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REPORT

OF

OMBUDSPERSON

R. no. 226/2025

on the denial of [REDACTED] right to vote

To:

Mr. Kreshnik Radoniqi, Chairman
Central Election Commission

Prishtina, December 12, 2025

Purpose of the Report

The purpose of this report is to draw the attention of the authorities to citizens' right to participate in political processes, namely the right to vote, of those citizens who, by a court decision, have been partially deprived of legal capacity to act and have been placed under guardianship.

Legal basis

1. 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."* 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."*
2. According to Law No. 05/L-019 on the Ombudsperson, the Ombudsperson has, *inter alia*, 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, sub-paragraph 1.2);*
 - *to publish notifications, opinions, recommendations, proposals and his/her own reports."* (Article 18, paragraph 1, sub-paragraph 1.6).

Summary of Facts and Actions of the Ombudsperson

3. Pursuant to Article 16, paragraph 1, of the Law on the Ombudsperson, on February 7, 2025 the Ombudsperson received a complaint from [REDACTED] (hereinafter: the complainant), submitted on behalf of her daughter, [REDACTED], against the Central Election Commission (hereinafter: the CEC) and the Kosovo Judicial Council (hereinafter: the KJC), due to the denial of the right to vote in the parliamentary elections of February 9, 2025.
4. Based on the complainant's statements and the documentation received, it appears that on September 29, 2022, the Basic Court in Prishtina - General Department issued a ruling approving the proposal of [REDACTED], submitted against the proposed party [REDACTED], to partially deprive her of legal capacity with regard to her property rights, due to Down syndrome.
5. The complainant further stated that on February 6, 2025, in her capacity as legal guardian, she sought to verify the polling station for her daughter, [REDACTED]. Following verification by the CEC, she was informed that her daughter did not have the right to vote, on the grounds that she had been deprived of legal capacity.

6. According to the complainant, such an action is unacceptable and unjust, since her daughter has only been partially deprived of legal capacity, and only in relation to property rights. For all other actions, her daughter enjoys full legal capacity.
7. On April 11, 2025, the Ombudsperson addressed the CEC requesting information regarding the complainant's allegations, as well as the legal basis on which the CEC undertook actions concerning the right to vote of [REDACTED]
8. On April 15, 2025, the Ombudsperson received a response from the CEC, stating that on August 16, 2025, based on Article 3, paragraph 4, of Electoral Regulation No. 03/2024 on the Creation, Objection to, and Confirmation of the Voters' List, it requested from the KJC the list of persons whose legal capacity had been removed by a court decision. According to this regulation, the list must contain the first name, last name, date of birth, personal number, and address of persons who have been deprived of legal capacity.
9. In the CEC's response, *inter alia*, it is stated that the KJC submitted the list with the requested data, which also includes the name of [REDACTED] from Prishtina.
10. The CEC emphasized that, pursuant to the Law on General Elections in the Republic of Kosovo, the deadline for submitting complaints against its decisions is 48 hours from the date of receipt of the contested decision. The CEC decision on the Certification of the Final Voters' List for the elections for the Assembly of Kosovo, held on February 9, 2025, was adopted on January 4, 2025, whereas the complainant submitted the complaint on 7 February 2025. For this reason, the CEC assessed that the complaint was submitted outside the statutory deadline. The complainant also lodged a complaint with the ECAP, which dismissed it, finding, like the CEC, that the complaint was time-barred.
11. On July 14, 2025, the Ombudsperson addressed the KJC, requesting information regarding: the time of submission to the CEC of the lists containing the names of persons deprived of legal capacity; the type of information provided to the CEC (whether the deprivation of legal capacity is full or partial); whether the CEC is informed of the specific rights for which persons have been deprived of legal capacity; and the reasons why the CEC is informed of the deprivation of legal capacity even in cases where the court judgment has not deprived the person of the right to express his or her will through voting.
12. On July 23, 2025, the Ombudsperson received a response from the KJC, which stated that, based on the relevant Law on Elections and the requests of the CEC, in every electoral process the KJC receives a request for the list of persons whose legal capacity has been removed by a final court decision. This is done for the purpose of updating the voters' list of those who will have the right to vote.
13. Furthermore, the response states that the Basic Court in Prishtina forwarded this list to the KJC on August 30, 2024. The list was compiled based on the court's records. Based on the data received from this court, it appears that, with respect to the subject [REDACTED], through case no. C.no.116/2021, her legal capacity was fully removed. No additional information was processed, and all transmitted data reached the CEC on August 30, 2024, without any objection.
14. In addition, the KJC's response emphasizes that, pursuant to Article 8, paragraph 8, of Law No. 08/L-228 on General Elections in the Republic of Kosovo: "*The competent court shall submit data to the CEC on persons who have been deprived of their legal capacity with a*

final court decision. Such data shall be delivered as required by the CEC.” In this context, the KJC clarifies that the data transmitted to the CEC include only the information that “the person has been deprived of legal capacity,” as well as the decision number and some general procedural data. Each court transmits the data based on its records, while the KJC merely forwards them to the CEC without adding to or altering their content.

