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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

**REPORT
OF
THE OMBUDSPERSON**

R. no. 489/2024

Respect for the rights to use national symbols

Addressed to:

Mr. Xhelal Sveçla, Minister
Ministry of Internal Affairs

Mr. Lulzim Hetemi, Mayor
Municipality of Leposavic

Copy:

Mr. Elbert Krasniqi, Minister
Ministry of Local Government Administration

Mr. Habit Hajredini, Director
Office of Good Governance - Office of the Prime Minister

Prishtina, on 7 April 2025

Purpose of the Report

1. This Report with recommendations aims to present the assessments and findings of the Ombudsperson regarding the individual complaint of Mr. Branko Marinković (hereinafter: the complainant), submitted to the Institution of the Ombudsperson (IO) on behalf of the non-governmental organization “Asocijacija za Razvoj Leposavic”, concerning allegations of violations of the rights of the Serbian community as a result of the rejection by the Municipality of Leposavic of the request to display national flags in public spaces in celebration of the “*St. Vasilije*” holiday. The Report is based on the facts and evidence provided by the complainant, as well as on the case files in the possession of the Ombudsperson, related to the issue raised by the complainant.
2. The assessments and findings of the Ombudsperson in this Report are presented based on the rights guaranteed by the Constitution of the Republic of Kosovo, international standards and the applicable laws in the country.

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, 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. Pursuant to Law No. 05/L-019 on Ombudsman, the Ombudsperson shall, among others, have the following powers 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 recommendations 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 20 May 2024, the Ombudsperson received a complaint from Branko Marinković, submitted on behalf of the non-governmental organization “Asocijacija za Razvoj Leposavic”, against the Municipality of Leposavic, regarding the alleged violation of the rights of the Serbian community concerning the use of national flags in public spaces on the occasion of the “*St. Vasilije*” holiday.
6. According to the complainant’s statements and the documentation submitted, on 10 May 2024, Mr. Marinković, referring to Law No. 03/L-047 on Use of State Symbols of Kosova,

addressed the Municipality of Leposavic – Directorate for Public Services, with a request that, on the occasion of the “St. Vasilije” holiday, the replacement and display of national flags of the Serbian community in public spaces be allowed.

7. On 10 May 2024, the Mayor of the Municipality of Leposavic issued Decision No. 987, which stated as follows: *“Based on the request submitted by Branko Marinković for the ‘St. Vasilije’ holiday regarding the display of Serbian flags in public spaces, the Mayor of the Municipality of Leposavić issues a decision not to allow these flags to be displayed in said public spaces.”* In relation to this decision, the complainant raised concerns over the lack of legal basis in the decision and the failure to respect the rights of the Serbian community to use national symbols.
8. On 6 June 2024, the Ombudsperson, through an official letter, requested from the Mayor of Leposavic information regarding the absence of the mandatory elements of an administrative act¹ in the decision, specifically the legal basis for its issuance, the justification and the legal remedies.
9. As no response was received, on 31 July 2024, the Ombudsperson sent a follow-up letter to the Mayor of the Municipality of Leposavic; however, no reply was received to this letter either.

Legal basis

Constitution of the Republic of Kosovo

Article 59 [Rights of Communities and their Members]

Members of communities shall have the right, individually or in community, to:

[...]

(7) use and display community symbols, in accordance with the law and international standards.”

Framework Convention for the Protection of National Minorities;

Article 11

[...]

“2. The Parties undertake to recognize that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.”

Law No. 03/ L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo

Article 5 [Culture]

[...]

“5.5 Communities and their members shall have the right to celebrate freely and publicly their traditional and religious holidays in accordance with the law.

5.6 Communities and their representative organization shall have the right to use and display symbols of their community in accordance with the law and international standards.”

¹ Law No. 05/L-031 on General Administrative Procedure, Article 47.

[...]

Law No. 03/L-038 on Use of State Symbols of Kosova

Article 6 [The use of national flags]

6.1 Every Kosovo citizens has the right to use national flags in accordance with this Law and other legislation in force.

6.2 Citizens of all communities in Republic of Kosova have the right to use the flags individually or as a community in accord with this Law and the international standards.

6.3 Regarding the way of using of the national flags in the internal and external environments of public institutions, the Kosova government shall enact respective sub legal acts.

