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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

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## **Report with Recommendations**

**C. No. 12/2017**

**Mentor Dragusha and others**

*Pertaining unequal treatment in determination of salary coefficient for the  
officials of Municipal Directorate of Education in Prishtinë*

Addressed to:

Mr. Shpend Ahmeti, Mayor of Prishtina Municipality, and

Mr. Mahir Yagcilar, Minister of the Ministry of Public Administration

Prishtinë, 10 February 2017

## Purpose of the Report

Purpose of this Report is promoting of equality as well as drawing attention of the Prishtina Municipality, regarding the need to undertake actions on harmonization of posts and coefficients for officials of Municipal Directorate of Education in compliance with the Law, in order to eliminate inequality which actually exists in their treatment.

The Report is based on complaint lodged by the following officials, Arbene Aliu, Ardiana Ismaili, Liridona Preniqi, Hajzer Idrizi, Fatos Osmani, Isa Avdiu, Shiqeri Mustafa, Mentor Dragusha, Arlinda Cakiqi, Nebahate Bejtullah, Jasmina Omeragiq, Arbër Gashi, Fatlum Osmani, Kadrije Shatri, Nezaqete Qerimi and Fatlinda Zuka, as well as also aims to draw attention on the right to be informed regarding the request submitted on 23 of August 2016, protocoled with number 01-120-240188.

## Legal bases

According to Article 135, par. 3 of the Constitution, *“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.”*

Law No. 05/L-019 on Ombudsperson, Article 18, par. 1 determines that the Ombudsperson, among others, has the following responsibilities as well:

- *“to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them” (point 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;” (point 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;” (point 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” (point 5);*
- *“to publish notifications, opinions, recommendations, proposals and his/her own reports;” (point 6);*
- *“to prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo;” (point 8);*

## Summary of case facts

Based on information and the documents in possession of the Ombudsperson Institution (OI), facts can be gathered as follows:

1. Above stated officials of the Municipal Directorate of Education in Prishtine on 18 of January 2017 lodged a complaint with the Ombudsperson Institution through which they exposed their dissatisfaction for unequal treatment, requesting upgrading of salary coefficient based on the qualification, professionalism, experience, tasks and work

responsibilities. They also complain that their salary coefficient is lower and varies compared with salary coefficient in the same posts of Municipal Directorates of Education in other municipalities.

2. Payroll lists of the following municipal directorates of education are being used for comparison: Prishtinë, Gjilan, Ferizaj, Gjakovë, Rahovec, Pejë, Prizren, Kamenicë, Klinë, Vushtrri, Fushë Kosovë, Mitrovicë, Istog, Skenderaj and Podujevë, as well as payroll lists of pre-university institutions in Prishtina municipality.
3. Appointment act of MDE employee in Prishtine and the work contract for school secretary.
4. Request for upgrading of salary coefficient for MDE staff in Prishtine, addressed to the Mayor of Prishtina Municipality Mr. Shpend Ahmeti, with protocol number 01-120-240188, date 23.09.2016.
5. Request for alteration of coefficient, sent by Mr. Isa Avdiu, Senior Financial Officer via e-mail, officially addressed to Mr. Shpend Ahmeti, the Mayor.
6. Request for alteration of coefficient, again sent by Mr. Isa Avdiu, Senior Financial Officer via e-mail, officially addressed to Mr. Shpend Ahmeti, the Mayor, on 5 December 2016.

### **Legal instruments applicable in Republic of Kosovo**

7. Constitution of Republic of Kosovo (further the Constitution), Article 24, Equality before the Law, determines that: *All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination*”(par.1).
8. Furthermore, according to Article 31, paragraph 1, of the Constitution, it is determined that: *“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.”*.
9. Article 32, of the Constitution, the Right on Legal Remedy, stipulates that : *“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..“*
10. European Convention on Human Rights (ECHR) is a legal document directly applicable according to the Constitution of Republic of Kosovo and prevails in case of conflict, towards legal provisions and other acts of public institutions.

Article 14, of the ECHR determines that : *‘ The enjoyment of the rights and freedoms set forth in this Convention shall be secured **without discrimination** on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*.

