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**THE REPORT  
OF  
OMBUDSPERSON**

**R/231/2024**

**R/234/2024**

**R/244/2024**

on

*the legal basis for determining the age criterion for applying in the Kosovo Customs  
recruitment process*

To:

Mr. Agron Llugaliu, Director General  
Kosovo Customs

Copy to:

Mr. Hekuran Murati, Minister  
Ministry of Finance, Labour and Transfers

Mr. Habit Hajredini, Director  
Office for Good Governance

Prishtina, May 5, 2025

## PURPOSE OF THE REPORT

This Report aims to draw the attention of Kosovo Customs to issues concerning the determination of the age criterion for specific positions within Kosovo Customs and whether these criteria are based on the Customs and Excise Code No. 08/L-247.

## POWERS OF THE OMBUDSPERSON

1. The Ombudsperson, pursuant to Law No. 05/L-019 on the Ombudsperson, has the following competences 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, par. 1, sub-par. 2)
  - *“to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media;”* (Article 18, par. 1, sub-par. 4)
  - *“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, par. 1, sub-par. 5)
  - *“to publish notifications, opinions, recommendations, proposals and his/her own reports.”* (Article 18, par. 1, sub-par. 6)
  - *“to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo;”* (Article 18, par. 1, sub-par. 7)
  - *“to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation.”* (Article 18, par. 1, sub-par. 9).
2. By submitting this report to the competent institutions, as well as through its publication, the Ombudsperson aims to fulfill these legal responsibilities.

## CIRCUMSTANCES OF THE CASE

3. Based on Article 16, paragraph 1, of Law No. 05/L-019 on the Ombudsperson, the Ombudsperson received three separate complaints against Kosovo Customs regarding the criteria set in the job vacancy announced on 7 March 2024, for the position of *customs officer*. The complaints received are as follows:
  - Complaint by [REDACTED], received on March 12, 2024, registered under file number R/244/2024;

- Complaint by [REDACTED], received on March 14, 2024, registered under file number R/231/2024;
  - Complaint by [REDACTED], received on March 14, 2024, registered under file number R/234.
4. According to the information received from the complainants, the job vacancy published by Kosovo Customs contains discriminatory criteria based on age, as it requires that applicants be between 18 and 30 years of age. Furthermore, according to the complaints, the age requirement is not only discriminatory but also contradictory, since an 18-year-old person is unlikely to have completed a university degree and lacks work experience, while one of the requirements for the position is indeed prior work experience. Moreover, the application for the position of customs officer was required to be submitted online, and candidates who did not meet the age requirement received a message stating, “*Notice: You cannot proceed with the application. The age requirement is not fulfilled,*” which prevented them from applying from the outset.
  5. The Ombudsperson observes that in the job vacancy published by Kosovo Customs for the position of *customs officer*, dated March 7, 2024, among the application criteria, point 3 specifies the age requirement of 18 to 30 years.
  6. On July 2, 2024, the Ombudsperson addressed the Directorate of Kosovo Customs, requesting information regarding the legitimate purpose of the age criterion in the aforementioned job vacancy.
  7. On July 23, 2024, the Ombudsperson received a response from the Directorate of Kosovo Customs, which stated that the restriction of the right to apply based on age, like the other criteria, is not only reasonable but also necessary and legally grounded. According to Kosovo Customs, the age restriction is stipulated in its internal normative acts, specifically in Administrative Instruction No. 82/2024, dated February 20, 2024, on regulating the employment relationship of customs officers. This act derives from Article 6 of the Customs and Excise Code No. 03/L-109, which was in force at the time the recruitment announcement was made.
  8. In its response, Kosovo Customs stated that the current average age of its staff is 50 years and that the number of officers taking medical leave due to chronic health conditions, exacerbated by age, has significantly increased. The response notes: “*Empirical evidence suggests that older employees are more likely to suffer from chronic illnesses, resulting in increased absenteeism and reduced work productivity. Studies and practice within the institution have shown a correlation between age and the prevalence of chronic illnesses, affecting job performance and productivity. The same consequences apply to the negative impact on cognitive abilities and physical mobility, which significantly hinder the capacity to operate in law enforcement environments such as Kosovo Customs.*” According to Kosovo Customs, similar age limits are applied by other security and law enforcement agencies, such as the Kosovo Police and the Kosovo Security Force. The response also stated that while a small portion of the staff work in offices, there is no policy that differentiates or ensures the nature of the work for one or more officers.

9. For these reasons, Kosovo Customs considers the age limit for new recruits a necessary strategic decision aimed at ensuring long-term operational efficiency and sustainability by addressing demographic imbalances, health-related absenteeism, and challenges in knowledge transfer within the organization. Kosovo Customs emphasized that following the employment of the new group of recruits, a positive shift in the average age of the staff is expected, which could allow for the consideration of extending the age limit in future recruitment processes.