6.4 It is forbidden to place national flags in public environments if they are old or damaged.

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

Article 47 [Structure and statutory elements of the written administrative act]

“1. A written administrative act shall consist of:

1.1. the introductory part, which indicates the name of the issuing public organ, legal basis, the name of the addressee, a brief note on the subject of the proceeding and date of issuance;

1.2. the decisional part (Decision), which indicates what was decided including the term, condition or obligation (if applicable) as well as the costs of the proceedings, if any. The decisional part may be divided into more points. The costs of proceedings are quantified under a separate point of the decisional part.

1.3. reasoning part (rationale);

1.4. the concluding part, indicating when the act enters into force, legal remedies, including the public organ or the court where the legal remedy may be lodged, its form, the deadline for lodging and the way such deadline is calculated (legal advice). In case the lodging of an administrative appeal, according to the law, does not suspend the enforcement of the administrative act, the concluding part shall also contain this information as well as the reference to legal grounds for such exception.

Legal analysis

10. The complainant, on behalf of the non-governmental organization “Asocijacija za Razvoj Leposavic”, submitted a complaint against the Municipality of Leposavic for the violation of the rights of the Serbian community concerning the use of national symbols in public spaces, and for the lack of legal basis in the decision issued by the Municipality of Leposavic, through which the complainant’s request was rejected.

11. Under the legal order of the Republic of Kosovo, the use and display of the symbols of community members is guaranteed by the Constitution of the Republic of Kosovo, the Framework Convention for the Protection of National Minorities, Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo, and Law No. 03/L-038 on Use of State Symbols of Kosova.

12. The Constitution of the Republic of Kosovo, in Article 59 [Rights of Communities and Their Members], paragraph 7, guarantees:

“Members of communities shall have the right, individually or in community, to: (7) use and display community symbols, in accordance with the law and standards.” The Framework Convention for the Protection of National Minorities, in Article 11, paragraph 2, explicitly provides: *“The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.”*

13. Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and Their Members in the Republic of Kosovo, in Article 5, paragraph 5.5, explicitly provides:

“Communities and their members shall have the right to celebrate freely and publicly their traditional and religious holidays in accordance with the law.” While paragraph 5.6 stipulates: *“Communities and their representative organization shall have the right to use and display symbols of their community in accordance with the law and international standards.”*

14. Whereas Law No. 03/L-038 on Use of State Symbols of Kosova, in Article 6, which regulates the use of national flags, explicitly provides as follows: *6.1 Every Kosovo citizens has the right to use national flags in accordance with this Law and other legislation in force. 6.2 Citizens of all communities in the Republic of Kosova have the right to use the flags individually or as a community in accord with this Law and the international standards. 6.3 Regarding the way of using of the national flags in the internal and external environments of public institutions, the Kosova government shall enact respective sub legal acts. 6.4 It is forbidden to place national flags in public environments if they are old or damaged.*

15. It should be emphasized that the legal system of the Republic of Kosovo takes an advanced approach regarding the support of the rights of communities and their members to use and display their community’s national symbols, as well as to use national flags individually or collectively as a community. The Constitution and relevant laws provide strong legal protection for these rights, ensuring that the use of national symbols complies with legal norms and international standards, which are essential for preserving cultural identities and respecting the diversity of Kosovo’s citizens.

16. However, despite constitutional and legal guarantees securing this right, the Ombudsperson has found that the manner of using national flags in internal and external environments within public institutions is still not regulated by appropriate subordinate acts. Law No. 03/L-038 on Use of State Symbols of Kosova, concerning the manner of using national flags, in Article 6, paragraph 6.3, specifies the following: *“Regarding the way of using of the national flags in the internal and external environments of public institutions, the Kosova government shall enact respective sub legal acts.”* Regarding this legal provision, which requires that the manner of using national flags be regulated by subordinate acts, the Ombudsperson has noted that the relevant subordinate act has not yet been issued by the Government of the Republic of Kosovo, or respectively by the Ministry of Internal Affairs, which is the sponsor of the respective law. Consequently, the failure to issue a bylaw regulating the use of national flags in public and institutional spaces constitutes a legal gap in this regard and creates uncertainty about the procedural steps for implementing the related right.