11. Law No.03/L-149 on Civil Servants of Kosovo Republic, Article 43 stipulates that: *“Civil Servant have the right to be treated to receive fair and **equitable treatment** in all aspects of personnel management career development, rewards, **compensation and legal protection**, without regard to sex, race, religious affiliation or belief, political affiliation, physical disability, conditions, marital status, age and ethnic origin..”*(par.1).

*“It is the duty of the public administration to remove those administrative obstacles which limit the freedom and equality of Civil Servants, impede their full professional development and constrain their opportunities to effective participation in the attainment of the scopes set for the Civil Service..”*(par. 2).

12. Article 50, stipulates that: *“Civil Servants shall have the right to appeal against administrative decision or any violation or omission of the general administrative rules or procedures that affect or are related to their working relationship.”*(par.1)
- “Civil Servants shall have the right to protect themselves in cases of any violation of their rights as a result of the action of the public administration through internal administrative or judicial procedures.”*(par. 2).
13. Law No.03/L-147 on Salaries of Civil Servants, Article 1, determines that :
- “The purpose of this law is the establishment of a system and structure of salaries, allowances and other remuneration for Civil Servants, as defined in the Law on the Civil Service of the Republic of Kosovo.”*
14. Article 3, determines that: *“Civil Servants’ right to a fair and regular pay shall be guaranteed according to the terms and conditions established in this Law and the Law on Civil Service..”*(par.1).
- “Public administration institutions in the Republic of Kosovo are obligated to pay equal salary for the work with the same value.”*(par.2).
15. Article 5, stipulates that : *“Basic salary, according to this Law, is a result of work price, respectively value for simple work and coefficients determined for every group and sub-group, as well as the increased sums of work experience, for every full year, in determined percentage.”*(par.1).
- “Basic salary, according to this Law, is a result of engagement and commitment of civil servant in his job position in relation to the entirety of other job positions determined with sub-legal act by the Government of the Republic of Kosovo.”*(par.2).
- Paragraph 8, explicitly determines that classification of salary grades shall be based on:
- 8.1. responsibility;
  - 8.2. complexity;
  - 8.3. interpersonal communication skills;
  - 8.4. available qualifications and;
  - 8.5. conditions at work..”
16. Article 7 determines that: *“The heads of public administration institutions shall propose the grades of positions in their institution to the Ministry responsible for public administration, based on recommendations from the person responsible for human resources in their institution, who is responsible for the application of the standards and procedures for the classification of work posts in the Civil Service..”*(par.1).
- “After proposal by the relevant institution and prior approval by the Ministry responsible for public administration and ministries responsible for finance, the organizational structure and grade for each work position and changes shall be approved by the Government..”*(par.2).
17. Article 26, stipulates that: *The control over the enforcement of this Law and sub-legal acts issued for the implementation of this Law shall be executed by the Ministry responsible for public administration and Ministry responsible for Finance.”*
18. Law No.02/L-28, on Administrative Procedure (LAP), in Article 11, explicitly

stipulates the liability for decision- making *“The public administration bodies, within the scope of their competences, shall decide on any request, submitted by natural and legal persons.”*

19. Article 38, of this Law, in detail manner foresees initiation of administrative proceeding by interested parties and the liability of the body to provide with the written response.  
*“38.4. The manager of public administration body shall immediately review the request for action submitted by the interested parties and shall undertake the following action::*
  - a) *he/she shall notify the requesting party in writing that the request has been endorsed and that the administrative proceeding has commenced, or*
  - b) *he/she shall notify the requesting party in writing that the request has not been endorsed and that the party may lodge an appeal against the decision, as per procedure set out in article 101 herein, or;*
  - c) *he/she shall notify the requesting party that further administrative action is required before the body may respond to the request. in this case, the body shall set a reasonable deadline for completion of the required actions..”*
20. Article 90 in paragraph 1 of this Law regulates the manner how these administrative acts are being published *“Individual and collective administrative acts are serviced to interested parties no later than 30 days.”*
21. Article 127, paragraph 127.4, stipulates that: *“The interested parties may address the court only after they have exhausted all the administrative remedies of appeal “*
22. While according to Article 131.1, the deadline for reaching a decision is determined : *“The competent administrative body shall review the administrative appeal and shall issue a decision in the course of 30 days upon submission of appeal”*
23. Article 3 paragraph 2, of the Law No. 05/L-021 on the Protection from Discrimination, stipulates that: *“Discrimination is any distinction, exclusion, restriction or preference on any ground specified in Article 1 of this law, which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislations of the Republic of Kosovo..”*

