action necessary to verify the event.

7 The session of the Disciplinary Commission is closed and is held with the physical presence of all members.

8. The hearing usually ends on the same day it has been initiated.

Article 23 **Effects of the Hearing**

1. The person appointed by the Chairperson of the Disciplinary Commission for the hearing shall keep minutes, which shall contain data on the composition of the Disciplinary Commission, the submitter of the proposal, the employee and his defense counsel if appointed, the legal basis of the disciplinary violation, the basic content of the statement of the employee, of the witnesses and of the evidence examined.

2. The minutes are signed by: The Chairperson of the Disciplinary Commission, the employee against whom the disciplinary procedure is conducted, respectively his defense counsel and the minutes' holder. If the employee or his defense counsel rejects to sign the minutes, the reasons for the refusal shall be noted.

3. A copy of the minutes is given to the parties in the procedure.

Article 24 **Counseling and voting sessions**

1. For consultation and voting of the Disciplinary Commission, a special report is compiled which shall contain:

1.1. the composition of the Disciplinary Commission;

1.2. place and time of the consultation;

1.3. the course of voting, and

1.4. the disciplinary measure imposed.

2. Dissenting opinions, if any, shall be recorded in the minutes. The minutes for deliberation and voting are signed by all members of the Disciplinary Commission and the registrar.

3. Disciplinary Commission shall issue the decisions, while they are signed by the Chairperson of the Disciplinary Commission.

Article 25

Decision of the Disciplinary Commission and content

1. After holding the disciplinary session, the Disciplinary Commission with a majority of votes shall take a decision, by which the employee is imposed a disciplinary measure or rejection from the responsibility.
2. Exceptionally from paragraph 1 of this Article, if the Disciplinary Commission deems that the qualification of the disciplinary violation does not stand, the Commission shall return it to the direct supervisor for imposing the measure in relation to the alleged violation.
3. The decision from paragraph 1 of this Article shall contain the following elements:
 - 3.1. the introductory part;
 - 3.2. enacting clause;
 - 3.3. reasoning; and the
 - 3.4. instruction on the legal remedy.
4. A copy of the decision of the Disciplinary Commission is delivered to the parties in the procedure and HRD, within three (3) days.
5. The copy of the decision becomes part of the employee's personal file.

Article 26

Prescription of disciplinary violations

The disciplinary procedure begins without delay, upon notification of a disciplinary violation, but not later than within a period of two years (2) from the date of violation occurrence.

Article 27

Evidence for the initiated disciplinary procedure

The OI safeguards records of the disciplinary proceedings established, the number and date of the disciplinary decision, the type of measure imposed, as well as the decision for temporary suspension of the employee during the duration of the disciplinary proceedings and other important data for the evidence regarding the development and outcome of the disciplinary procedure.

Article 28

Deletion of disciplinary measures

1. Disciplinary measures listed in the personnel file are deleted, after the expiration of these deadlines:
 - 1.1. two (2) years from the notification of the measure specified in subparagraphs 1.1 and 1.2 of Article 13 of this Regulation;
 - 1.2. three (3) years from the expiration of the term for which the measure set forth in paragraph 1.3 of Section 13 of the present Regulation has been applied;

- 1.3. five (5) years from the notification of the measure determined according to sub paragraph 1.4 of Article 13 of this Regulation;
2. The declaration on termination of disciplinary measures upon the expiration of the specified deadline can be made at the request of the employee and ex officio, in which case the measure is deleted from the personnel file and the relevant register.

CHAPTER IV COMPLAINT PROCEDURE

Article 29

The right to complaint

1. The dissatisfied party against the Disciplinary Commission decision has the right to file a complaint to the Appeals Commission within fifteen (15) days from the moment the decision has been served.
2. The employee has the right to file a complaint directly to the Complaints Commission for any action or omission that violates the rights or legitimate interests, these rights, arising from the employment relationship according to the legislation in force.
3. The right to appeal to the Appeals Commission is recognized to every candidate in an admission procedure (hereinafter the candidate) in the OI.

