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**OPINION
OF THE OMBUDSPERSON**

With regard to

Prevention of nepotism at the University of Prishtina

Addressed to:

- **Mr. Marjan Dema, Rector of the University of Prishtina**
- **Mr. Shyqyri Bytyqi, Minister of the Ministry of Education, Science and Technology**

Prishtina, 16 March 2018

PURPOSES

1. In the Report with Recommendations issued on 12 February 2018, the Ombudsperson classified the prohibition of "recruitment/engagement of candidates in any of the basic organizational structures (department/branch or program) if such candidates' have established regular employment relationship within those structures, or if they have close relatives engaged in such structures" (Regulation No. 2/475 on the Evaluation Procedures for the Engagement of Foreign Associates at the University of Prishtina "Hasan Prishtina", issued on 7 September 2017, Article 7, paragraph 11) as discriminatory.
2. This Opinion has **two** main purposes:
 - (1) Clarify that such conclusion does not prevent the University of Prishtina from fighting the nepotism problem in accordance with procedures provided for by the Statute of the University of Prishtina;
 - (2) Emphasize that fighting nepotism is indispensable for the full respect of human rights of all candidates for employment at the University of Prishtina; and
 - (3) Propose some measures to further strengthen the prevention of nepotism based on the policies of two universities which are universally recognized for high academic standards: Harvard University, United States of America, and University of Cambridge, United Kingdom.

LEGAL BASIS

3. According to Law No. 05/L-019 on Ombudsperson, the Ombudsperson, inter alia, has the following powers and responsibilities:
 - “publishes reports and makes recommendations on policies and practices on combating discrimination and promoting equality” (Article 16, paragraph 15);
 - “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, paragraph 1, subparagraph 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, paragraph 1, subparagraph 5);
 - “to publish notifications, opinions, recommendations, proposals and his/her own reports” (Article 18, paragraph 1, subparagraph 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, paragraph 1, subparagraph 7);
 - “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” (Article 18, paragraph 1, subparagraph 8);
 - “to recommend to the Assembly the harmonization of legislation with International

Standards for Human Rights and Freedoms and their effective implementation” (Article 18, paragraph 1, subparagraph 9); and

- “advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advancement of human rights and freedoms in the Republic of Kosovo” (Article 18, paragraph 3).
4. By submitting this report to the competent institutions and by publishing it in the media, the Ombudsperson intends to fulfil the following legal responsibilities.

LEGAL ANALYSIS

5. In a report with recommendations issued on 12 February 2018 (hereinafter: "the Report of the Ombudsperson" or "the Report"), the Ombudsperson has reviewed the Regulation No. 2/475 on the Evaluation Procedures for the Engagement of Foreign Associates at the University of Prishtina "Hasan Prishtina", issued on 7 September 2017 (hereinafter: "the Regulation of the UP" or "the Regulation").
6. Article 7, paragraph 11 of this Regulation provides that: "In the University of Prishtina, the recruitment/engagement of candidates within any of the basic organizational structures (department/branch or program) will not be allowed if such candidates have regular employment relationship within those structures, or if they have close relatives engaged in such structures (parent-child relationship, brother-sister relationship, sister-sister relationship, brother-brother relationship and vice versa)".
7. In the Report, the Ombudsperson has found that this provision is discriminatory according to the Constitution and laws of the Republic of Kosovo.
8. For example, the Constitution of the Republic of Kosovo, Article 24, paragraph 2, stipulates that: "No one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status".
9. As explained in paragraph 10 of the Report, "The Constitution explicitly guarantees the equality of all persons before the Constitution and the law, the right of everyone to equal legal protection without discrimination and prohibits discrimination on any of the listed grounds, *but continues further by including any other personal status that is not explicitly mentioned in this Article*" (emphasis added).
10. Report continues in paragraph 17, "a person shall not, because of some of his or her personal characteristics, or in the present case, due to his or her close family relations and employment relationships within the UP department or program, be deprived of the right to employment, a right which is accessible and fully recognized to others, because on the contrary, this would put this person in an unfavourable position compared to other candidates and the same would not get the chance to equally participate in the competition during the recruitment procedure".
11. For this reason, the Ombudsperson has classified the prohibition of recruitment or engagement of candidates who have close relatives employed or engaged within the branch or department in which such candidates are applying as discriminatory.