## **Legal analyses**

Ombudsperson’s Legal analyses is divided into two parts:

- Assessment regarding the failure of municipal bodies to respond on the request filed by the complainants.
- Assessment regarding the differences of job titles and salary coefficient in payroll lists.

### **Assessment regarding the failure of municipal bodies to respond**

24. Due to the fact that complainants did not receive response concerning their request for upgrading of coefficient in the municipality, they addressed the Ombudsperson on 18 of January 2017, regarding the failure of municipal bodies to review their request. The Ombudsperson notes that, until the day this Report has been published, no response has been served to the complainants by the Municipality.
25. The Ombudsperson observes that the municipal authorities failed to handle the request within the legal time frame as foreseen by the LAP, that Public Administration Bodies,

within their powers, are obliged to decide upon each request filed by legal and natural persons, determining specifically situations and deadlines for provision of response. Such situation of failure to handle complainants' submissions is the failure of municipal bodies, and because of this legal remedies exercised by the complainants did not produce legal effect in accomplishment of their rights.

26. Furthermore, parties/complainants' rights for timely administrative process, guaranteed by the LAP, where among others is stated precisely that, the municipal bodies are obliged on timely delivery of administrative, individual and collective acts to the parties within legal time frame, so that parties are informed on their rights and eventually use legal remedies on higher instances in case they are dissatisfied with their content. Starting from the fact that the bodies fail to inform the complainants with decision on their request, has influenced on violation of their rights.
27. Law No.03/L-040 on Local Self-Government explicitly determines legal obligations of municipality versus citizens' rights to obtain response on their requests, Article 4, paragraph 4 explicitly determines that: *"All municipal authorities shall be answerable to the citizens of the Municipality in the forms set by law."*
28. The Ombudsperson notes that failure to review the request, filed on 23 August 2016, constitutes a violation of the right to a fair hearing within a reasonable time, as guaranteed under Article 32 of the Constitution of the Republic of Kosovo, paragraph 1 of Article 6 in conjunction with Article 13 of the ECHR, and Articles 11, 38.4 and 131.1 of the LPA. The Ombudsperson considers that the examination of the request should be developed without further delay and the issue raised should be decided on its merits by public authorities.
29. As per enforcement of Article 13 of the ECHR, the Ombudsperson reiterates that it is states' constitutional obligation that the complainants are guaranteed effective legal remedies. This right guaranteed based on this Article, foresees that: *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*, because of this huge delays on administration of justice, comprise a serious threat for the rule of law.
30. Additionally, Article 38.4 requires from the bodies to inform in written form the parties on admission or refusal of their complaints, providing them with the opportunity to act further or use of legal remedies. In the above given case the complainants were not informed in written regarding the complaint submitted and no decision has been issued regarding their case, and as a result they have been deprived from the opportunity of using effective legal remedies, thus the Ombudsperson reiterates that, failure to take in consideration such important facts is in a full contradiction with requests of Article 32 of the Constitution.
31. In complainants' case no sustainable and sound reason of the municipal authorities for delay of the procedure existed regarding case review. Municipal authorities failed to prove that they are capable to respect legal deadlines to decide upon the case.
32. Thus, delay and non-efficiency of the procedure leads to situations which are opposite with **rule of law principle, principle that is sanctioned with highest legal acts as well as international legal instruments**, that Kosovo authorities are obliged to respect without any exemption.
33. Law No.03/L-040 on Local Self-Government in a specific manner determines legal liabilities of the municipality to ensure that the citizens enjoy all rights and freedoms, Article 4, paragraph 2, explicitly stipulates that: *"All municipal organs shall ensure that*

*the citizens of the municipality enjoy all rights and freedoms without distinction of any kind, such as race, ethnicity, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and that they have fair and equal opportunities in municipality service at all levels.*” while paragraph 4 stipulates that: “ *All municipal authorities respond to citizens of the municipality in forms determined by law.*” The Ombudsperson notes that, Prishtina municipality, apart meeting with the complainant, did not undertake appropriate actions to review the request.

