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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

REPORT
OF
THE OMBUDSPERSON

A. no. 39/2023

Addressed to:

Mr. Petrit Reçica, Chief Executive Officer
Regional Waste Management Company “Pastrimi” J.S.C.

For information:

Mr. Përparim Rama, Mayor
Municipality of Prishtina

Prishtina, on 18 March 2025

Purpose of the Report

1. The purpose of this Report is to draw the attention of the Regional Waste Management Company (RWMC) “Pastrimi” J.S.C. to the legal obligation to undertake the necessary actions to review and decide on the request submitted by [REDACTED], without further delay.
2. This report is based on the individual complaint of [REDACTED] (hereinafter: the complainant) and relies on the facts and evidence provided by the complainant as well as on the case documents held by the Ombudsperson, related to the issue raised before the IO by the complainant.

Legal basis

3. Article 132, paragraph 1 of the Constitution of the Republic of Kosovo provides: *“The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities”*, whereas Article 135, paragraph 3 provides: *“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. Pursuant to Law No. 05/L-019 on the Ombudsperson, among others, the Ombudsperson has the following competencies and responsibilities:
 - *“The Ombudsperson has the power 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 publish notifications, opinions, recommendations, proposals and his/her own reports (Article 18, paragraph 1, subparagraph 1.6).”*

Summary of facts and actions of the Ombudsperson

5. Pursuant to Article 16, paragraph 1 of Law No. 05/L-019 on Ombudsperson, on 23 January 2023, the Ombudsperson received the complaint of [REDACTED], submitted against the Regional Waste Management Company (RWMC) “Pastrimi” J.S.C., for the failure to respond to his requests.
6. According to the documentation and information submitted by the complainant to the Ombudsperson (OI), on 29 July 2022, [REDACTED] submitted a request to RWMC “Pastrimi” J.S.C., with reference number 2863, regarding compensation for overtime hours worked during holidays, weekends, and night shifts. The complainant stated that on 10 January 2023, he resubmitted his request but received no response.
7. On 6 April 2023, the Ombudsperson addressed a letter to the Acting Chief Executive Officer of RWMC “Pastrimi”, requesting information on the actions taken and those

planned to be undertaken by RWMC “Pastrimi” J.S.C., in relation to the complainant’s request.

8. On 31 July 2023, the complainant reported that he had submitted a complaint to the Labour Inspectorate.
9. On 7 August 2023, the Ombudsperson sent a reminder letter to the Chief Executive Officer of RWMC “Pastrimi”.
10. On 19 September 2023, the complainant submitted additional information, namely that the Labour Inspectorate issued a decision in his case, imposing a punitive measure on RWMC “Pastrimi” due to its failure to respond to his requests regarding the matter.
11. On 13 December 2023, the Ombudsperson received a response from the Chief Executive Officer of RWMC “Pastrimi”, stating that due to changes in staff structure and reorganization, the review and decision on the complainant’s requests had not been carried out. Furthermore, he stated the following: *“Since such obstacles no longer exist, we inform you that we are currently reviewing [REDACTED] requests and that, within a reasonable period of time, a concrete decision will be made regarding the same, for which you, as the OI, will be informed in writing of the respective decision.”*
12. On 10 May 2024 and again on 8 July 2024, the OI representative was informed by the complainant that, up to that date, RWMC “Pastrimi” had still not taken any action to process or decide on [REDACTED] request.
13. On 25 July 2024, the Ombudsperson once again addressed a letter to the Chief Executive Officer of RWMC “Pastrimi”, requesting information on whether the company had undertaken actions regarding [REDACTED] request, as stated in the response dated 13 December 2023 addressed to the Ombudsperson.
14. The Ombudsperson did not receive a response to this letter.
15. The complainant was informed regarding the actions of the IO.

Legal basis

Constitution of the Republic of Kosovo:

Article 21 [General Principles]:

- “1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.*
- 2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.*
- 3. Everyone must respect the human rights and fundamental freedoms of others [...].”*

Article 49 [Right to Work and Exercise Profession]:

- “1. The right to work is guaranteed.*
- 2. Every person is free to choose his/her profession and occupation.”*

Law No. 05/L-031 on General Administrative Procedure:

Chapters: “*The request and its submission*”; “*Initiation of administrative procedure*”; “*Principles of administrative review*”; “*Completion of the administrative procedure*”; “*The principle of completion of the administrative procedure*”; “*Deadline*”.

Law No. 03/L-212 on Labour:

Article 56 [Allowances]

“1. For labour performed in extended working hours and during the days of national holidays as well as night shifts, an employee is entitled to allowances in compliance with this Law, Collective Contract and Employment Contract.[...].”

