



REPUBLIC OF ALBANIA
OMBUDSMAN
Special section



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Protocol no. K2/I-11-2
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Tirana, 02 March 2016

OMBUDSMAN
Protocol no. K2/I-11-2
Dated 31 March 2016

Subject matter: Recommendation *"To start the inquiry of the criminal offense of "Carrying out arbitrary action "against the police officers of Tirana Police Commissariat no. 1 for the physical violence exercised with accomplices against citizens who were protesting at the hills of the artificial lake on 21 February 2016, as provided for by Article 250 and 25 of the Criminal Code".*

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

TIRANA

Cc: Prosecutor General, Mr. Adriatik LLALLA

TIRANA

Dear Mr. FUSHA,

The Ombudsman started investigating ex officio the case made public in the media regarding the violence as exercised by the police officers of Tirana Police Commissariat no. 1 against the citizens who were protesting at the hills of the artificial lake, on 21 February 2016 to stop the municipality from building a playground for children.

Regarding this concern, conducting of an independent administrative investigation was ordered, following which they a series of actions have been carried out consisting in obtaining explanations from the citizens Mimoza Boçari, Aldo Allaj, Franc Bregu and Orges Zani, and in the administration of the pages of the register identifying data for the persons detained in Tirana Police Commissariat no. 1 on 21 February 2016 and photos from the protest.

Case findings

On 21 February at about 11:30 hrs members of civil society and citizens of Tirana organized a protest at the hills of the artificial lake to prevent the construction by Tirana Municipality of a children's playground. After protesters removed the wooden stakes fencing the place where the work would be carried out, police have used physical violence while clashing with citizens.

Grounds to start criminal proceeding

In her statement Mimoza Boçari has explained among others that: "*... At this moment I saw a policeman who had caught the upper part of the body of a young man, whom he was beating, something which made me react by jumping between them to split them so that violence against this guy could be stopped. At the same time, I have called on the police during all this time with the same words "Stop the violence" ... I tried to draw the attention of police through calling and movement of hands, especially the right hand, which inadvertently touched the cap of the police officer ... but remember that I received a blow suddenly on the right side of the face, which had an immediate effect on me by creating a state of shock, followed with immediate pain in my right ear. Suddenly I felt a firm grasp on the back of the neck, which was followed by the seizure with both hands by the same police officer.... "*

Orges Zani clarifies in his explanation that: "*... I was trying to defend my friend Klodi Leka against the violence by police, while two or more police officers seized me and gripped my hands from behind and pulled me to the police van. Using of force by the police when seizing caused injuries in the internal parts of the joints of my hands."*

While Aldo Allaj explains that, on the day of the event, he happened to be there by accident and when he saw the protesters he started recording them and taking pictures with his mobile telephone camera. "*At those moments, a police officer had approached and had twisted his hand wanting to get the mobile phone off his hands ordering to erase the video footage. Then three other police officers arrived and took him by force and put him into a police vehicle and took him to Tirana Police Commissariat no. 1 "*

Insights and conclusions

By analyzing the incident in its entirety with the administered evidence, it came out that:

Actions carried out by the police officers of Tirana Police Commissariat no. 1 are illegal and contrary to the relevant legal provisions and regulations, which regulate the activity of the State Police officers and specifically:

Article 105 of the Decision of the Council of Ministers no. 750, dated 16 September 2015 "On the approval of the Regulation of the State Police, which states "*the State Police Ethics contains principles and norms that govern the relations of behavior, attitude, completing tasks and communication of the police officers to act in accordance with the law, with the highest professional standards in a fair, impartial manner and in respect of human dignity, human rights and fundamental freedoms*". Article 133, paragraph 1 of the law "On the State police" states:

"Police officer shall use force to accomplish the task only when it is necessary and only if all other measures are unsuccessful or impossible".

With these actions the police are responsible under Article 211 of the "State Police Rules of Procedure", as approved by the Decision of the Council of Ministers no. 750, dated 16 September 2015, stating: *"The police officer shall be liable for the unlawful and unjustified use of force: 1. If he uses force in intensity and time which is disproportionate to the measure that is necessary to achieve a legitimate and lawful objective of the police."*

These actions run against the State Police Mission, which is to maintain public order and security in accordance with the law and respecting the rights and freedoms as provided for in Article 2 of Law no. 108/201, "On the State Police".

The State has vested the police with the responsibility of performing policing services in respect of the rule of law. Therefore, the police services must comply with the democratic principles, rule of law and respect for human rights.

The observation is that the police have used physical violence against citizens protesting in excess of powers conferred by law while carrying out their duty, thus affecting the freedom of citizens, and therefore there is reasonable and grounded suspicion that they have committed the offense "Committing arbitrary acts with accomplices".

