



**Republika e Kosovës • Republika Kosovo • Republic of Kosovo
Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution**

REPORT WITH RECOMMENDATION

**A.no. 929/2016
Eljesa Krasniqi**

regarding the delay of procedure in the Court of Appeals in the case AC. no. 1553/2014,

**For: Mr. Hasan Shala, President
Court of Appeals**

Prishtina, on 1 December 2017

Purpose of the report

1. The purpose of this report is to draw attention of the Court of Appeal, regarding the need to undertake relevant actions for reviewing and deciding on the case AC 1553/2014, without further delays.
2. This report is based on the individual complaint of Mrs. Eljesa Krasniqi (hereinafter *the Complainant*) and is grounded on facts and evidences of the Complainant, as well as on the case files available at the Ombudsperson Institution (OI) regarding the delay of the court procedures related to the confirmation of ownership.
3. The case was initiated with the claim lodged on 16 July 2004 in the Municipal Court in Prishtina (now the Basic Court in Prishtina), where the Complainant is in the capacity of the Respondents, whereas the Complainant filed the counterclaim on 15 January 2007. Therefore the Complainant has been waiting for 13 years for a final decision on her matter.

Legal basis

4. Pursuant to Article 135, para. 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.”*
5. Also, Law No. 05/L-019 on Ombudsperson, Article 16 paragraph 8, stipulates: *“The Ombudsperson may provide general recommendations on the functioning of the judicial system. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in case of delays of procedures”.*

Summary of facts

Facts, evidences and information available to the Ombudsperson Institution (OI) can be summarized as follows:

6. On 16 July 2004, a claim was filed before the Municipal Court in Prishtina (now the Basic Court in Prishtina) with regard to the handover of immovable property, wherein the Complainant is in the capacity of the Respondent. On 15 January 2007, the Complainant filed a counterclaim before the Municipal Court in Prishtina (now the Basic Court in Prishtina) for confirmation of ownership.
7. On 26 December 2007, the Municipal Court in Prishtina, while deciding on the case, rendered the Judgment C.no.1839/04.
8. On 16 March 2009, the Court of Appeals, according to the appeal renders the Judgment Ac.no.794/2008 and quashes the Judgment BCP (C.no.1839/04) and returns the case for retrial.
9. On 2 October 2009, the Municipal Court in Prishtina decides on the matter and renders the Judgment C.no.704/09.

10. On 4 December 2012, the Court of Appeals, according to the appeal, renders the Judgment Ac.no. 1423/09 and quashes the Judgment of the BCP (C.no.704/09) and returns the case for retrial.
11. On 26 December 2013, the Basic Court in Prishtina, decides on the matter and renders the Judgment C.no.3344/12 and on 30 April 2014, the case, according to the appeal, is filed for the third time to the Court of Appeals (Ac.no. 1553/14.)
12. On 12 January 2015, the Complainant through her representative addressed the Court of Appeals requesting to accelerate the procedures because almost a year had passed from the moment that the case was lodged before the Court of Appeals.
13. On 15 January 2015, the Complainant received a response to the request for acceleration of the case from Public Information Office within the Court of Appeals, where, among other, it was stated that the Court of Appeals is handling cases of 2012 and once the cases under this category have been settled the court will commence with the cases of such nature of 2013.
14. On 21 December 2016, the Ombudsperson received the complaint of Ms. Eljesa Krasnqi, through her authorised representative, regarding the delays of procedure in the Court of Appeals.
15. On 31 January 2017, the Ombudsperson addressed the Court of Appeals with a submission whereby requested information on actions taken and those to be taken in relation to the case.
16. On 9 February 2017, the Ombudsperson received a response from the Court of Appeals, stating, among others, that the case has been assigned and is awaiting adjudication.
17. On 22 November 2017, the authorised representative of the Complainant informed the Ombudsperson Institution that the Court of Appeals has not taken any action to adjudicate on the matter.

Legal instruments applicable in the Republic of Kosovo

18. The Constitution of the Republic of Kosovo, Article 21 stipulates that: *“The Republic of Kosovo protects and guarantees human rights and fundamental freedoms, [...]”*.
19. The right to a fair and impartial trial is defined in Article 31.1 of the Constitution, which stipulates that: *“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public power, and paragraph 2 stipulates “Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”*
20. Article 32 of the Constitution stipulates: *“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”*.
21. Additionally, Article 54 - Judicial Protection of Rights - of the Constitution defines:

“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”.

