



REPUBLIC OF ALBANIA
OMBUDSMAN
Special section



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Subject matter: *Recommendation for the initiation of investigations against citizens Admir Goduni and Servet Daliu for the commitment of the criminal offense of "Conducting arbitrary actions" carried out with accomplices, as provided for by Articles 250 and 25 of the Criminal Code.*

To: Chief Prosecutor of the Prosecution Office of District Court, Mr. Petrit FUSHA

Tirana

Dear Mr. Fusha,

On 26 March 2016, in the afternoon, a protest was organized at the Tirana Artificial Lake Park by the leaders of the Democratic Party, its supporters and members of civil society, who were against the construction of a playground in this park by the Municipality of Tirana. In the evening of this date, the Ombudsperson Office was informed by some civil society activists who had been protesting in this place permanently that one of their members was beaten by an employee of the Municipality of Tirana.

On the basis of this complaint, the Ombudsman ordered two staff members to go to the place and make the appropriate verifications. The staff members of the Ombudsman Office went to the site and met with representatives of civil society. They claimed that the police officers of Tirana Municipality had broken their tent, which they had erected near the site the playground was being built, and in which they kept some of their belongings and stayed in it 11 days without interruption. They also claimed that one of their colleagues called Rezarta Caushaj was hit by a civil person who was together with the municipal police. According to them, she felt sick due to the shock and was taken by ambulance to the Tirana Trauma University Hospital (Military Hospital).

Ombudsman together with two of his staff went to Tirana Trauma University Hospital and met with Rezarta Caushaj, who was hospitalized in the emergency ward. She was asked about what had happened at place where the playground was being built in Tirana Artificial Lake Park.

At about 23:30 hrs the Ombudsman was informed by several members of civil society that three of their colleagues, who had been permanently protesting at the site where the playground was being built, had gone to Tirana Police Commissariat no. 1 to file charges against the Tirana Municipal police for demolishing the tent and the physical violence exercised against their colleague, Rezarta Caushaj. The police officers of this commissariat did not take their report, but instead took them into custody.

Based on this information, the Ombudsman together with his two staff members went to Tirana Police Commissariat no. 1 and met with one of the heads of the Police Commissariat, the Chief of Crimes Section no. 1, Mr. Julian Qyta and some other police officers who were working there. The police officers informed us that the three persons concerned, who were called Ardi Mekshiqi, Liridon Vulaj and Altin Kuka were taken by the police agents to the Commissariat because after the examination of video footage it was confirmed that they had participated in the illegal and violent rally organized that day in Tirana Artificial Lake Park. Given that they were suspected as criminal offenders, they were taken to the detention room and they were kept there locked with a padlocked. The Ombudsman advised the police officers to carry out the corresponding action in an objective way and by respecting their legal rights.

The Ombudsman and his two staff members met before leaving the Commissariat with the three persons concerned Ardi Mekshiqi, Liridon Vulaj and Altin Kuka who were kept in the detention room of the police Commissariat padlocked. They were asked about the respecting of their rights and if they had any claims against the behavior of police officers with them. According to them, they had gone themselves to this Commissariat around 22:00 hrs on 26 March 2016. Once they had gone to the Commissariat they had met on the ground floor in the lobby of the building with the information officer of this Commissariat, whom they had informed about the purpose of their visit to the police Commissariat. The purpose was to file a report against the Tirana Municipal Police officers for demolishing (damaging) their tent and physical violence against Rezarta Caushaj, who had been taken Tirana Trauma University Hospital and they demanded the assistance of Sate Police to stay close to them and protect them against the Municipal Police. The Information Officer asked them to wait, because they were going to meet with the Chief of the Commissariat.

After having waited for about an hour and 15 minutes and no police chief or police officer had met with them, they told the information officer that they were going away and were going to come back the next day to file the report. At that moment a police officer dressed in civilian, named Admir Goduni, came there and after filling out a form for each of them, he had told them that they were going to be detained, because they had seen footage of the protests and it showed that they were participating in that protest. At this moment the police officers took the three of them in the detention room and locked them with iron bar door and with a padlock.

Given that their interrogation showed that the three of them had come themselves to the Police Commissariat and were not detained, as the police officers informed, the Ombudsman and two of his staff members came back to clarify this issue and asked by writing down a record the persons who were locked in the room and the police officers who had communicated with them.

When asking the police officer Frroku Gjovalin who had the position of assistant information specialist in this Commissariat it came out that he had met the three persons mentioned above at around 22:15 or 22:20 hrs. They had told him that they had come to file a report against Tirana Municipal police for damaging the tent that they had set up at the Artificial Lake Park and for physical abuse. He had informed the Chief of Crimes Section no. 1, Mr. Julian Qyta about these persons and the reason why they had come to the Police Commissariat. The latter had told him that he was going to assign someone to work with them. At those moments the judicial police officer Admir Goduni had appeared there and told him that the persons concerned has participated in the protest and that he had drafted detention reports about them.

After the police officer Admir Goduni had prepared the detention reports, both of them together had placed Ardi Mekshiqi, Liridon Vulaj and Altin Kuka in the detention room. At around 00:37 he took the three persons out of the detention room to the office of the judicial police officer Gazmir Sokoli who was on duty that day in order to perform the procedural actions. According to

police information officer, their report that they wanted to file was not accepted till 01:37 of 27 March 2016.

