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## **OMBUDSPERSON**

### **OPINION**

**R. no. 151/2024**

on the obligations of the University of Prishtina “Hasan Prishtina” to act in compliance with  
the principles of the Law on Protection from Discrimination

**To:**

Prof. Dr. Arben Hajrullahu, Rector  
University of Prishtina “Hasan Prishtina”

Mr. Altin Sahiti, Chairman  
Governing Council  
University of Prishtina “Hasan Prishtina”

Prishtina, December 13<sup>th</sup>, 2024

## Purpose

1. Through this opinion, the Ombudsperson provides a general position on the obligations of the University of Prishtina “Hasan Prishtina” to act in accordance with the principles of the Law on Protection from Discrimination and the applicable legislation in force when exercising its duties and responsibilities.

## Legal basis for the Ombudsman’s action

2. The Constitution of the Republic of Kosovo, 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.*”
3. Article 135, paragraph 3, stipulates: “*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.*”
4. Law No. 05/L-019 on the Ombudsperson defines, *inter alia*, the Ombudsperson’s competencies and responsibilities as follows: “*The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights.*” (Article 16.4); as well as: “*to publish notifications, opinions, recommendations, proposals and his/her own reports;*” (Article 18, paragraph 1, sub-paragraph 1.6).
5. Law No. 05/L-021 on Protection from Discrimination, Article 9 [Ombudsperson], paragraph 1, stipulates: “*The Ombudsperson is state institution for equality, for promotion and protection of human rights. The Ombudsperson shall handle cases related to discrimination under the relevant Law on Ombudsperson.*”

## Circumstances of the case

6. Based on Article 16, paragraph 1, of Law No. 05/L-019 on the Ombudsperson, the Ombudsperson received a complaint on February 1<sup>st</sup>, 2024, from Mr. ...., filed against the University of Prishtina “Hasan Prishtina” (hereinafter referred to as: UP), regarding an alleged violation of the right to work and the exercise of profession, as well as unequal treatment and discrimination in the process of establishing an employment relationship with UP.
7. Based on the complainant’s statements and the documentation available to the Ombudsperson Institution, it was noted that UP, within the competencies defined under Article 173, paragraph 4, of the Statute of UP, and in accordance with Law No. 04/L-037 on Higher Education, as well as Regulation No. 886 on Selection Procedures for the Appointment, Reappointment, and Promotion of Academic Staff, on May 31<sup>st</sup>, 2023 announced a public competition (No. 1/331), for the appointment, reappointment, and promotion of academic staff in UP faculties. The complainant, based on item 1 of the public competition, applied for position No. 13: “*One assistant for the following subjects: History of Southeast Europe II (C), Public History, Management of Programs for the*

*Preservation of History (C), Arrangement and Processing of Archival Materials (C), Archival Science – Theory and Practice (C), Archival Legislation (E), History of Civilization (C), Methodology of History (C), and History of Modern Civilization (C),”* for which four other candidates had also applied.

8. In this regard, following the completion of the recruitment process, the Faculty of Philosophy published the report in the UP bulletin, in which the complainant was selected as a successful candidate. Along with the proposals of the selected candidates, the faculty submitted the report to the Office for Academic Affairs at the Rectorate of UP, which did not find any violations concerning the position for which the complainant had been selected.
9. Furthermore, the complainant stated that on November 21<sup>st</sup>, 2023, the Rector addressed the Ethics Council with a request to review the complainant’s academic integrity. The complainant claims that such a request was made solely for him and not for the dozens of other candidates who had been selected in this recruitment process.
10. On January 22<sup>nd</sup>, 2024, the Ethics Council issued Decision No. 159, recommending to the Academic Senate: *“To take into consideration the fact that the reputation and credibility of the University would be seriously jeopardized if the ethical suitability and questionable past of candidates were entirely disregarded in the academic staff recruitment process, especially when such a past is relevant in relation to the University.”*
11. On February 27<sup>th</sup>, 2024, the UP Senate issued Decision No. 647, rejecting the appointment of the complainant/candidate to the academic title of Assistant for the subjects: *History of Southeast Europe II (C), Public History, Management of Programs for the Preservation of History (C), Arrangement and Processing of Archival Materials (C), Archival Science – Theory and Practice (C), Archival Legislation (E), History of Civilization (C), Methodology of History (C), and History of Modern Civilization (C).*
12. The complainant submitted a request for access to the minutes of the Ethics Council meeting held on January 22<sup>nd</sup>, 2024, which was denied by UP. Following the rejection of his request for access to the requested document, the complainant filed a complaint with the Information and Privacy Agency (IPA). After the IPA’s decision, the request for access was granted.