Article 30

Filing a complaint

1. The complaint is in writing and submitted to the HRD.
2. The complaint pursuant to paragraph 2 and 3 of Article 29 of this Regulation shall be submitted within the period of fifteen (15) days from the moment when the employee or the candidate considers that his rights have been violated from the employment relationship.
3. The technical administrative work for the Complaints Commission is performed by the OI through the HRD and without being limited to:
 - 3.1. within three (3) days shall send the case to the Complaints Commission;
 - 3.2 shall provide evidence from the party involved in the dispute, and additional evidence required by the Appeals Commission;
 - 3.3. shall make administrative preparations for the session of the Complaints Commission;
 - 3.4. shall notify the parties about the time and place of the hearing;
 - 3.5. shall notify the parties about the decision of the Appeals Commission;
 - 3.6. shall keep the decision of the Appeals Commission in the personal file of the parties involved in the dispute.

4. The complaints procedure is considered to have started at the moment when the case is submitted to the Complaints Commission.
5. The appeal is reviewed and decided upon within thirty (30) days from its submission to the Appeals Commission.

Article 31
Public hearings

1. The Appeals Commission shall firstly try to resolve the issue of complaint between the complainant and the party to whom the complaint has been addressed.
2. The hearing must be held within ten (10) days from the day of complaint admission.
3. Articles 18, 19, 20, 21, 22, 23 and 24 of this Regulation shall apply accordingly to the complaint procedure.

Article 32
Types of Appeals Commission decisions

1. The Appeals Commission shall decide on the issues raised through a decision, by which;
 - 1.1 shall dismiss the appeal as out of time or inadmissible;
 - 1.2 shall reject the appeal as unfounded and confirms the decision of the first instance;
 - 1.3 shall annul the appealed decision or action and returns the case for reconsideration;
 - 1.4 shall accept the appeal and changes the appealed decision or action and make a meritorious decision on the credibility of the submitted case.

Article 33
Decision of the Appeals Commission and content

1. The complaint of the employee or candidate shall be reviewed and decided by the Appeals Commission.
2. After reviewing the complaint from paragraph 1 of this Article, the Complaints Commission shall make a decision by a majority of votes.
3. The decision from paragraph 2 of this Article shall contain the following elements:
 - 3.1. the introductory part;
 - 3.2. enacting clause;
 - 3.3. reasoning; and
 - 3.4. instruction on the legal remedy.
4. A copy of the decision of the Appeals Commission shall be submitted to the parties to the proceedings and to the HRD, within five (5) days.
5. A copy of the decision of the Appeals Commission shall be a part of the personal file of the employee.

6. The decision of the Appeals Commission is final in the administrative procedure.
7. The employee or the candidate who is not satisfied with the decision of the Appeals Commission can initiate the procedure in the competent court.

CHAPTER V
DISCIPLINARY PROCEDURE AND THE RIGHT TO COMPLAINT FOR THE
SENIOR MANAGING EMPLOYEE

Article 34

Disciplinary Commission for Senior Management Official

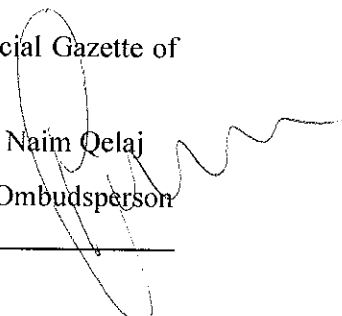
1. The disciplinary procedure for the senior management officer in the OI shall be developed and decided by the Disciplinary Commission for the senior management officer (hereinafter DCSMO), which is established by a decision of the Ombudsperson.
2. DCSMO, shall consist of three (3) members:
 - 2.1. two (2) deputies to the Ombudsperson, one of whom is appointed Chairperson;
 - 2.2. one (1) person who may be from the senior management category or an independent personality with professional experience.
3. The members from paragraph 2 under paragraph 2.2 of this Article shall benefit a fixed payment for each case in the disciplinary procedure in which they participate. The fixed payment is determined by Ombudsperson's a special decision.
- 4 The administrative and technical work for the DCSMO shall be performed by the OI through the HRD.
5. Provisions of this Regulation for the discipline of the employee, appropriately shall apply to the senior management officials, unless otherwise specified, by this Regulation and by sub-legal acts of the OI.
6. The decision of DCSMO is final in the administrative procedure.
7. DCSMO decides on disciplinary measures, except the measure for discharging from work, which shall propose to the Ombudsperson for the decision.
8. The senior managing officer for any action or inaction, which violates the rights or legitimate interests, rights that arise from the employment relationship according to the legislation in force, shall have the right to initiate the case in the competent court.

Article 35

Entrance into force

This Regulation shall enter into force on the day of its publication in the Official Gazette of the Republic of Kosovo.

Prishtinë, 31 January 2022


Naim Qelaj
Ombudsperson