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**REPORT WITH RECOMMENDATION  
OF THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO**

**A.nr. 352/2019**

**Zylqyfli Bajçinca and others**

**against**

**Kosovo Company Energy Distribution and Supply Services J.S.C**

*Regarding the non-implementation of the final Decision No.CP.nr.3086/16, dated 8<sup>th</sup> of June 2018 of the Basic Court in Prishtina, upheld by the Decision No. AC No.3208/18, dated 12<sup>th</sup> of November 2018, by the Court of Appeals*

To: Mr. George Karagutoff, General Director  
Kosovo Company Energy Distribution and Supply Services J.S.C.

Copy: Ms. Duda Balje, Chairperson  
Committee on Human Rights, Gender Equality, Missing Persons and Petitions

Ms. Afërdita Bytyçi, President  
Basic Court in Prishtina

Mr. Valdrin Lluka, Minister  
Ministry of Economic Development

Prishtina, on 6<sup>th</sup> of May 2019

## Purpose of the Report

1. This report is based on the individual complaint filed by Mr. Zylqyfli Bajçinca and others (hereinafter *the complainants*), substantiated by the facts and proves submitted by the complainants, and the case files regarding the non-implementation of the final Decision CP.no.3086/2016, which the Ombudsperson obtained from the Basic Court in Prishtina.
2. The purpose of this report is to draw the attention of the Kosovo Company Energy Distribution and Supply Services J.S.C (hereinafter KEDS) regarding the necessity of taking relevant actions to enforce, without any further delay, the final Decision CP.nr.3086/2016 issued by the Basic Court in Prishtina.

## Legal grounds

According to the Law No. 05/L-019 on the Ombudsperson, the Ombudsperson has, inter alia, the following competences and responsibilities:

- *“The Ombudsperson has the power to investigate, (...)on its own initiative (ex officio) (...)there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights.”* (Article 16, par. 4).
- *“The Ombudsperson may provide general recommendations on the functioning of the judicial system.”* (Article 16, par. 8).
- *“to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them.”* (Article 18, par. 1, nënpar.1).
- *“to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases.”* (Article 18, par. 1, subpar. 2).
- *“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, par. 1, subpar. 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, par. 1, subpar. 5).
- *“to publish notifications, opinions, recommendations, proposals and his/her own reports.”* (Article 18, par. 1, subpar. 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, par. 1, subpar. 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, par. 1, subpar. 8).

- *“to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation.”* (Article 18, par. 1, subpar. 9).

Upon submission of this report to competent institutions and its publication in the media, the Ombudsperson aims to fulfil these legal responsibilities.

### **Description of the case**

Based on the documentation and information available to the Ombudsperson, the facts can be summarized as follows:

3. On 27<sup>th</sup> of September 2016, complainants received the notification and Decision on termination of Employment contract by their employer KEDS in Prishtina
4. On 29<sup>th</sup> of September 2016, the Federation of Independent Unions ElektroKosova, on behalf of complainants dismissed from work, lodged a complaint (No. 37-00194/16A) to the Labour Inspectorate against the decisions for termination of employment contracts by KEDS.
5. On 26<sup>th</sup> of October 2016, the Labour Inspectorate rendered a decision according to which the Complaint (No. 37-00194/16-A) of the Federation of Independent Union ElektroKosova, submitted to the Labour Inspectorate on 29<sup>th</sup> of September 2016, was found as grounded and the employer (KEDS) with headquarters in Prishtina, was obliged to annul the decisions on termination of employment relationship for the dismissed complainants.
6. KEDS filed a complaint, within the legal time limit, before the Executive Agency of the Labour Inspectorate against the Decision (No. 37-00194/16-A) of the Labour Inspectorate.
7. On 2<sup>nd</sup> of December 2016, the Executive Agency of the Labour Inspectorate issued the Decision (No. 156/2016), whereby rejected the appeal filed by KEDS and upheld Decision (No. 37-00194/16-A) of the Labour Inspectorate.
8. On 28<sup>th</sup> of December 2016, KEDS submitted a lawsuit (A.No.2034/16) before the Basic Court in Prishtina (BCP) – Department on Administrative Matters in an administrative dispute against the Ministry of Labour and Social Welfare, namely against the Executive Agency of the Labour Inspectorate (MLSW-EBLI), whereby requested to annul the Decision (No. 156/2016) of MLSW-EBLI, dated 2 December 2016, and requested to postpone the execution of aforementioned decision.
9. On 30<sup>th</sup> of December 2016, the BCP-Department for Administrative Matters, with its Decision (A.nr.2034/2016) rejected the proposing party’s-KEDS- as ungrounded, who requested the postponement of the execution of decision.
10. Within the legal time limit, the proposing party – KEDS- has submitted an appeal before the Court of Appeals (CA) against the Decision (A. No. 2034/2016) of BCP.
11. On 30<sup>th</sup> of December 2016, the Labour Inspectorate has issued the Decision (no. 37/00194/16-A) on imposing the punitive measure against KEDS for not executing the Decision (Nr. 37-00194/16-A).
12. On 16<sup>th</sup> of February 2017, the CA has issued a Decision whereby rejected as ungrounded the complaint of the proposing party KEDS regarding the delay in the execution of the

Decision (No. 37-00194/16-A) and upheld the Decision (A. No. 2034/2016) dated 30 December 2016 of the BCP – Department on Administrative Matters.