## LEGAL ANALYSIS AND FINDINGS OF THE OMBUDSPERSON

10. Considering that the job vacancy for *customs officer* was announced on April 7, 2024, at a time when the Customs and Excise Code No. 03/L-109 was in force in Kosovo, the provisions of this Code form the legal basis for addressing this matter.
11. Article 6, paragraph 4, of the Customs and Excise Code No. 03/L-109 of Kosovo stipulates: “*Customs staff, excluding civil support staff, shall be employed through public competition under the terms and procedures established by the General Director after consultation with the Minister of Economy and Finance.*”
12. Although in its response dated July 23, 2024, the Directorate of Kosovo Customs refers to Administrative Instruction No. 82/2024 on Application Criteria for Customs Officers, which under Article 2, paragraph 2.3, sets the age criterion for employment as between eighteen and thirty years old, this administrative instruction cannot be found published either in the Official Gazette, on the website of the Ministry of Finance, Labour and Transfers (MFLT), or on the website of Kosovo Customs.
13. Conversely, a document titled *Guidelines on the Recruitment Process for Customs Officers, March 2024*, is available on the official website of Kosovo Customs. Among other things, these guidelines set out the minimum conditions for applying for the customs officer position, one of which (point 3, page 4) defines the age range as between eighteen and thirty years.
14. On May 10, 2024, the Customs and Excise Code No. 08/L-247 was published in the Official Gazette and entered into force 15 days after its publication. Article 322 [Recruitment], paragraph 5, states: “*The procedures rules, commissions, types of tests, requirements and additional criteria and other issues regarding the recruitment according to this Article, are determined by sub-legal act of the relevant Minister of Finances with a proposal by the General Director.*”
15. Neither the repealed Customs and Excise Code No. 03/L-109 nor the current Customs and Excise Code No. 08/L-247 specify any age-related criteria for employment in Kosovo Customs.
16. The only public document that sets an age criterion is the *Guidelines on the Recruitment Process for Customs Officers, March 2024*, which contains no legal basis authorizing the imposition of such a criterion.
17. Law No. 05/L-021 on the Protection from Discrimination, Article 1, paragraph 1, stipulates: “*The purpose of this law is to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual*



*orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment.”*

18. The Venice Commission, as an advisory body of the Council of Europe on constitutional matters, provides guidance for the protection of the rule of law and human rights. It outlines key principles of the rule of law<sup>1</sup>, such as legality, legal certainty, prohibition of arbitrariness, access to justice, respect for human rights, and equality before the law.
19. Limitations on fundamental human rights and freedoms may be imposed only by law adopted by the Assembly. This approach ensures that any restriction is based on law, transparent, and subject to democratic oversight. According to Article 55 of the Constitution of the Republic of Kosovo: *“Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.”* The Venice Commission also emphasizes that any restriction must be legally prescribed, pursue a legitimate aim, and be proportionate.
20. The Ombudsperson recalls that Law No. 05/L-021 on Protection from Discrimination, in Article 6, provides: *“Notwithstanding Articles 3 and 4 of this law it is not deemed a discrimination a distinction in treatment which is based on differences provided on grounds of Article 1 of this Law, but which as such represents real and determinant characteristic upon employment, either because of the nature of professional activities or of the context in which such professional works are conducted, if that provision, criterion or practice is justified by a legitimate purpose and there is a reasonable relationship of proportionality between the means employed and the targeted aim.”*
21. In democratic systems, as in the Republic of Kosovo, the separation of powers is essential to the rule of law. This division ensures that legislative powers have the authority to enact laws, while executive bodies implement those laws. This structure prevents power concentration and protects individual rights. However, it should be noted that in some jurisdictions, parliaments may delegate certain legislative powers to executive bodies, allowing them to issue regulations or sub-legal acts within the framework established by primary legislation.
22. Furthermore, the Ombudsperson recalls that Law No. 05/L-021 on Protection from Discrimination aligns with Council Directive 2000/78/EC of November 27, 2000, establishing a general framework for equal treatment in employment and occupation of the Council of the European Union. For this reason, the Ombudsperson refers to a case that serves as an interpretation of the established principles of non-discrimination based on age under EU standards.
23. The Court of Justice of the European Union (CJEU) addressed the issue of age-based discrimination in the case *Mario Vital Pérez v Ayuntamiento de Oviedo* (Judgment of November 13, 2024).
24. Mr. Vital Pérez, a Spanish citizen, applied to join the local police of Oviedo but was rejected because he was over 30 years old. It turned out that some municipalities in Spain had imposed age limits for the recruitment of police officers. The applicant filed a lawsuit

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<sup>1</sup> [https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule\\_of\\_Law\\_Check\\_List.pdf](https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf)

in domestic courts to challenge this age restriction. The national court referred the matter to the CJEU to determine whether the age limit could be considered either a genuine occupational requirement under Article 4(1) of Directive 2000/78/EC or objectively justified under Article 6(1) of the same Directive.