12. The Ombudsperson stands behind this ascertainment.
13. However, as noted in paragraph 16 of the Report, "the Ombudsperson specifically understands the problem of nepotism as a special form of conflict of interest, which is extremely common when recruiting in the public sector".
14. In fact, the Ombudsperson considers that the prohibition of discrimination, stipulated by the Constitution and by law, makes it necessary to fight the phenomenon of nepotism. According to ECtHR judgments, "[the] right . . . not to be discriminated against . . . is also violated when States *without an objective and reasonable justification fail to treat differently persons whose situations are significantly different*" (*Thlimmenos v. Greece*, Application No. 34369/97, ECtHR, 6 April 2000, paragraph 44, emphasis added).
15. From this point of view, as a result of nepotism, the candidates are *not* treated simply because of family ties. It is obvious that the family ties that a candidate may have (or not) should not serve as an "objective and reasonable justification" to treat them unequally. For this reason, nepotism can be described as a form of discrimination. As such, it is the responsibility of the University of Prishtina and all public institutions to fight nepotism in the most efficient way, in accordance with the Constitution and the laws of the country.
16. It may seem however that the Ombudsperson has, at this point, put the University in Prishtina into an inevitable dilemma: on the one hand, the phenomenon of nepotism is discriminatory because it results in discrimination of those candidates who *have no* family ties within the department or branch they are applying for; but on the other hand, according to the last Report of the Ombudsperson, the strict measure imposed by the University of Prishtina discriminates those candidates who *have* family ties within the department or branch they are applying for. The question is, therefore, what should the University of Prishtina do so that it does not discriminate those who have no family ties and those who have such ties without their fault?
17. To answer this question, we can start with the University of Prishtina Statute which was approved by the Assembly of the Republic of Kosovo and therefore has the status of a law. Article 173, paragraph 7 of the Statute stipulates that: "No person may be a member of the evaluation commission if that person is a spouse, partner or a close relative of the candidate to be appointed". The application of this provision ensures that no candidate is evaluated by his/her close relatives during the recruitment process.
18. This provision sets out a measure to fight nepotism, which is far milder compared to the extreme measure of the strict prohibition of recruiting or engaging the candidates. In this way, the University of Prishtina Statute proves that it is indeed possible to take measures against the nepotism problem without discriminating those who have family ties with any members of the unit in which they are applying.
19. However, the fact that Senate of the University of Prishtina approved a categorical prohibition of such candidates shows that the problem of nepotism is so widespread and so deep that the measure determined by the Statute (excluding family members from the evaluation commissions) is not sufficient as a means to fight nepotism.

20. While recognizing these concerns, the Ombudsperson, proposes some other measures that the University of Prishtina can undertake against the nepotism problem, in addition to the aforementioned measure that is already included in the Statute.
21. The following proposed measures are based on the policies of two world-renowned universities: Harvard University, United States of America, and University of Cambridge, United Kingdom. Both universities are ranked among the top 5 universities in the world, according to a recent assessment (see QS World University Rankings 2018, link: <https://www.topuniversities.com/university-rankings/world-university-rankings/2018>). Both are globally respected for the application of the highest academic standards. Therefore, these universities can serve as models for regulating academic issues, including the prevention of nepotism in academic staff.
22. First, the Ombudsperson notes that both universities' policies on preventing nepotism cover relationships even beyond close family relatives. As we have seen above, the Regulation of the University of Prishtina uses the term "close relatives", which includes only the "parent-child relationship, brother-sister, sister-brother, brother-brother and vice-versa" (*ibid.*, Article 7, para. 11). Whereas, Harvard University has included the following relationships in the list as well: husband and wife; son and daughter (including stepchildren); grandchildren; son- and daughter-in-law; parents (including stepparents); grandparents; father- and mother-in-law; brother and sister (including stepbrother and stepsister); and brother- and sister-in-law (*see* Harvard University Staff Personnel Manual, Work Relationships, Section 1). In addition, Harvard treats similarly the cohabitation relationship (*see* *ibid.*).
23. The University of Cambridge has far more comprehensive criteria, by also adding: extramarital partners; former spouses; relationship [aunt/uncle] - [niece/nephew]; cousins; and close friends (*see* University of Cambridge Human Resources Policies and Procedures, Employing and Working with Relatives and Related Matters). Cambridge also points out that this list is not exhaustive and it "is the responsibility of members of staff to take any necessary action on the basis of common sense and reasonableness" to avoid nepotism in the case of other links that are not explicitly included in the list (*ibid.*).
24. The Ombudsperson considers that considering the depth of nepotism problem in the Republic of Kosovo, the policy of the University of Prishtina against this problem should cover as many different types of personal relationships as possible.
25. In addition to the involvement of wider covered relationships, Harvard also takes another stricter measure: it prohibits staff members not only from participating as members of the evaluation committee in cases when a relative is a candidate, but rather prohibits them from participating in any other process that may have an impact on the immediate relative. According to Harvard policy, all staff members should neither "initiate nor participate in (directly or indirectly) decisions involving a direct benefit to relatives, and "direct benefits include but are not limited to employment, salary and increase of revenues, promotion and work assignments" (Harvard University Staff Personnel Manual, Work Relationships, Section 1).