22. Article 22 of the Constitution of the Republic of Kosovo stipulates that the European Convention on Protection of Human Rights and Fundamental Freedoms (ECoHR) is a legal document that is directly applicable and in case of a conflict shall prevail over the provisions of other laws and acts of public institutions.¹ Therefore, paragraph 1 of Article 6 of CPHRFF provides for: *“In the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time”.*
23. Article 7, paragraph 2 of the Law No. 03/L-199 on Courts stipulates that:
- “All persons shall have equal access to the courts and no one shall be denied due process of Law or equal protection of the Law. Every natural and legal person has the right to a fair trial within a reasonable timeframe”.*
24. Whereas, Article 7, paragraph 5 of the Law No. 03/L-199 on Courts stipulates that: *“All courts should function in an expeditious and efficient manner to ensure the prompt resolution of cases”.*
25. Law No. 03/L-006 on Contested Procedure, respectively Article 10, paragraph 1 sets out: *“The court shall be bound to carry out proceedings without delay and minimize costs as well as to make impossible any misuse of the procedural rights set for the parties according to this law”.*
26. Article 441, paragraph 1 of the Law on Contested Procedure stipulates that: *“The main hearing session cannot be postponed indefinitely”.* Paragraph 2 of the same Article also stipulates that the: *“The main hearing session cannot be postponed for more than thirty (30) days [...]”.*

Legal analysis

27. The Complainant alleges that in her case, the court failed to ensure a regular, fair process within the reasonable legal time limit and the right to effective legal remedies, as provided for in Article 31 and 54 of the Constitution of the Republic of Kosovo, Article 6 paragraph 1 and Article 13 of ECHR, as well as Article 10, paragraph 1 of the LCP, given the fact that the court procedure in the matter of the Complainant is lasting for 13 years now.
28. The Ombudsperson recalls that the court is obliged to apply the court procedure, without any unreasonable delay. Based on information available, the Complainant did not contribute to the delay of the procedure with her actions or omissions, whereas delays without any final decision contributed to the violation of the rights for court protection, as guaranteed with Article 54 of the Constitution of the Republic of Kosovo.
29. The Ombudsperson notices that three Judgments have already been rendered for the matter of the Complainant by the Municipal Court, namely Basic Court in Prishtina, and

¹ Constitution of the Republic of Kosovo, Article 22

that the court of second instance returned the first two Judgments for re-adjudication and after rendering the third Judgment C.no.3344/12, dated 26 December 2013, the case is for the third time in the Court of Appeals (Ac.no. 1553/14).

30. The Ombudsperson recalls that the ECtHR case law has established that the length of proceedings shall be calculated from the initiation of court proceedings (*see Moldova and Others v. Romania Judgment, 12 July 2005, and Sienkiewicz v Poland Judgment, 30 September 2003*) until the case is completed and/or the judgment is executed (*see: Poitier v. France Judgment, 8 November 2005*). In the case of the Complainant, the court procedure was initiated on 16 July 2004.
31. In numerous occasions the ECtHR has emphasised that the right of the party to have its case decided within a reasonable time limit is an essential element of the right to a fair and impartial adjudication.
32. Also, the Ombudsperson noted that according to the case law of ECtHR, “the reasonableness” of the duration of procedures should be assessed by referring to the following criteria: the complexity of the case, conduct of applicant and relevant authorities and what was at risk for the applicant in the case in question (ECHR [Grand Chamber], *Frydlender v. France*, Application no. 30979/96 (2000), par. 43, citing ECHR [Grand Chamber], *Comingersoll S.A. v. Portugal*, Application no. 35382/97, par. 19 (2000), par. 19).
33. Additionally, the Ombudsperson, with regard to the behaviour of court authorities noted that since 16 July 2004, the first instance court has rendered in total three, whereby two of the judgments have been quashed by the second instance court, whereas as of 30th of April 2014 the case has been at the Court of Appeals and since then, despite the fact that the Complainant submitted several requests for acceleration of the case, the court did not take any procedural action. Therefore, the Ombudsperson concludes that this action of the court constitutes a failure to render a final decision on the case to the detriment of the Complainant and also a failure for court protection of human rights guaranteed under Article 54 of the Constitution of the Republic of Kosovo.
34. The ECtHR in the case of *Zimmerman and Steiner* against Switzerland stated that one of factors to be considered is the behaviour of the competent court and administrative authorities and that the court is responsible to organize its work in such a way that individuals are informed on the progress and results on their case within a reasonable time. (*Judgment Zimmerman and Steiner v. Switzerland, 13 July 1983*).
35. Therefore, in the concerned case, the Ombudsperson re-emphasizes that the relevant period to examine the case of the Complainant is considered 16 July 2004, the date when the claim was filed to the Municipal Court in Prishtina on handing over the immovable property in which the Complainant is in the capacity of the Respondent, the submission for expanding the claim in the Municipal Court in Prishtina and that the procedures are lasting for 13 years now.
36. Regarding the lack of effective legal remedies, i.e. the right to appeal in case of delays of the procedure, the Ombudsperson points out that ECtHR in its jurisprudence re-

