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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

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## **Report with Recommendations**

**C. No. 597/2014**

**ĐORĐE ARTINOVIĆ**

**Related to the length of judicial proceedings in the Basic Court in  
Prishtinë**

**To: Mrs. Afërdita Bytyçi, President  
Basic Court in Prishtinë**

**Mr. Nehat Idrizi, Presiding  
Kosovo Judicial Council**

**Prishtinë, 15 June 2017**

## **ACTIONS OF THE OMBUDSPERSON INSTITUTION**

1. On 23 December 2014, Đorđe Artinović (hereinafter „complainant“), lodged a complaint with the Ombudsperson Institution (further in the text „OI“), concerning length of the judicial proceedings in the Basic Court in Prishtinë –branch in Graçanicë, related to the attestation of property right and ownership of the immovable property, which has been illegally seized by the third party (hereinafter "defendants "). The complainant has initiated a lawsuit than at the Municipal Court- currently Basic Court in Prishtinë, on 14 July 2008 (C.nr.1383/08), concerning duration of the judicial proceedings.
2. On 29 December 2014, the complaint has been recorded at OI (No. of the complaint 597/2014).
3. On 21 January 2015 OI Legal advisor had a meeting with the judge of the branch of Basic Court in Graçanicë and requested information related with procedures undertaken or/and planned to be undertaken in order that the case is resolved within reasonable time frame. OI Legal adviser was informed that due to the deficiency of judges in this branch of the Court in Gracanice during 2014, complainant’s case has been transferred to the Basic Court in Prishtinë.
4. On 6 February 2015, the Ombudsperson delivered a letter to the president of the Basic Court in Prishtinë, through which he required to be informed as to what phase of treatment this case is in the Basic Court in Prishtinë.
5. On 19 February 2015, a reply has been served to the Ombudsperson from the President of the Basic Court on Prishtine through which he informed the Ombudsperson that the complainant’s case firstly has been processed in the branch of Basic Court in Graçanicë, where was recorded with relevant number. On 29 September 2011 a pre-trial session has been held and a ruling was rendered, according to which an expertise ought to be conducted by a geodesy expert with the intention of identifying and ascertaining of plots which are the subject of this case. As stated in the letter, delay in reviewing complainant’s case was due to deficiency of judges in the branch of this Court in Graçanicë as well as due to Court’s overload with priority cases. As per this, until present it was impossible to decide upon this case as well as upon similar cases due to the reason given. Furthermore, the response stated that complainant’s case, jointly with a certain number of other cases, on 28 of May 2013 was transferred from Branch of Basic Court in Gracanice in the Basic Court in Prishtine, in order to be assigned further to the judge for proceeding. On 12 February 2015, case judge addressed a Request to the Kosovo Property Agency (hereinafter KPA) in Prishtine for gaining data related to the issue of the subject property and upon provision of the response from KPA, as stated in the letter, will be continued with the case proceeding.
6. On 2 June 2015, the Ombudsperson addressed the second letter to the President of the Basic Court in Prishtinë, through which he requested to be informed as to what phase of treatment this case is in the Basic Court in Prishtinë.
7. On 17 June 2015, the Ombudsperson received a response from the Basic Court in Prishtina, stating that a court hearing was scheduled for 7 May 2015 regarding this case, but the case judge adjourned the hearing due to the absence of the complainant and his legal representative. The letter addressed to the Ombudsperson contained also the personal delivery

note of the invitation for scheduled hearing, which was signed on a regular basis on 17 April 2015, by an authorized attorney based on complainant's authorization.

8. On 7 August 2016, the OI Legal advisor sent an e-mail to the case judge and informed him that according to the complainant's allegations, no notification regarding the hearing set has been provided to him. The case judge was also informed that on 2 July 2015 the complainant revoked the authorization given to the legal representatives and handed the referral to the Court and requested to be invited in person to participate in hearings set in the future.

9. On 23 October 2015 the Ombudsperson delivered the third letter to the President of the Basic Court in Pristina, in which he reiterated that no concrete actions were taken in order to resolve the case within a reasonable time, especially considering the fact that this property dispute is ongoing more than eight years. The Ombudsperson requested to be provided with information on what phase of treatment is the complainant's case at the Basic Court in Prishtina.

10. On 19 November 2015, the OI Legal advisor at the meeting held with the case judge at the Basic Court in Prishtina was informed on the date set for the next judicial session on the complainant's case. Additionally, the OI Legal advisor stated that during last written correspondence, the Ombudsperson informed the Court about the withdrawal of the attorney's authorization by the complainant. In this regard, pre-trial judge stated that summon will be delivered on complainant's address in Gracanica in the future. The OI Legal advisor also discussed with the case judge on the procedures undertaken and planned as well as on the complainant's request to conduct an expertize by a geodesy expert in order to identify the cadastral plots which are subject to this case, since with the ruling rendered in 2013 an order has been issued for conducting an expertize, but access to the disputed property has been prohibited by the defendant.