Legal analysis

16. The assessments and findings of the Ombudsperson in relation to Complaint no. 39/2023 are based on the rights guaranteed by the Constitution of the Republic of Kosovo and the applicable domestic laws. In this report, the Ombudsperson analyses the implementation of legal obligations by the responsible authority in relation to the binding legal guarantees for conducting the administrative procedure in accordance with the law.
17. The Constitution of the Republic of Kosovo guarantees: “*Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.*” According to the Constitution: “*Everyone must respect the human rights and fundamental freedoms of others.*” [Article 21].
18. The handling of requests within the public administration of the Republic of Kosovo is regulated by Law No. 05/L-031 on General Administrative Procedure. This Law sets out the standards, procedures and time limits for the handling of requests.
19. The form, content, submission of the request, registration and confirmation of the submission are clearly regulated under Articles 73, 74, and 76 of Law No. 05/L-031 on the General Administrative Procedure.
20. The administrative procedure is initiated at the request of the party [...]¹. In this case, the complainant initiated the procedure on 29 July 2022, whereby he addressed to the RWMC “Pastrimi” J.S.C. with Request no. 2863. The request concerns compensation for additional working hours performed during public holidays, weekends, as well as for working hours during the night shift. The complainant stated that on 10 January 2023, he resubmitted his request but received no response.
21. The review of an initiated administrative procedure is a legal obligation and duty of the public authority to which the request has been submitted. Law No. 05/L-031 on General Administrative Procedure, in Article 86, paragraph 1, explicitly stipulates: “*The public organ shall ex officio investigate all facts and assess all circumstances necessary for resolving the administrative case.*” While paragraph 2 stipulates: “*The public organ shall independently determine the type and scope of administrative investigation and assess whether a fact or circumstance is relevant for the solution of the case.*”

¹Article 83, paragraph 1, of Law No. 05/L-031 on General Administrative Procedure

22. For the resolution of the respective matter, the law also imposes obligations on the party to cooperate with the public authority, specifically in the determination of the necessary facts and circumstances (Article 87 of Law No. 05/L-031 on General Administrative Procedure).
23. The conclusion of the administrative procedure is carried out by means of a notification through an administrative act addressed to the requesting party. Law No. 05/L-031 on General Administrative Procedure, in Article 97, paragraph 1, stipulates: *“An administrative proceeding, instituted upon request, shall be terminated by notification of an administrative act or conclusion of administrative contract.”*
24. The deadline for the completion of the administrative procedure is 45 days from its initiation, or as soon as possible, but no later than the deadline prescribed by law. 05/L-031 on General Administrative Procedure, in Article 98, paragraph 1, explicitly stipulates: *“An administrative proceeding, instituted upon request, shall be terminated as soon as possible, but no later than within the deadline established by law for that type of proceeding.”* While paragraph 2 stipulates: *“In case the special law provides no deadline, as provided under paragraph 1. of this Article, the general deadline applicable to the conclusion of administrative proceedings shall be forty five (45) days from the date of its institution.”*
25. Based on the legal guarantees specified above regarding the initiation, review and completion of an administrative procedure and also based on the circumstances and documentation submitted by the complainant as well as the actions taken by the OI during the investigation of the case, the responsible authority RWMC “Pastrimi” J.S.C. did not act in accordance with the law to review and complete an administrative procedure upon the request initiated by the complainant [REDACTED]. The complainant has not received any administrative act regarding the outcome of his request, through which he sought compensation for overtime hours worked during public holidays, weekends, as well as night shift hours. The complainant’s request is legitimate and based on Law No. 03/L-212 on Labour (Article 56 – Overtime Pay) and on the complainant’s employment contract with RWMC “Pastrimi” J.S.C.

Findings of the Ombudsperson

26. The Ombudsperson, based on the findings presented in this report, finds that in this case, RWMC “Pastrimi” J.S.C. failed to fulfil the legal obligation to examine and decide on the complainant’s request. The failure to issue an administrative act based on the initiation of an administrative procedure following the party’s request creates, in addition to legal uncertainty, in the circumstances of this specific case, uncertainty regarding the fulfilment of conditions and rights arising from the employment relationship, a violation of the right to due process, and difficulties in exercising legal remedies.
27. The Ombudsperson notes that the handling, examination and decision-making on a request is a legal obligation for the public authority and, on the other hand, it is the right of every individual to have their request handled in accordance with the law, through a proper legal procedure, and to receive a response or decision based on the party’s legal rights, as defined by law, both regarding the procedure followed and the substantive right.

Based on the circumstances outlined above, the Ombudsperson, pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo (*“[...] 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.”), in the capacity of a recommending authority,

RECOMMENDS

to the Regional Waste Management Company “Pastrimi” J.S.C.:

- *To undertake the procedural actions to examine and decide on [REDACTED] request, in accordance with the legal rights arising from the employment relationship, without further delay.*

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 Law No. 05/L-019 on Ombudsperson (“Authorities to which the Ombudsperson has addressed recommendation, request or proposals for undertaking concrete actions, [...] must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue concerned.”). Please inform us of the actions you will take regarding this case.

Sincerely,

Naim Qelaj
Ombudsperson