15. According to the KJC, based on the provisions of Article 8 and the requests of the CEC, the request for information concerns solely the determination of whether “the person has been deprived of legal capacity by a final court decision.” Consequently, the data provided do not include details regarding the specific rights of which the person has been deprived, nor the full or detailed content of the decision by which legal capacity was removed.

Practice of the European Court of Human Rights (ECHR)

16. On 20 May 2010, the European Court of Human Rights (ECHR) issued a landmark judgment in the case of *Kiss v. Hungary*.¹ Mr. Kiss suffered from bipolar disorder and, due to this condition, was placed under partial guardianship in 2005. In 2006, with the approaching elections, he realized that Hungarian law prohibited him from voting, as all persons placed under guardianship (whether partially or fully) were deprived of this right. The Court held that Article 3 of Protocol No. 1 [Right to Free Elections] had been violated.
17. The Court struck down a general provision of Hungarian legislation that deprived persons with intellectual disabilities who were under partial guardianship of the right to vote. The Court emphasized that when a restriction on fundamental rights is applied to a particularly vulnerable group, which has experienced significant forms of discrimination in the past, such as persons with intellectual disabilities, the margin of appreciation afforded to the state is significantly narrowed, and very strong reasons are required to justify such restrictions.
18. The Court emphasized that the rights guaranteed by Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR) are essential for establishing and maintaining the foundations of an effective and meaningful democracy based on the rule of law. However, these rights are not absolute, and the margin of appreciation afforded to states in this area is wide. Nevertheless, it is ultimately for the European Court of Human Rights to assess whether the conditions imposed impair the very essence of the rights and deprive them of their effectiveness; whether they pursue a legitimate aim; and whether the means employed are not disproportionate. Accordingly, the Court needed to determine whether the measure applied in the specific case served a legitimate aim in a proportionate manner.
19. With regard to the legitimate aim, the ECtHR accepted that the purpose was to ensure that only citizens who are capable of assessing the consequences of their decisions and able to make decisions consciously and reasonably should participate in public affairs.
20. Regarding proportionality, the Hungarian government argued, relying on the margin of appreciation, that the legislature should have the right to establish rules ensuring that only those capable of assessing the consequences of their decisions should participate in public affairs. The Court accepted that this is an area in which, generally, national legislatures are afforded a wide margin of appreciation. However, there was no evidence that the Hungarian

¹ <https://hudoc.echr.coe.int/eng?i=002-970>, Application no. 38832/06

legislature had ever assessed the proportionality of such a restriction. Therefore, the ECtHR concluded as follows:

“However, the Court cannot accept that an absolute ban on voting for every person under partial guardianship, regardless of their actual abilities, falls within an acceptable margin of appreciation. Indeed, while the Court reiterates that this margin is wide, it is not unlimited... Furthermore, if a restriction on fundamental rights is applied to a particularly vulnerable group in society, which has suffered significant discrimination in the past, such as persons with intellectual or mental disabilities, the State’s margin of appreciation is significantly narrower, and very strong reasons are required to justify such restrictions (see also the example of those who are treated differently on the basis of their gender...). The rationale for this approach, which calls into question certain classifications per se, is that such groups have historically been subjected to prejudices with lasting consequences, resulting in their social exclusion. Such prejudice may include legislative stereotypes that prevent an individualized assessment of their capacities and needs [...].”

21. In the present case, the applicant lost the right to vote as a result of an automatic and general restriction, which was applied to all persons placed under partial guardianship.
22. The Court further held: *“Treating individuals with intellectual or mental disabilities as a single class is a questionable classification, and any restriction of their rights must be subject to strict scrutiny.”* This approach is reflected in other international law instruments, for example, in the Convention on the Rights of Persons with Disabilities. Accordingly, the Court concluded: *“A blanket removal of voting rights, without an individualized judicial assessment and based solely on a mental disability requiring partial guardianship, cannot be considered in accordance with legitimate grounds for restricting the right to vote.”*
23. The Ombudsperson also refers to the case of *Harmati v. Hungary*, which concerns a Hungarian citizen with Down syndrome², who was denied the right to vote under Hungarian legislation providing that any person with an intellectual or mental disability who has a legal guardian automatically loses this right. The government did not contest the applicant’s arguments. The Court found that the circumstances of the current application were almost identical to those in the *Alajos Kiss* judgment (cited above) and reached the same conclusion: that there had been a violation of Article 3 of Protocol No. 1 of the ECHR. This decision confirms that no person with an intellectual disability may be automatically deprived of the right to vote.
24. Following the ECHR’s decision in the *Alajos Kiss* case, Hungary ended the automatic prohibition on voting for persons under guardianship as part of broader constitutional amendments that entered into force in 2012. The new Fundamental Law (Constitution) provides that Hungarian courts must assess whether the individual circumstances of each person under guardianship justify restricting their right to vote. Subsequently, Hungary adopted further legislative changes to make this even clearer. Between 2013 and 2014, 23% of persons under partial guardianship retained their right to vote, a situation that would not have been possible prior to these legal changes. In 2015, a Hungarian court again placed *Alajos Kiss* under partial guardianship, but this time without depriving him of the right to vote.