emphasises that the requirements from Article 13 and the effect of this Article is to require that a provision of a domestic remedy deals with the substance of "*a contested complaint*" according to the Convention and allow the relevant relief (see, e.g. judgment in the case *Kaya v. Turkey*, on 19 February 1998). Any such means shall be effective both in practice and in law (see, e.g., Judgment in the case of *Ilhan v. Turkey*, 27 June 2000). Regarding the complaint for delays of the proceedings, the Ombudsperson recalls that "effective remedies" within the meaning of Article 13 should have been able to prevent the alleged violation or its continuation, or to provide adequate correction of any violation that had already occurred (see the abovementioned Judgment of *Kudla v. Poland*, paragraph 158).

37. Therefore, Article 13 provides an alternative in the meaning that a legal remedy shall be considered effective if the same can be used for accelerating the issuance of a decision by a court examining the case or to provide litigants with an appropriate address for delays already occurred (see *Kudla* *ibid.*, § 159: *Mifsud against France* (GC), no. 57220/00, § 17, ECHR 2002-VIII).
38. Instead, Article 13 directly reflects the obligation of the state to initially and primarily protect human rights through its legal system by providing, on this case, an additional guarantee for an individual to ensure that he or she effectively enjoys the rights. In this perspective, the right of an individual to a fair trial within a reasonable time will be less effective if there is no opportunity to first lodge this complaint with a local authority. Requirements of Article 13 support those of Article 6 (see the abovementioned Judgment of *Kudla vs. Poland*). Thus, Article 13 guarantees an effective remedy before a local authority for an alleged breach of the requirements of Article 6 to examine a case within a reasonable time.
39. Regarding the implementability of Article 13, the Ombudsperson recalls that ECtHR has frequently ascertained that the great delays in administration of justice in relation to the parties in dispute which have no tools for appeal within the local international system constitute a threat to the rule of law (see Judgment in the case *Bottazi v. Italy*, on 28 July 1999, and Judgment in the case *Di Mauro v. Italy*, on 28 July 1999). In the case of the Complainant, the matter becomes even more difficult when we consider that the case is awaiting adjudication in the Court of Appeals since 30 April 2014 and since then no session has taken place.

Conclusions of the Ombudsperson

40. Based on analysis of available information, evidences and facts, the Ombudsperson concludes that there is a violation of the right to a fair trial within a reasonable time limit, guaranteed by the aforementioned legal acts in the matter in question. In the specific case, the court process commenced by filing the claim on 16 July 2004 and continues until the date when this report was issued.
41. The Ombudsperson finds that in the specific case, the delay in carrying out court procedures has violated the right for fair and impartial trial.
42. Also, the procedural delay in the specific case has violated the right to judicial protection

of rights.

Therefore, the Ombudsperson, 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 Article 16, paragraph 8 of the Law on the Ombudsperson, according to which “The Ombudsperson may provide general recommendations on the functioning of the judicial system. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in case of delays of procedures”, based on the above-mentioned legal analysis, in the capacity of the referent, referring to the above arguments, in order to improve the work in the Kosovo judicial system

RECOMMENDS

the Court of Appeals

- *To undertake all relevant actions for reviewing and deciding on the case AC 1553/2014, without any further delay*

Pursuant to 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 matter in question”), we kindly ask to inform us of the actions taken regarding the matter in question.

Respectfully,

Hilmi Jashari
Ombudsperson