### **Assessment of the Ombudsman**

13. The Ombudsperson, knowing that the public competition No. 1/331 for the appointment, reappointment, and promotion of academic staff in the faculties of UP was announced on May 31<sup>st</sup>, 2023, while the Statute of UP in force at that time was the one approved on October 12<sup>th</sup>, 2012 (now an outdated statute), and considering that the new Statute of UP came into force on July 11<sup>th</sup>, 2024 (published in the Official Gazette on July 17<sup>th</sup>, 2024), considers that the matter at hand should refer to the Statute of UP approved on October 12<sup>th</sup>, 2012.
14. The Ombudsperson, taking into account the above-mentioned circumstances, emphasizes that the Statute of UP, which represents the highest legal act of this institution, stipulates in Article 7 that UP: *“Is obligated to create equal opportunities for all without any form of discrimination... [...] or any other status.”* The Ombudsperson considers that in the spirit of this provision, all other acts issued by UP should align.

15. Furthermore, the Ombudsperson has noted that the Statute of UP:

- Article 9 stipulates: *“The academic and administrative staff of the University and the students must behave in accordance with the highest standards of commitment, integrity, objectivity, responsibility, sincerity, honesty, and leadership.”*
- Article 47, paragraph 1, subparagraph 1.3 stipulates:
  1. *Despite the responsibilities of the Governing Council and the Rector, the Senate is responsible for:*  
[...]
    - 1.3. *Approving proposals from the Faculty Council for the election and promotion of academic staff.*
- Article 173 of the Statute of UP stipulates the procedure for the appointment of academic staff:
  1. *The academic staff will be appointed by the rector based on the decision of the Senate, based on the proposal of the academic unit council.*
  2. *If the proposal is rejected, it is returned for reconsideration to the academic unit council.*
  3. *If the academic unit council, after reconsideration, makes the same proposal, the Senate makes the final decision.*
  4. *Appointment procedures will be conducted transparently by announcing the public competition for the position.*
  5. *All appointments are made after the application documentation is reviewed by the evaluation commission formed by the academic unit council upon the proposal of the department. The evaluation commission evaluates candidates who are considered to meet the requirements for the offered position.*
  6. *The evaluation commission reports to the council that formed it, within a set timeframe.*
  7. *No one can be a member of the evaluation commission if they are a spouse, partner, or close family member of the candidate to be appointed.*
  8. *Other matters related to the evaluation procedures are determined by the rules issued by the Senate in accordance with this Statute.”*
- Article 174 stipulates: *“The conditions for the appointment and promotion to any academic title are the relevant qualifications and the relevant experience for the position.”*
- Article 185 stipulates: *“The academic staff of the University is obligated to respect:*
  - 1.1. *The spirit of humanity;*
  - 1.2. *The autonomy of the University;*
  - 1.3. *The freedom of scientific and artistic creativity;*
  - 1.4. *University acts and decisions based on them;*
  - 1.5. *Principles of professional and scientific integrity;*
  - 1.6. *The Code of Ethics;*
  - 1.7. *The reputation of the university and to improve it.”*

16. Furthermore, the Ombudsperson observes that Regulation with Prot. No. 886 on the Selection Procedures related to the Appointment, Reappointment, and Promotion of Academic Staff at the University of Prishtina “Hasan Prishtina” (hereinafter: Regulation No. 886), dated April 27<sup>th</sup>, 2022, defines the selection procedures and the process for the appointment, reappointment, and promotion of academic staff for positions such as *full*

*professor, associate professor, assistant professor, assistant, and lecturer* in all faculties, except for the Faculty of Arts, for positions related to the field of arts.