### **Assessment regarding the differences of job titles and salary coefficient**

34. Complainants claim that other MDE employees in Kosovo for the same job receive their wages with higher coefficient, and in order to ascertain allegations disclosed, the Ombudsperson compared payroll lists of the Prishtina MDE and MDE of other municipalities in Kosovo. While comparing payroll lists, the Ombudsperson, noticed that huge discrepancies exists of job titles, that there are also differences in coefficient of salaries for MED officials, and that these two elements vary from municipality to municipality without any reasonable justification.
35. Senior MDE advisors in Prishtinë, as a part of a big institution (over 64 educational institutions and with approximately 50.000 pupils), even though face with a greater number of services provided, receive compensation of salary based on coefficient 6, if this coefficient is compared with the MED employees in some municipalities, it is noted that their coefficient is lower.
36. It is unacceptable that for the post of Assistant in MDE in Gjilan and in Ferizaj, the salary coefficient is 6, equal with the senior official post in MDE of Prishtina, it is also unacceptable that community education coordinators in MDE in Prishtina have coefficient 6, while same coordinators in MDE in Prizren and Gjilan have coefficient 7, further, it is also unacceptable that finance and education officials in Prishtina have lower coefficient than MDE finance and education officials in Kline or Kamenice. These are some of differences noticed according to the payroll lists, even the Ombudsperson faced difficulties in verifying titles of the job positions in MDE due to diversity of titles.
37. According to ECtHR judicial decisions, “[the] right . . . not to be discriminated . . . is violated when States treat unequally persons in similar situations without providing reasonable and objective justification” (*Thlimmenos v. Greece*, Application No. 34369/97, GJEDNJ, 6 April 2000, par. 44). So, in order that such a justification be “objective and reasonable”, it should pass over two other steps: Firstly, it should have a “legitimate purpose” for the given inequality and the second, it should have a “reasonable linkage of the proportionality between used remedy and aimed objective” (“*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*” v. *Belgium*, Application No. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, ECtHR, 23 July 1968, par. 10; see also *Case of X and Others v. Austria*, Application No. 19010/07, ECtHR, 19 February 2013, par. 98).
38. In order to have objective and reasonable justification, it should exist also “a reasonable linkage of proportionality” between the objective and such a treatment. As per the concept of “proportionality”, ECtHR did not set any detailed standard for its enforcement, at least not in cases of alleged discrimination. In these cases “principle of proportionality (is considered) as assessment of “adaptability”, between undertaken measures and advanced objective or by weighing the severity of measures with the importance of intended objective” (O.M. Arnardóttir, *Equality and Non-*

39. Notwithstanding, Article 55 of the *Constitution* provides us with the detailed description of proportionality concept. According to the Constitutional Court of Republic of Kosovo, “the test of proportionality is described in Article 55 of the Constitution: (Case No. KO131/12, Dr. Shaip Muja and 11 Deputies of Kosovo Republic Assembly, Ruling 15 April 2013, par. 127). Actually, Article 55, par. 4 of the Constitution determines five criteria for assessment of proportionality of limitation of a human right:

*“In cases of limitations of human rights or the interpretation of those limitations; all public authorities..., shall pay special attention to (1) the essence of the right limited, (2) the importance of the purpose of the limitation, (3) the nature and extent of the limitation, (4) the relation between the limitation and (5) the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation..”*