When asking the police officer Admir Goduni it was found that he had been in the Commissariat on 26 March 2016 at about 23:00 hrs to analyze the incident that had occurred at Tirana Artificial Lake Park and to identify the persons who had participated in this violent protest. He had noticed in the information hall on the first floor of the building of the Police Commissariat three persons, whose names and why they had come to the Commissariat he did not know. According to him, they had participated in a violent protest that was held Tirana Artificial Lake Park where they had hurled stones and firecrackers against the police. He had seen them he had informed Chief of Crimes Section no. 1, Mr. Julian Qyta. His colleague Servet Daliu and him had drafted the reports of detaining these persons into the police premises and placed them in the detention room for further inquiry about the incident. That was the time when he had learned their names.

We hereby bring to attention that under Article 6, Paragraph 25 of Law no. 108/2014 "On the State Police", "Detention" is taking persons to the police facilities, health institutions, rehabilitation centers, the custodian or to the responsible person in the institution that issued the order or in other institutions with or without his will as stipulated in Articles 109 and 122, paragraph 1, of this law.

Based on the administrative inquiry of this complaint, it has already been proven that, in the present case the citizens Ardit Mekshiqi, Liridon Vulaj and Altin Kuka were not detained, because they had come themselves to the Police Commissariat to file charges against the Municipal Police officers and to seek the help of the state police to protect them. Given that they were not detained by the police officers, there was no legal reason to draft detention reports by the police officers Admir Goduni and Servet Daliu.

In the circumstances that they had come by themselves to this Police Commissariat and asked to file charges against the Municipal Police officers for demolishing their tent and for using physical violence against their colleague, the judicial police officer who was on duty, was obliged under Article 283 and 303 of criminal Procedure Code to accept their report after explaining to them the criminal liability, to which they would become subject, if they filed false charges. Even if they were suspected that they were behind the violent protest (demonstration), the police officers had the legal right to conduct procedural actions by asking them as persons against whom criminal inquiries were being undertaken after having received the report, for which they had come to the Police Commissariat.

Fictitious compilation of their detention reports by the police officers Admir Goduni and Servet Daliu gave the possibility to police officer Gjovalin Frroku who was carrying out the duty of information assistant specialist in this Commissariat to treat them as detained and take them to the detention room. Placing them in this room and locking them with a padlock constitutes a deprivation of liberty and violation of their rights as guaranteed by the Constitution and laws. We hereby explain that this situation of violation of their rights might have continued to aggravate further up to 10 hours had the Ombudsman not been and intervened.

We hereby bring to attention that, under Article 2 of Law no. 108/2014 "On the State Police", the State Police has the mission of maintaining order and public security, protection of high state personalities and buildings of particular importance, ensuring rule of law, under the Constitution and international acts while respecting human rights and freedoms. While under Article 85/1 of this law, the police officer is obliged to respect the Constitution, legislation, and protect human rights and freedoms.

In the case under review, the actions of police officers Admir Goduni and Servet Daliu, who carry out the state duty as police officers of the State Police, contain elements of the criminal offense of "Arbitrary actions", carried out with accomplices as provided for by Articles 250 and 25 of the criminal Code. These actions they have committed when exercising their duties seriously violated the freedom of citizens Ardi Mekshiqi, Liridon Vulaj and Altin Kuka, as guaranteed by the Criminal Procedure Code and Law no. 108/2014 "On the State Police".

Moreover, these actions seriously affect the image of the State Police and deeply damage and shake public confidence in this body.

As above, pursuant to Article 63/3 of the Constitution of the Republic of Albania which provides that: "The Ombudsman shall have the right to make recommendations and propose actions when observing violations of human rights by the public administration", and Article 21/9 of law no. 8454 dated 04 February 1999 "On the Ombudsman", stating that: "The Ombudsman shall recommend to the prosecution office to start inquiries if he finds that a criminal offense has been committed".

Therefore, the Ombudsman hereby,

RECOMMENDS:

Initiation of inquiries against Admir Goduni and Servet Daliu, holding the position of the assistant specialist of crimes inquiry in Tirana Police Commissariat no. 1 for the offense of "Arbitrary actions" as provided for by Articles 250 and 25 of the Criminal Code.

Concerning the position you will keep and the measures that you will take to implement this recommendation, please reply back to us within 30 days as stipulated by Article 22 of Law nr. 8454, dated 04 February 1999 "On the Ombudsman", as amended.

Please see attached photocopies of the following documents as evidence:

1. Records of the interrogation of Ardi Mekshiqi, dated 27 March 2016.
2. Records of the interrogation of Liridon Vulaj, dated 27 March 2016.
3. Records of the interrogation of Gjovalin Frroku dated 27 March 2016.
4. Records of the interrogation of Admir Goduni dated 27 March 2016.
5. Report of the detention of Ardi Mekshiqi, dated 26 March 2016.
6. Report of the detention of Liridon Vukaj Association dated 26 March 2016.
7. Report of the detention of Altin Kuka, dated 26 March 2016.

Trusting your understanding and cooperation,

COMMISSIONER

(Signature)

Arben SHKËMBI