² <http://voting-for-all.eu/?p=36>

Assessment of the Ombudsperson

25. The Constitution of the Republic of Kosovo, in Article 45 [Freedom of Election and Participation], paragraph 1, provides: *“Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.”*
26. The Ombudsperson considers that, although the Constitution allows the limitation of this right through a final court decision, this does not mean that every person whose legal capacity has been partially restricted and who has been placed under guardianship automatically loses the right to vote.
27. Article 8, paragraph 8, of Law No. 08/L-228 on General Elections in the Republic of Kosovo provides: *“The competent court shall submit data to the CEC on persons who have been deprived of their legal capacity with a final court decision. Such data shall be delivered as required by the CEC.”*
28. The Ombudsperson notes that this legal provision makes no distinction between partial and full removal of legal capacity and does not specify the circumstances under which the removal of legal capacity affects the right to vote.
29. The Ombudsperson observes that Electoral Regulation No. 03/2024 on the Creation, Challenge, and Confirmation of the Voter List, Article 3, paragraph 4, provides: *“Immediately after the announcement of the elections, the Electoral Service shall request from the Kosovo Judicial Council to submit the list of persons whose legal capacity has been removed by court decision, which must be submitted to the CEC no later than seven (7) days after the announcement of the election date. The personal data of these persons must include: name, surname, date of birth, personal number, and address.”*
30. The Ombudsperson considers that the CEC, in its request to the KJC, does not differentiate between partial and full removal of legal capacity, and the courts are not asked to provide information regarding the reasons for the removal of legal capacity, whether partial or full, which may have no connection to the right to vote.
31. On the other hand, the Ombudsperson considers that, when legal capacity is removed, the courts must assess whether the individual circumstances of each person placed under guardianship justify restricting his/her right to vote.
32. The Ombudsperson considers that the request submitted by the CEC to the KJC, based on Article 8, paragraph 8, of Law No. 08/L-228 on General Elections in the Republic of Kosovo, cannot serve as a basis and cannot be applied automatically to all persons whose legal capacity has been partially restricted.

Findings of the Ombudsperson

33. Based on the case law of the European Court of Human Rights (ECtHR), the Ombudsperson finds that the automatic deprivation of the right to vote for persons whose legal capacity has been removed and who are placed under guardianship, without considering the individual circumstances of each person, does not justify restricting their voting rights guaranteed under Article 45 of the Constitution of Kosovo [Electoral Rights and Participation].

34. The Ombudsperson draws attention to Article 55 of the Constitution [Limitations on Fundamental Rights and Freedoms], in particular paragraph 4, which provides: *“In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.”*; and paragraph 5, which provides: *“The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.”*
35. In this regard, the Ombudsperson, taking into account the provisions of Article 55, paragraph 1, of the Constitution, which stipulates that rights guaranteed by the Constitution may only be limited by law, and noting that both the Constitution and the law foresee the possibility of limiting the right to vote, considers that this limitation is nonetheless disproportionate. This is because the law does not define clear circumstances under which the right to vote may be restricted.
36. Furthermore, the Ombudsperson draws attention to the Convention on the Rights of Persons with Disabilities, which in Article 29 [Participation in Political and Public Life] provides:
- “States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:*
- (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, [...]”*
37. In conclusion, the Ombudsperson expresses the position that any restriction on the right to vote for persons with intellectual or mental disabilities must be subject to heightened scrutiny and care. In the present case, the Ombudsperson addressed an issue related to restricting the right to vote as a consequence of the removal of legal capacity concerning Down syndrome. Regarding this matter, the ECtHR has taken a clear and firm stance, emphasizing that such restrictions, when not based on an individualized and proportional assessment, constitute discrimination against persons with disabilities. This requires that the relevant authorities, particularly the courts, exercise heightened care to avoid practices of unequal treatment and to ensure the free and equal exercise of the right to vote for these persons.

Based on the above, 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.”* And in accordance with Article 18, paragraph 1.2, of the Law on the Ombudsperson, the Ombudsperson has the responsibility: *“to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases [...]”*; as well as: *“to recommend [...] promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo;”* (Article 18, paragraph 1.7). In this regard, the Ombudsperson hereby

RECOMMENDS

To the Central Election Commission:

- ***To amend paragraph 4 of Article 3 of Electoral Regulation No. 03/2024 on the Creation, Objection to, and Confirmation of the Voters' List, in such a way as to ensure that this regulation does not, under any circumstances, restrict the right to vote, except in cases where this right has been expressly restricted by a final and binding court decision.***

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