40. Article 55, par. 5 of the Constitution: *“The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.”* As per the essence of the right not be to discriminated, ECtHR has pointed out that there are some bases of unequal treatment which are considered strictly unacceptable in a democratic society.
41. According to this, the Ombudsperson ascertains that there is an unequal treatment between civil servants employed in the MEDs in Kosovo, which on one side creates inequality between MEDs employees in Kosovo, and on the other side in the municipality of Pristina, creates differences even among MED civil servants and civil servants in schools, since under the Constitution, all are equal before the law and no one can be discriminated, public authorities must ensure that all employees have fair and equal opportunity, therefore, such actions of public authorities **violate equality before the law** and are opposite with legal provisions.
42. It is obvious for the Ombudsperson the fact that such treatment has derived from inadequate budgetary allocations. The process of budget proposal and allocation of the budget from the central level should be a well-coordinated process, in order to avoid impacts on human rights.
43. Based on these facts, public authorities have failed to implement provisions of the Law on Civil Servants as well as of the Law on Salaries of Civil Servants according to which, it is foreseen that *“Public administration institutions in the Republic of Kosovo are obligated to pay equal salary for the work with the same value.”* (Article 3, paragraph 2).
44. Based on Article 26, of the Law on Salaries of Civil Servants, it is determined that: *“The control over the enforcement of this Law and sub-legal acts issued for the implementation of this Law shall be executed by the Ministry responsible for public administration and Ministry responsible for Finance.”* Thus, in the concrete case the Ministry of Public Administration- Department of Civil Service Administration, has failed to oversee enforcement of policies in the field of salaries and administer appropriately payroll lists and Salary system.
45. In the current case, not reviewing complainants’ request by public institutions, resulted with not resolving of the request and unequal treatment compared with other MDE employees in other municipalities, as well as compared with civil servants in Prishtina Municipality schools without any legitimate purpose and without any reasonable

justification, the Ombudsperson ascertains that failure of Prishtina Municipality to review the case, as well as insufficient involvement in coordination with relevant Ministries to find solution, comprise violation of principle of legal certainty and the right not to be discriminated.

## **Findings of the Ombudsperson**

46. Taking in consideration the above given facts, the Ombudsperson, ascertains that Prishtina municipality should ensure equal treatment to its employees, according to appointment act, majority of complainants occupy the position of senior officials while their coefficient is lower than civil servants at schools, while the Ministry of Public Administration should guarantee that all civil employees working at MDEs of Republic of Kosovo in same positions are treated equally and receive equal salary for the same work.
47. Failure to enforce legal provisions, leads into situations which are opposite with rule of law principles, principle that is sanctioned with highest legal acts as well as international legal instruments that Kosovo authorities are bound to respect without any exemption.
48. Base on all presented proves and facts gathered, the Ombudsperson, in compliance with respective legislation, finds that violation of human rights and fundamental freedom in the given case has occurred, since responsible authorities in the Ministry of Public Administration fail to undertake appropriate actions in order to ensure equal treatment to all MDE employees in Kosovo, by positions, qualifications, and work responsibilities, while responsible authorities in the Prishtina municipality fail to undertake necessary deeds to review the request submitted and due to this complainants were denied the right of using effective legal remedies.
49. As a conclusion, the Ombudsperson consider as indispensable the fact that the relevant Ministries and Municipalities have better coordination with the aim to eliminate differences stated above without further delay. Standardization of job positions assists institutions in providing better and efficient services, enables efficient budget management and can also impact on improvement of the quality of education.

## **Ombudsperson's recommendations**

Based on above stated findings and in compliance with Article 135, par. 3 of the Constitution of Republic of Kosovo and Article 18.1.2, of the Law on Ombudsperson, the Ombudsperson recommends that:

### ***Prishtina Municipality***

- 1. To undertake all necessary measures that requests filed by complainants are reviewed in compliance with the Law on Administrative Procedure.*
- 2. To ensure that all civil servants –complainants in equal situations enjoy equal rights and opportunities.*

**Ministry of Public Administration- Department of Civil Service**

## ***Administration***

- 3. To conduct individualized assessments for job posts and salary coefficients for each post of civil servants in Municipal Directorates of Education in the Republic of Kosovo..*

In accordance with Article 132, paragraph 3 of the Constitution of Republic of Kosovo (“*The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo.*”) and Article 28 of the Law on 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*”), we are kindly requesting to be informed on actions undertaken regarding the issue subject of this report.

Sincerely,

Hilmi Jashari

Ombudsperson