26. The Ombudsperson considers that such a wider restriction is indispensable in order to efficiently fight nepotism. The problem of nepotism does not end with the recruitment process, but continues even further by infecting other processes within the University in the context of work relations.
27. In addition to these measures, Cambridge policy adds another very important measure such as: "Staff members are required to declare their interest, if are engaged in a recruitment process where a candidate is his/her relative" (University of Cambridge Human Resources Policies and Procedures, Employing and Working with Relatives and Related Matters).
28. This obligation of declaration is a must for the University of Prishtina as well, for two reasons. First of all, family ties between a staff member and a candidate for employment are not always known in all cases. By imposing an obligation on the staff to declare such ties, and by imposing punitive measures for non-declaration of such ties, the University of Prishtina can ensure the most effective implementation of the policy against nepotism. Secondly, such an obligation would increase the level of transparency within the University both in the recruitment process and in all processes where the problem of nepotism could emerge.
29. In addition to the specific policies against nepotism, the Ombudsperson considers important to note that these policies aim to equally treat all candidates for employment, as well as all employees. These policies also aim at ensuring that the ***public is aware and feels secure about this equal treatment***. As the country's largest and most important university, the University of Prishtina, respectively the leaders and its entire staff, is obliged to improve the University's image before the eyes of the public.
30. In this regard, Cambridge policy also states that "Staff members should not be placed by others, nor place themselves in a situation where others ***would have reason to believe*** that there is or may exist a conflicts of interest or improper behaviour" and must ensure "not to discredit the University and not to harm its reputation due to irregular behaviour by its staff " (University of Cambridge Human Resources Policies and Procedures, Employing and Working with Relatives and Related Matters; emphasis added). The Ombudsperson considers that the same principles apply also for the staff of University of Prishtina.
31. One last issue remains to be clarified: What is the competent body to incorporate these proposed reforms into the policies of the University of Prishtina against nepotism? Here are two options. First of all, these reforms can be directly introduced into the Statute of the University, which would require the amendment of the Statute by the Assembly of the Republic of Kosovo. Secondly, the authorities of the University of Prishtina, without changing the Statute, may adopt these reforms in the form of a regulation. Such a step would be in full compliance with the current Statute, which gives the Senate of the University the right of *carte blanche* to regulate the appraisal processes of the candidates, at least when it does not contradict other parts of the Statute. Regarding this point, see the Statute of the University of Prishtina, Article 173, para. 8 ("Other matters for appraisal procedures are defined by rules issued by the Senate in accordance with this Statute"). And in general, the University enjoys autonomy to regulate all aspects of its functioning (*see ibid* Article 12 "Rights and duties").

32. The Ombudsperson considers that both of these opportunities should be used at the same time. The most ideal solution would be for the Assembly to change the Statute to include reforms directly in it. This would ensure that reforms are sustainable and cannot be easily modified by future University leaders, who change on relatively frequent basis. However, change of Statute requires more time, since all the changes have to go through the legislative process of the Assembly. Therefore, until the Statute is changed, the Ombudsperson proposes to the authorities of University to immediately take measures to approve these reforms, by exercising their competences to regulate all aspects of the functioning of University.

Based on the abovementioned assessment, the Ombudsperson considers that it is necessary to adopt reforms in the University's anti-nepotism policies, as follows:

- (1) Policies of the University of Prishtina against nepotism must cover not only the relationships of "close family members" ("parent-child, brother-sister, sister-sister, brother-brother and vice-versa"), but also the relationships of other relatives, as follows: spouses; stepparents-stepchildren; grandparents - [nephew/niece]; brother- and sister-in-law; mother- and father- in law- [groom/bride]; brother/sister from stepparents; extramarital partners; extramarital partner relation; former spouses; [aunt/uncle] - [niece/nephew]; cousins; and close friends. It should also be noted that this list is not exhaustive and that it is the responsibility of staff members to take any necessary measures based on logic and reason to avoid nepotism in the case of other relations that are not explicitly included in the list.*
- (2) University staff members should be prohibited not only from being members of the evaluation council when their relatives are candidates but they should also be prohibited from participating in any other process that can bring benefits to any of their relatives, including (but not limited to) the processes of employment, income and income growth, job promotion, and job duties.*
- (3) Staff members should be obliged to declare whether they are engaged or not in a recruiting process or any other process that may bring benefits to any of their relatives. Failure to declare such family ties should result in punitive measures.*

Respectfully,

Hilmi Jashari

Ombudsperson