17. Furthermore, the Ombudsperson observes that the procedure for the case in question followed Regulation No. 886 up to the point when the Office for Academic Affairs at the Rectorate conducted the evaluation and review of the proposal for the selected candidates from the Faculty of Philosophy.
18. The Ombudsperson, considering that the selection procedure for the appointment, reappointment, and promotion of academic staff at UP is clearly defined by Regulation No. 886, while the appointment of academic staff is also regulated by Article 171 of the UP Statute, finds that the Rector, in referring the complainant to the Ethics Council for the review of their academic integrity, acted beyond the competencies established by the UP Statute and in contradiction with Regulation No. 886. Furthermore, such a request was made solely for the complainant and not for the dozens of other candidates selected in the same recruitment process.
19. Consequently, based on Article 173 of the UP Statute, academic staff are appointed by the Rector following the Senate's decision, which is based on the proposal of the academic unit's council. If the proposal is rejected, it is returned for reconsideration to the **academic unit's council**. If, after reconsideration, the council submits the same proposal, the Senate makes the final decision. All appointments are made after the evaluation of the application documentation by the review committee, which is formed by the academic unit's council based on the department's proposal.
20. The Ombudsperson, taking into account that the complainant has never been and is not currently employed at UP, nor is a student, considers that the Rector's request to the Ethics Council was a violation of the procedures established by Regulation No. 886. This assessment is supported by the provisions of the Code of Ethics (Prot. no. 1/751, dated July 19<sup>th</sup>, 2013), which, in Article 3, defines its scope of application, stating that it applies to all academic staff employed at UP, regardless of the type and form of the employment contract, the level of appointment, including but not limited to the positions of *lecturer, assistant, assistant professor, associate professor, and full professor*. Thus, the provisions of the UP Code of Ethics do not apply to candidates undergoing the selection/recruitment process for academic staff.
21. Moreover, the UP Statute, in Article 9, states: "*The academic and administrative staff of the University and students must act in accordance with the highest standards of dedication, integrity, objectivity, responsibility, sincerity, honesty, and leadership.*" This provision does not extend to candidates in the selection/recruitment process for academic staff.
22. The Ombudsperson emphasizes that Regulation No. 886 does not contain any provisions regulating the credibility or integrity of individuals participating in the selection process for UP academic staff. However, the integrity of candidates in the selection process, who are not employed at UP, is assessed through the submission of a certificate from the competent court confirming that the candidate is not under investigation and has not been convicted. Such a certificate is listed under the **General Conditions of the public competition announcement, Section II – Required Application Documents, item (j)**,

as specified in public competition No. 1/331, dated May 31<sup>st</sup>, 2023, for the appointment, reappointment, and promotion of academic staff at UP faculties.

23. The Ombudsperson assesses that the Rector's actions, the decision of the Ethics Council, and ultimately the decision of the Senate, not only placed the complainant in an unequal position but also constituted discrimination under the provisions of Article 1 of Law No. 05/L-021 on Protection from Discrimination: "[...] *combating discrimination based on nationality, or in relation to any community, social origin, [...] or any other grounds, in order to implement the principle of equal treatment.*"
24. Furthermore, Law No. 05/L-021 on Protection from Discrimination states: "*The principle of equal treatment shall mean that there shall be no discrimination, direct or indirect in the sense of any of the grounds set out in Article 1 of this Law.*" (Article 3, paragraph 1), where in the list of these "defined grounds," an open-ended category is included: "*or any other grounds*" (Article 1, paragraph 1).
25. Moreover, in interpreting the constitutional concept of discrimination, Article 53 of the Constitution must be taken into account, which provides: "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the judicial decisions of the European Court of Human Rights.*" (hereinafter: ECtHR).
26. According to ECtHR case law: "[T]he right [...] not to be discriminated against [...] is violated when States treat persons in similar situations unequally without providing an objective and reasonable justification." (*Thlimmenos v. Greece*, Application No. 34369/97, ECtHR, April 6<sup>th</sup>, 2000, para. 44). For such a justification to be "*objective and reasonable*," it must meet two further conditions: 1) there must be a "*legitimate aim*" for the inequality in question, and 2) there must be a "*reasonable proportionality between the means employed and the aim sought.*"
27. Similar to ECtHR case law, the Law on Protection from Discrimination stipulates that unequal treatment may be justified if there is "[...] *a legitimate purpose and there is a reasonable relationship of proportionality between the means employed and the targeted aim.*" (Article 6).
28. In the present case, the Rector's request to the Ethics Council for reviewing the academic integrity of the complainant but not the other candidates selected in the same recruitment process is an arbitrary request that places the complainant in an unequal position compared to the other candidates, thus constituting discrimination.
29. Moreover, the Rector's request lacks a legitimate aim for the inequality in question, as the candidate selection rules are clearly defined and leave no room for misinterpretation, and there is no reasonable connection to the intended purpose.
30. The discrimination against the complainant continued with the action of the Ethics Council, which resulted in Decision No. 159, through which this Council recommended to the UP Senate to consider the reputation and credibility of UP if the questionable past of candidates is disregarded. Additionally, in this decision, the Ethics Council emphasized that the decision-making bodies in the recruitment process had not taken into account Article 185 of the UP Statute, particularly Articles 6, 13, and 14, and that this article should also be considered for candidates who applied in the public competition.