17. However, notwithstanding this, the legal guarantees in the Republic of Kosovo clearly allow the right of all citizens from all communities in the Republic of Kosovo, whether individually or as a community, to use their national flags in accordance with the law and international standards. This right is enjoyed by all members of the communities in the country, allowing them to use their national symbols to celebrate any festivity, including, as in this specific case, the religious holiday “Sveti Vasilija” if it is customary for the community to celebrate it with national flags.
18. Regarding the complainant’s allegations that the Municipality of Leposavic failed to respect the rights of the Serbian community to use national symbols in public spaces, during the review of the case, the Ombudsperson noted that the non-governmental organization “Asocijacija za Razvoj Leposavic,” in a request addressed to the Municipality on 10 May 2024, asked the latter to permit the replacement and display of the Serbian community’s national flags in public spaces on the occasion of the “Sveti Vasilija” celebration. However, it has been noted that the request addressed to the Municipality was not clearly specified regarding which public spaces the flag placement was requested for, nor was it clarified what was actually meant by the “replacement” of the flags.
19. The issue of the request for flag replacement, in the absence of clarification from the requesting party, carries different interpretations. Therefore, it is very important to specify the meaning of the term “replacement” in the sense of which flags the Serbian community’s national flags would replace, so that the request can be concluded based on the legal rules of the Republic of Kosovo.
20. Regarding the complainant’s allegations that the decision issued by the Municipality of Leposavic, as a response to their request, lacks a legal basis, the Ombudsperson analyzed the relevant decision in relation to the applicable legislation.
21. During the examination of the case, the Ombudsperson observed that Decision No. 987, dated 10 May 2024, issued by the Mayor of Leposavic to respond to the complainant’s request, was not issued in accordance with Law No. 05/L-031 on General Administrative Procedure. This law, in Article 47, regulates the structure and mandatory elements of a written administrative act. Paragraph 1 of Article 47 explicitly states as follows:

“1. A written administrative act shall consist of:

1.1. the introductory part, which indicates the name of the issuing public organ, legal basis, the name of the addressee, a brief note on the subject of the proceeding and date of issuance;

1.2. the decisional part (Decision), which indicates what was decided including the term, condition or obligation (if applicable) as well as the costs of the proceedings, if any. The decisional part may be divided into more points. The costs of proceedings are quantified under a separate point of the decisional part.

1.3. reasoning part (rationale);

1.4. the concluding part, indicating when the act enters into force, legal remedies, including the public organ or the court where the legal remedy may be lodged, its form, the deadline for lodging and the way such deadline is calculated (legal advice). In case the lodging of an administrative appeal, according to the law, does not suspend the

enforcement of the administrative act, the concluding part shall also contain this information as well as the reference to legal grounds for such exception.

22. The main purpose of this provision is to integrate the principle of clarity and legal certainty into administrative procedure practice, a constitutional principle derived from the rule of law. The rule of law, from which the principle of clarity and legal certainty arises, is defined in paragraph 1 of Article 7 of the Constitution of the Republic of Kosovo. Clarity and certainty of an administrative act means that the person to whom the administrative act is addressed can fully and clearly understand its regulatory content, primarily determined by its enacting clause, in order to act accordingly. The principle of clarity and certainty is important not only to protect the public interest but also the individual interest of persons to whom the administrative act is addressed. The purpose of all elements is also to ensure that the person addressed by the administrative act is able to understand the content of the administrative decision and its factual and legal reasoning.²
23. In the light of the legal guarantees specified above, the Ombudsperson has observed that Decision No. 987, dated 10 May 2024, issued by the Mayor of Leposavic, does not contain all the mandatory elements of an administrative act. Specifically, besides the enacting clause, the decision lacks other elements such as the introductory part (only partially included), the reasoning and the concluding part, including instructions on legal remedies.
24. An administrative act lacking the mandatory elements not only fails to comply with the law and creates legal uncertainty for every individual or group involved in the procedure, but also causes ambiguity regarding the meaning and content of the legal regulation. It obscures the main factual and legal reasons considered by the public authority when making the decision and also causes uncertainty about the party's right to legal protection. Information on available legal remedies is crucial for the correct awareness of the parties involved in the procedure and for the constitutional and legal respect of the fundamental right to legal remedies.³
25. Consequently, based on paragraph 1 of Article 47 of Law No. 05/L-031 on General Administrative Procedure, which lists the mandatory elements that every written administrative act must contain in order to be fully in line with the law, the Ombudsperson considers that the decision concerned was not issued in compliance with the law, in terms of both content and structure.