11. On 1 December 2015 the complainant informed the OI Legal advisor that a hearing was held in the Basic Court in Pristina regarding his case and that the case judge issued an order on conducting an investigations by expert of geodesy on 12 December 2015 at the plot, with the aim of identifying the cadastral plot.

12. On 11 January 2016, OI Legal advisor was informed by the complainant that geodesy expertize services were postponed for 12 January 2016.

13. On 9 March 2016, the complainant informed the Legal Advisor that the previously-set expertize was not conducted. According to the complainant's claims and knowledge, the expert of geodesy services designated by the Court's instructions claimed that due to security reasons he could not carry out the inspection. The complainant has no other information about the actions taken in this case.

14. After this situation the Ombudsperson delivered two letters to the President of the Basic Court in Prishtinë, on 12 April and 18 May, requesting urgency in resolving of this case in the Basic Court in Prishtinë. But, no response has been provided to the Ombudsperson in the given correspondence.

15. Based on the written correspondence between the OI and the Basic Court in Prishtinë dated 21 June 2016 and 13 July 2016, the Ombudsperson was informed that, on the basis of

the judges' order for the an expertize, which should have been completed on January 12, 2016, the geodesy expert informed the Court, on 8 January 2016, regarding the provisional obstacle occurred in accomplishing the expertise because he was abroad. Furthermore in the letter was stated that on 25 January 2016, the Court has officially required from the Directorate for Cadaster, Geodesy and Property of the Municipality of Prishtina all available information regarding the disputed immovable property, which were sent to the Court on 1 February 2016. The judge of the proceedings stated in the letter also that *the subsequent field expertize inspection of the plot in the field is in the process, for which the parties will be timely notified*. Furthermore, it has been emphasized that the Court is guided by principles of working on priority cases and that the case judge is burdened with a large number of cases, thus it is impossible to resolve them within a reasonable time.

### **Summary of case facts**

Facts which have been ascertained up to this moment are given below:

16. The complainant is co-owner in a 1/3 of immovable ideal part in Prishtinë, in the area called Kodra e Trimave n. n., which is not physically divided and comprises from plots P 71914059-00077-1, with the surface of 3006 m2 and the plot P71914059-2 with the surface of 1420 m2. These immovable properties, according to complainant's claims, have been illegally misappropriated from the defendants after June 1999.

17. On 14 July 2008, the complainant lodged a lawsuit in the Basic Court in Prishtinë in order to attest the right on possession and ownership of the immovable property (P.br.1383 / 08).

18. After the lawsuit has been filed in the Basic Court in Prishtinë, on 29 of September 2011 a preparatory hearing was held and the case judge issued an order on appointment of an expert from geodesy in order to identify and verify the plots which are the subject to the case. However since that day no actions have been taken regarding complainant's case.

19. On 28 May 2013, complainant's case C.no.1383/08 was transferred from the branch of Basic Court in Graçanicë in the Basic Court in Prishtinë.

20. On 17 December 2014, the complainant disclosed to the Directorate for Cadaster, Geodesy and Property of the Municipality of Prishtina the request no. 011-095-279519 for attestation of the boundaries of the disputed immovable property.

21. On 23 December 2014, a notification has been served to the complainant by the Directorate for Cadaster, Geodesy and Property of the Municipality of Prishtina in which was stated that Directorate's experts visited the plots, subject of this dispute, and ascertained that houses have been built in disputed cadastral plots, owners of which have stated that they bought the property 45 years ago and that they have been living there since then.

22. After many interventions addressed to the President of the Basic Court in Prishtina by the complainant, no further proceeding has been ongoing regarding this case.

23. On 23 December 2014, the complainant submitted a complaint in OI due to duration of the judicial procedure in the Basic Court in Prishtinë, when the case has been admitted and recorded with the number 597/2014.

24. On 12 February 2015, after the case of the complainant has been assigned for further proceeding, the case judge in the Basic Court in Pristina initiated certain procedural actions, actually sent a Request to the KPA in Pristina through which he requested information about the property, subject of this case.
25. On 17 June 2015, the Ombudsperson's Legal Adviser informed the complainant about the letter addressed to the Ombudsperson by the Basic Court in Pristina, which points out that on 7 May 2015, the court adjourned the hearing due to complainant nonattendance.
26. On 2 June 2015, the authorization granted to the legal representatives has been withdrawn by the complainant because they failed to inform the complainant of the scheduled date of hearing session as well as did not attend the same in the Basic Court in Prishtina.
27. On 26 November 2015, at the scheduled session in the Basic Court in Pristina, the judge of the procedure issued an order through which he requested that the geodesy service expert conduct on-site inspection in order of attestation of disputed cadastral plots.
28. On 8 January 2016, the geodesy expert informed the court that he was temporarily prevented from conducting the expertise because of the fact that he was abroad.
29. On 25 January 2016, the Basic Court officially requested from the Directorate for Cadaster, Geodesy and Property of the Municipality of Prishtina all available information about the disputed immovable property, which has been delivered to the Court on 1 February 2016.
30. Until the day this Report has been published, the Basic Court in Prishtina did not issue any decision regarding the complainant's case C.nr. 1383/08.