The scope of the above offense is the legal relationship established to regulate the activity of the state or public service that has to do with respect for the freedoms of citizens specifically protected by the criminal law against criminal acts or omissions.

After performing some procedural investigative actions, Tirana Police Commissariat no. 1 sent on 24 February 2016 Memo no. 1234/1 to Tirana Prosecution Office of District Court for the criminal offenses of *"Property destruction"*, *"Organization and participation in illegal gatherings and demonstrations"* and *"Objection of public order police officers"*, as provided for by Articles 150, 236 and 262 of the Criminal Code.

In order to carry out a comprehensive and objective inquiry, we would hereby suggest that the proceeding body should conduct also other investigative actions and regarding the exercise of physical violence of police officers and concretely:

- a. Identification of the police officers of Police Commissariat no. 1 or the Police Directorate of Tirana, who have applied physical violence against citizens, Mimoza Boçari, Eljan Tanini. The latter held a megaphone calling on the protesters, etc.
- b. Obtaining and administration as a material evidence the CDs with footage of the citizens' protests on 21 February 2016.
- c. Administration of forensic expertise acts for the four protesters, for which the Judicial Police of Tirana Police Commissariat no. 1 has drafted on 21 February 2016 the decisions for carrying out the expertise.

Regarding what is said above and based on Article 63, paragraph 3 of the Constitution of the Republic of Albania stating: *"The Ombudsman has the right to make recommendations and propose actions when observing violations of human rights by the public administration"* and under Article 21, Paragraph 5 of Law no. 8454, dated 04 February 1999, "On the Ombudsman" as amended, which states: *"The Ombudsman after the completion of the inquiry shall have the right to recommend to the Prosecution Office to start an inquiry if it finds that a criminal offence has been committed, or to resume inquiries that have been dismissed or suspended"*.

Therefore, the Ombudsman hereby,

RECOMMENDS:

"Start the inquiry of the criminal offense of "Carrying out arbitrary action "against the police officers of Tirana Police Commissariat no. 1 for the physical violence exercised with accomplices against citizens who were protesting at the hills of the artificial lake on 21 February 2016, as provided for by Article 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".

In addition, please see attached copies of the following documents:

1. The article of the newspaper "Shekulli", dated 22 February 2016.
2. The record of obtaining declarations from Mimoza Boçari, dated 21 February 2016.
3. The record of obtaining declarations from Aldo Allaj citizens, dated 21 February 2016.
4. The record of obtaining declarations from Franc citizens, dated 21 February 2016.
5. The record of obtaining declarations from Orges Zani, dated 22 February 2016.
6. A copy of Memo no. 1234/1 dated 24 February 2016 of Tirana Poice Commissariat no. 1, delivered to the Prosecution Office of Tirana District Court.
7. Photos of the protest of citizens, dated 21 February 2016, on the hills of Tirana Artificial Lake.

Thank you for your understanding.

OMBUDSMAN

IGLI TOTOZANI

(Signature and stamp)



REPUBLIC OF ALBANIA
GENERAL PROSECUTION OFFICE
DIRECTORATE OF INVESTIGATION CONTROL, CRIMINAL PROSECUTION,
REPRESENTATION AT THE COURT AND SUPERVISION OF THE CRIMINAL
DECISIONS EXECUTION

Protocol no. 864/1

Tirana, 21 March 2016

Subject matter: Forwarding Ombudsman's Recommendation for jurisdiction purposes

Drejtuar: **PROSECUTION OFFICE OF DISTRICT COURT**

TIRANA

Cc: **OMBUDSMAN OFFICE**
Address: Bulevardi "Zhan D'Ark", nr. 2

TIRANA

Dear Chief Prosecutor,

Ombudsperson Office (special section), with Memo with Protocol no. K 2/I 11-2, dated 02 March 2016 has sent to the General Prosecutor's Office (for information), the recommendation for the initiation of criminal proceedings with the claim that the police officers of Tirana Police Commissariat no. 1 have committed the criminal offense of "*Committing arbitrary acts*" with accomplices as provided for by Articles 250 and 25 of the Criminal Code.

As above, in the capacity of the competent Prosecution Office, under the definition of Articles 76 and 281 et sequence of the Criminal Procedure Code, we are sending attached to this Memo the recommendation of the Ombudsman Office for judicial review jurisdiction purposes.

At the end of inquiry actions on your part, please take measures also to inform Ombudsman Office and the General Prosecution Office.

Thank you for understanding.

DIRECTOR

Adnan XHOLI
(Signature and stamp)

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