31. The Ombudsperson notes that Article 185 of the Statute of the University of Prishtina (UP) defines the obligations of **UP's academic staff**, as does the Code of Ethics, which applies to **all academic staff employed at UP, regardless of the form and type of their employment contract**. However, the complainant is not an employee of UP.
32. In this decision, the Ethics Council engaged in the interpretation of a court ruling related to a criminal case in which the complainant was involved as part of the investigation during his time as a student. However, the complainant was acquitted by a **final judgment** (PAKR no. 402/2017). Furthermore, two of the individuals mentioned in this judgment, who were accused of the same matter while they were students, are now employed at UP (E.B. and G.M.). Therefore, the complainant has been treated unequally and discriminated against in relation to other individuals in a similar situation. In addition to the fact that such a decision contradicts the Law on Protection from Discrimination, the Statute of UP, and Regulation no. 886, it is also inconsistent with the Ethics Council's own statements regarding its decision-making practices when referring to the credibility and reputation of UP. The Ombudsperson observes that the unequal and discriminatory treatment of the complainant continued with the Senate's Decision (Decision with prot. no. 647, dated 27.2.2024).
33. Consequently, based on the interpretation of Article 1 of Protocol 12, which extends protection against discrimination to "*any right set forth by law*" and establishes a general prohibition of discrimination – meaning situations where a matter falls within the scope of a substantive right guaranteed by domestic law – the establishment of a criterion favouring candidates who have completed their studies at UP also falls within the scope of a legally regulated right.

## Conclusion

34. The Ombudsperson, considering the circumstances outlined above, assesses that the University of Prishtina "Hasan Prishtina", through its acts (the Statute and Regulation No. 886), has established the selection procedures concerning the appointment, reappointment, and promotion of academic staff at the University of Prishtina "Hasan Prishtina."
35. Regarding the specific case, the Ombudsperson, taking into account the aforementioned circumstances as well as the legal basis, considers that in the complainant's case, the University of Prishtina has failed to implement the procedures as stipulated by the Statute and Regulation No. 886.
36. As a result of the failure to adhere to the procedures set forth in the above-mentioned acts, the Ombudsperson finds that, in this particular case, the complainant has been placed in a disadvantaged position during the recruitment process at the University of Prishtina.
37. Furthermore, the Ombudsperson considers that the actions taken by the University of Prishtina towards the complainant in the process of selecting academic staff indicate unequal treatment among individuals in similar situations and are discriminatory within the meaning of Article 1, paragraph 1, and Article 3, paragraph 1, of Law No. 05/L-021 on Protection from Discrimination.

38. The Ombudsperson emphasizes that the University of Prishtina, in addition to complying with all other applicable laws that govern its daily activities, has an obligation to act in full accordance with the principles of the Law on Protection from Discrimination.
39. Finally, the Ombudsperson calls the attention of the University of Prishtina “Hasan Prishtina” to the fact that failure to comply with internal acts in accordance with their purpose and scope, as well as failure to uphold the principles of the Law on Protection from Discrimination, leads to violations of human rights, specifically to discrimination, as evidenced in the complainant’s case.

Respectfully,

Naim Qelaj  
Ombudsperson