## RELEVANT INSTRUMENTS

31. Law on Contested Procedure No.03/L-006 and the Law on Amending and Supplementing the Law No.03/L-006 on Contested Procedure No.04/L-118 (hereinafter "Law on Contested Procedure") in Article 10 reads:

*"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."*

32. European Convention on Protection of Human Rights and Fundamental Freedoms (further in the text "European Convention on Human Rights" or "Convention"), is an integral part of the Constitution of the Republic of Kosovo, because Article 22.2 of the Constitution guarantees the right of direct application of the Convention and its Protocols, guaranteed to all its citizens with the Constitution of the Republic of Kosovo.

33. European Convention on Human Rights (4 November 1950) in Article 6, paragraph 1 stipulates that:

*“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]”*

34. European Convention on Human Rights in its Article 13 stipulates:

*“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.”*

## **ANALYSES**

### **The right on a regular process within a reasonable time: Article 6 of the European Convention on Human Rights**

35. The complainant appeals on duration of the procedure before the Basic Court in Prishtina. He complains on the fact that he is awaiting the first instance judgment of the Basic Court in Prishtina almost 8 years. The complainant complains that the case has been pending for a long time and that this constitutes a violation of his right to a fair hearing within a reasonable time, guaranteed by paragraph 1 of Article 6 of the European Convention on Human Rights, which stipulates:

*“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]”*

36. The same principle can be found in Article 10 of the contested procedure, which states that:

*“The court shall be bound to carry out proceedings without delay [...]”*

37. Firstly, the Ombudsperson notes that civil disputes concerning attestation of property rights and ownership of immovable property are considered civil rights within the meaning of Article 6 of the Convention, which is therefore applicable in the proceedings of this.

38. The Ombudsperson recalls that the case law of the European Court found that in the case involving determination of a civil right, the duration of the proceedings is usually calculated from the time of initiation of the judicial proceedings (see, for example, *Sienkiewicz v. Poland*, judgment of 30 September 2003) until the case is finally resolved and / or the judgment is enforced (see *Vocaturo v. Italy (II)* Judgment of 24 May 1991).

39. The Ombudsperson notes that the proceedings initiated previously in the Municipal Court, currently the Basic Court in Pristina on 14 July 2008, when the lawsuit has been lodged against the defendants, still continue. Therefore, first instance proceedings are lasting almost 8 years.

40. The Ombudsperson recalls that reasonability of the lengthy proceedings should be assessed in the light of the particular circumstances of the case and taking in consideration the criteria established by the case law, particularly when it comes to the complexity of the case, the conduct of parties and authorities working on this case as well as what is best interests of the complainant (see *Case Gollner v. Austria*, judgment of 17 January 2002).

41. The Ombudsperson pointed out that complainant's case was not complex and that the conduct of the complainant did not contribute on delay.

42. As per procedures of judicial bodies, the Ombudsperson finds that according to response of the Basic Court in Prishtina, the delay of case review occurred due to the deficiency of judges and due to the fact that the Court is overloaded with huge number of priority cases. The Basic Court in Prishtina in its letter also stated that until presently it was impossible to decide on complainant's case as well as on other similar cases as well (see paragraph 5 above).

43. The Ombudsperson recalls that in the above mentioned case *Vocaturu vs Italy*, the Italian Government stated that the reason for the delay in the procedure was Court's overburden with cases. In this case, the Court considers that Article 6 paragraph 1 imposes to the States the liability to organize their legal systems in such a way that Courts meet requirements deriving from the Convention. Nevertheless, temporary gathering of unsolved cases does not involve states' responsibility, provided that timely actions are undertaken and coping with situation of this nature (see *Milas versus Italy*, judgment of 25 June 1987 also see *Foti and Others vs Italy*, judgment of 10 December 1982).

44. Even if we take in consideration the fact that the judiciary has problems with big number of unsolved cases due to deficiency of judges, responsible courts still are obliged to ensure justice on time. In this regard, the Ombudsperson reiterates that Article 10 of the Law on Contested Procedure, states that court "... shall be bound to carry out proceedings without unnecessary delays [...]."