Legal obligation to cooperate with the Ombudsperson

26. Considering the fact that the Ombudsperson has not received a response to the two official letters addressed to the Mayor of the Municipality of Leposavic regarding this case, the Ombudsperson recalls that, based on the constitutional obligation, the Constitution of the Republic of Kosovo in Article 132, paragraph 3, provides: *“Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond*

² Legal Commentary on Law on General Administrative Procedure of the Republic of Kosovo, 2022 (Content and purpose of Article 47).).

³ The Constitution of the Republic of Kosovo, Article 32 [Right to Legal Remedies]: *“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.”*

Law No. 05/L -031 on General Administrative Procedure, Article 13 - The principle of the right to legal remedies: *“Except when explicitly excluded by law, any person has the right to use the legal administrative and judicial remedies, as provided by law against any administrative action or omission, which affects his subjective right or legitimate interests.”*

to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.”

27. The obligation to cooperate with the Ombudsperson is also defined in Law No. 05/L-019 on Ombudsperson, which in Article 18, paragraph 6, explicitly provides: *“The Ombudsperson [...], may require any authority of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including full or partial file copy and documents upon request of the Ombudsperson.”* Whereas Article 25, paragraph 1 of the law stipulates: *“All authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request.”* Consequently, in paragraphs 2 and 3 of Article 25, the law defines the consequences of refusing to cooperate with the Ombudsperson.
28. The Ombudsperson recalls that refusal to cooperate with the Ombudsperson constitutes a violation of the Constitution and the law, and at the same time represents an obstacle to the Ombudsperson’s ongoing investigations in the cases under review.

Findings of the Ombudsperson

29. The Ombudsperson, based on the guaranteed rights and the findings presented in this Report, concludes that the legal order of the Republic of Kosovo is clear and structured in support of the rights of communities and their members to use and display the symbols of their communities, as well as to use national flags individually or as a community. The legal guarantees in the Republic of Kosovo clearly allow all citizens of all communities in the Republic of Kosovo the right to use national flags, either individually or as a community, in accordance with the law and international standards.
30. The Ombudsperson notes that the lack of regulation through secondary legislation on the manner of using national flags in indoor and outdoor premises of public institutions, as foreseen in Law No. 03/L-038 on the Use of the State Symbols of Kosovo (Article 6, paragraph 6.3), represents a legal gap which not only creates administrative and decision-making obstacles in the implementation of the respective law but also results in consequences for the standardization and unification of the use of flags in public spaces. In the absence of secondary legislation, there may be differences in the interpretation of the law, which complicate the process of oversight and control by the competent authorities. Furthermore, when public institutions are faced with such requests, legal and administrative uncertainty may arise in initiating administrative procedures. Such an approach constitutes a discriminatory practice and should therefore be avoided.
31. The Ombudsperson concludes that the Municipality of Leposavic, through Decision No. 987 issued on 10 May 2024, addressed to the complainant, did not act in compliance with Law No. 05/L-031 on General Administrative Procedure, in terms of the structure of the decision and the mandatory elements of the written administrative act, deriving from Article 49 of this law. The Ombudsperson recalls the content of the principle of legality, which clearly specifies as follows: *“1. Public authorities shall act in accordance with the Constitution, the applicable legislation, as well as with the general administrative rules applicable within their competences and in line with the purpose for which these competencies are granted. [...]”*⁴

⁴ Law No. 05/L-031 on General Administrative Procedure, Article 4, Principle of Legality, paragraph 1.

32. Therefore, based on the above-mentioned circumstances, the Ombudsperson, in accordance with 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*”, based on the above legal analysis, in the capacity of recommender, referring to the aforementioned arguments, with the aim of improving the work in the administrative system of Kosovo, and

RECOMMENDS

To the Ministry of Internal Affairs:

- *In accordance with its constitutional powers and as provided by Law No. 03/L-038 on Use of State Symbols of Kosova, to undertake the necessary actions for adopting secondary legislation regulating the manner of use of national symbols in public spaces.*

To the Municipality of Leposavic:

- *To undertake the necessary actions to decide on the complainant’s request through a decision that must be in line with Article 47 of Law No. 05/L-031 on General Administrative Procedure, which defines the structure and mandatory elements of a written administrative act.*

In accordance with 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 the 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 undertake in relation to this matter.

Sincerely,

Naim Qelaj

Ombudsperson