25. In its decision, the CJEU emphasized that it is understandable that local police officers' duties include assisting citizens, protecting persons and property, arresting and detaining law violators, patrolling to prevent crime, and traffic control. The Court noted that possessing specific physical capacities may be considered a "genuine and determining occupational requirement" under Article 4(1) of Directive 2000/78 for police employment. However, it stated that although firefighters require exceptionally high physical capacities due to the nature of their work, such requirements for police officers are not comparable. Accordingly, the CJEU found the 30-year age limit to be disproportionate.
26. Secondly, regarding the justification of age-related differences in treatment, the CJEU stated that age-based treatment does not constitute discrimination if, within the context of national law, it is objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market, and vocational training objectives, and if the means for achieving that aim are appropriate and necessary.
27. The CJEU held that although the law did not explicitly state its objective, the age limit was based on the training requirements for the post and the need for a reasonable period of service before retirement or transfer to another role. The Court emphasized that employment and social policies are at the discretion of member states, but they must not result in age discrimination. In the absence of evidence and a clearly defined legal objective, the CJEU concluded that the 30-year maximum recruitment age for local police officers could not be deemed necessary to ensure a reasonable employment period before retirement, as provided under Article 6(1)(c) of Directive 2000/78.
28. The Ombudsperson notes that neither the repealed Customs and Excise Code No. 03/L-109 nor the current Customs and Excise Code No. 08/L-247 set any age-related criteria for employment in Kosovo Customs.
29. Such criteria, according to Kosovo Customs, are reportedly defined in Administrative Instruction No. 82/2024, which has not been made publicly available. The Ombudsperson's representative managed to obtain a copy of this instruction from the Legal Office of Kosovo Customs, dated February 2, 2024 and signed by the Director of Customs, titled *Administrative Instruction No. 82 on Amending and Supplementing the Administrative Instruction No. 37/2016, as amended by Administrative Instructions No. 69/2019 and No. 77/2022 on Regulating the Employment Relationship of Customs Officers*. From the obtained copy, it cannot be concluded whether this instruction is in force, as it bears a watermark indicating that it is a draft document.
30. The Ombudsperson finds that the age criterion set out in the vacancy notice dated March 7, 2024 for the position of *customs officer* lacks a clear legal basis, as it is defined by an administrative instruction signed by the Director of Customs which is not publicly available.
31. The Ombudsperson acknowledges that human rights may be restricted when a legitimate aim exists. However, the justifications provided by Kosovo Customs not only fail to

present a legitimate aim but also constitute direct discrimination against individuals over 30, based on unsubstantiated and unproven assumptions regarding their physical and mental abilities. Moreover, Kosovo Customs explicitly states that the purpose of such criteria is to lower the average age of staff – an argument that is unacceptable to the Ombudsperson. As explained above, differential treatment may be justified based on the nature of professional activities or their context, but only if the provision, criterion, or practice is justified by a legitimate aim and there is a reasonable proportionality between the means used and the intended aim.

32. The Ombudsperson finds that the comparison made by Kosovo Customs with the Kosovo Police and the Kosovo Security Force is legally unfounded, as these two institutions, through acts governing their scope, classify employees into categories for which lower age limits are required. On the other hand, according to Kosovo Customs' own response, there is no policy that differentiates and ensures the nature of the work for one or more officers. Consequently, the Ombudsperson considers that had such differentiation existed – established by normative acts with a legal basis, which are public and accessible, and which serve a legitimate aim and are proportionate – then the setting of age criteria for specific groups of employees in Customs might have been justifiable.

## CONCLUSION

33. Based on the above analysis, the Ombudsperson has identified several violations in the recruitment process for the customs officer position, primarily concerning the lack of legal basis for applying the age criterion and the unjust exclusion of candidates over 30 years of age. The violations found by the Ombudsperson include: lack of legal basis for setting the age criterion; absence of a legitimate aim for such a restriction; and the use of a non-public, inaccessible legal act. Therefore, the Ombudsperson concludes that Kosovo Customs acted contrary to the principles of the rule of law and engaged in conduct that may be considered discriminatory on the basis of candidates' age.

Therefore, the Ombudsperson

## RECOMMENDS

### To Kosovo Customs:

1. *To amend Administrative Instruction No. 82/2024 on Application Criteria for Customs Officers by removing Article 2, paragraph 2.3, which sets the employment age criterion for customs officers as between eighteen and thirty years old.*
2. *To publish the amended Administrative Instruction No. 82/2024 on Application Criteria for Customs Officers.*

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 proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain

*written reasoning regarding actions undertaken about the issue in question.”*), kindly inform us of the actions you will undertake regarding this matter.

Respectfully,  
Naim Qelaj  
Ombudsperson