45. Since 29 September 2011, when preliminary session has been held and court's order has been issued related to expertize conducting by on expert of this field with the intention of attestation and determination of the plots, subject of this complaint, till today, the Basic Court in Prishtina did not undertake concrete measures related to the complainant's case. Thus, this case did not get due attention by the court, as Article 6, paragraph 1 of the Convention as well as Article 10 of the Law on Contested Procedure require. The case in the Basic Court in Prishtine was not complex and could have been easily solved without the need of ensuring additional evidence, set a hearing or undertake other actions that would contribute to a legitimate delay in review of the case. Furthermore, the Ombudsperson notes that the case was of a great importance for the complainant, who lives as displaced person and receives his pension as the only income, which suffices solely for his basic needs.

46. Referred to what has been stated above, the Ombudsperson ascertains that failure of authorities to recruit appropriate number of judges (see above paragraphs 5 and 13) who would deal with backlog of cases, cannot be considered valuable excuse for such delays in the Basic Court in Prishtine. The Ombudsperson notes that this is a responsibility of the Government of Kosovo and the Kosovo Judicial Council to guarantee timely assignment of civil disputes through appointment of appropriate number of judges or through other appropriate means.

## **FINDINGS OF THE OMBUDSPERSON**

47. The Ombudsperson finds that because of the reason given above it has come to violation of the right on a fair hearing within reasonable time guaranteed with paragraph 1 of Article 6 of the European Convention on Human Rights.

## **The right on effective solution: Article 13 of the European Convention on Human Rights.**

48. The complainant lodged a complaint in the absence of an effective remedy in the meaning of the infringement of his right to a regular process within reasonable time frame, guaranteed by the European Convention on Human Rights, which comprises violation of his right for an effective solution according to Article 13 of the Convention which reads:

*„ 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 “.*

49. As per the enforceability of the Article 13, the Ombudsperson reiterates that the European Court of Human Rights has repeatedly emphasized that excessive delays in the administration of justice in the aspect when no available legal remedy is served to the party, constitutes a threat to the rule of law within the domestic legal system (see, for example, *Bottazzi versus Italy*, judgment of 28 July 1999 and *Di Mauro versus Italy*, Judgment of 28 July 1999). The Ombudsperson also recalls that although the European Court of Human Rights considers that the requirements for an effective legal remedy should be interpreted in the sense that a remedy can be effective in the aspect of limited scope of requesting basic assistance in a given dispute ( *Klass and Others v. Germany*, judgment of 6 September 1978), the same considered as follows:

*“As regards an alleged failure to ensure trial within a reasonable time [...] however, no such inherent qualification on the scope of Article 13 can be discerned. On the contrary, the place of Article 13 in the scheme of human rights protection set up by the Convention would argue in favor of implied restrictions of Article 13 being kept to a minimum. (Kudla v. Poland, Judgment of 26 October 2000). ”,*

50. In this way, Article 13, giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority. Article 13 is to be seen as reinforcing those of Article 6 (see the aforementioned judgment, *Kudla*). Due to this, Article 13 guarantees an effective remedy before the national authorities for the alleged violation of the provisions of Article 6 for accomplishment of the case within a reasonable time. Since this case deals with the complaint regarding the length of the proceedings, Article 13 of the Convention is applicable.

51. In the light of the provisions of Article 13 of the European Convention, the Ombudsperson reiterates that the impact of this Article is to request provision of a domestic remedy to deal with the issue of "disputed complaint" under the Convention and to provide the appropriate financial remuneration (*Kaya v. Turkey* judgment of 19 February 1998). Any such remedy should be effective in practice and in law (*Ilhan v. Turkey* Judgment of 27 June 2000). Regarding the complaint concerning the length of the proceedings, the Ombudsperson reminds that the "effective legal remedy" in the meaning of Article 13 of the Convention should be capable to prevent the alleged violation, or continuation of the same, or provision

of adequate remuneration for any violation that had already occurred (see the aforementioned judgment Kudla).

52. The Ombudsperson notes that no legal method is at place through which the complainant in the current case could have complained for the lengthy proceedings with the possibility of achieving preventive or compensatory assistance.

### **RECOMMENDATIONS OF THE OMBUDSPERSON**

Based on these ascertainties and in compliance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 16, paragraph 4 and 8 of the Law No. 05/L-019 on the Ombudsperson, the Ombudsperson recommends to the:

#### ***Basic Court in Prishtinë***

- ***Given the former delays, action to be undertaken towards reviewing and adjudicating on the complainant's case without further delay.***

#### ***Kosovo Judicial Council***

1. ***To initiate compiling of legal instrument which would constitute effective legal remedy in the meaning of Article 13 of the European Convention on Human Rights, which ensures lenience in the form of preventive or compensatory related to the complaints for lengthy proceedings.***
- 2.

In conformity with Article 132, paragraph 3 of 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 Ombudsperson (“Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, ... must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”), You are kindly asked to inform us on actions to be undertaken about this issue.

Respectfully submitted,

Hilmi Jashari  
Ombudsperson