13. On 16<sup>th</sup> of February 2017, pursuant to the execution proposal by the Federation of Independent Union ElektroKosova, made on behalf of the complainants, and based on the enforcement document – Decision (Nr. 37-00194/2016-A) dated 26<sup>th</sup> of October 2016 of the Executive Body of the Labour Inspectorate, the BCP has issued the Decision (CP.no.3086/16) whereby has determined the enforcement against the debtor -KEDS- and forced the same to repeal the decisions for termination of employment against the creditors.
14. On 2<sup>nd</sup> of March 2017, the debtor has submitted the reverse claim to BCP against the Decision (CP. No. 3086/16) dated 16<sup>th</sup> of February 2017.
15. On 26<sup>th</sup> of May 2017, the BCP has issued the Decision (CP.No.3086/16) and rejected the reverse of the debtor as ungrounded.
16. The debtor, KEDS, has submitted, within the legal time limit, an appeal to the CA against the Decision (CP.nr.3086/16) of the BCP.
17. On 22<sup>nd</sup> November 2017, the CA has rendered a Decision (Ac.nr.2935/17), which has upheld the complaint of the debtor – KEDS - and has annulled the Decision (CP.no.3086/16) of the BCP dated 26<sup>th</sup> of May 2017 and the case was returned to the court for further proceedings.
18. On 8<sup>th</sup> of June 2018, the BCP has issued a Decision (CP. No. 3086/16) whereby the reverse filed by the enforcement debtor was partially approved.
19. Within the legal time limit, the debtor KEDS has lodged an appeal before the CA against the Decision (CP.nr. 3086/16) of the BCP.
20. On 12<sup>th</sup> of November 2018, the CA has issued the Decision (AC.no.3208/18) rejecting the appeal of the debtor - KEDS - as ungrounded and upheld the Decision (CP.nr. 3086/16) of the BCP.
21. On 20<sup>th</sup> of December 2018, the BCP has issued an execution order for the Decision (CP.no. 3086/16) of the BCP and requested KEDS to, within three days, inform the court of having acted in compliance with this order.

### **Legal instruments applicable in the Republic of Kosovo**

22. Article 7 of the Constitution [Values], paragraph a defines: “*The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.*”
23. Article 31 of the Constitution [Right to Fair and Impartial Trial], paragraph 1, defines: “*Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*”
24. Article 54 of the Constitution [Judicial Protection of Rights] 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.*”

25. Article 22 of the Constitution, whereby international human rights instruments are listed: *“are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions”*. Amidst these international instruments, the Ombudsperson refers to the European Convention on Human Rights and Fundamental Freedoms and its Protocols (ECHR).
26. Article 53 of the Constitution: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*
27. Article 6 of the ECHR [Right to a fair trial], paragraph 1, defines: *“the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*
28. Article 13 of the ECHR defines: *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have the right to an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*
29. Law no. 2002/9 on Labour Inspectorate, as amended by the Law No. 03/L-017 on Amending and Supplementing the Law no. 2002/9 on Labour Inspectorate, in Article 2, paragraph a, provides:
- “The Labour Inspectorate as an Executive Agency of the Ministry of Labour and Social Welfare oversees the implementation of the Law on Labour, the Law on Safety at Work, Protection of Employees’ Health and Work Environment, as well as other applicable provisions in the field of employment and protection at work.”*
- And in Article 6, paragraph 6.4 defines:
- “The complaint filed against a decision of the Labour Inspectorate does not postpone the execution of the decision.”*
30. Law no. 04 / L-139 on Enforcement Procedure, Article 22, paragraph 1.2, *foresees the enforcement decision awarded in administrative procedure*. Article 23, paragraph 2, defines: *“The decision of administrative body, according to this law, is considered decision and conclusion reached in administrative proceedings by the administrative body or service or by the legal person charged with public authorizations, while administrative settlement is considered the achieved settlement in administrative procedure before the body or service, respectively such legal person, if it has to do with obligation in cash and if the law does not provide otherwise”*.

### **Analysis and assessment by the Ombudsperson**

31. The Ombudsperson's assessments and findings on this issue are based on the rights guaranteed by the Constitution of the Republic of Kosovo, laws, the European Convention on Human Rights and Fundamental Freedoms and its Protocols, as well as the practice of the European Court of Human Rights.
32. The Law No. 2002/9 on Labour Inspectorate, as amended by the Law No. 03/L-017 on amending and supplementing the Law No. 2002/9 on Labour Inspectorate, shall determine the Labour Inspectorate as an independent body of state administration acting within the Ministry of Labour and Social Welfare and as the only agency under the executive of the Republic of Kosovo to monitor the implementation of legislation in the



field of labour relations, in a comprehensive manner, safety and health at work. Thus, all decisions taken by this Institution on issues under its jurisdiction produce legal effects for other relevant institutions.

33. In this regard, the Ombudsperson notes that the execution of a final and binding administrative decision should be considered as an inseparable and integral part of a 'trial' for purposes of the right to an impartial trial and should be implemented within a reasonable time. This is a state obligation and the excessive delay in the execution of a final and binding decision, or the failure to undertake measures for its execution, constitutes a violation of the right to an impartial trial and the right to an effective remedy.
34. The Ombudsperson recalls that KEDS acts as a legal entity, which deals with the distribution and sale of electricity in Kosovo, and as a private company exercising a public authorization in the Republic of Kosovo is obliged to adhere to applicable laws.
35. Despite the fact that the Labour Inspectorate has rendered a final and binding decision obliging KEDS to repeal decisions on termination of employment relationships for the dismissed complainants within eight days, KEDS has failed to enforce this decision.
36. Since the Labour Inspectorate's decision was not voluntarily implemented by KEDS, the complainants addressed the Basic Court in Prishtina (BCP) with the proposal to execute the Labour Inspectorate's decision and, based on their proposal, the Court has rendered a final decision, which is not being implemented yet.
37. In this regard, the Ombudsperson points out that it would be unavailing if the legal system allows a final court decision to remain inoperative to the detriment of complainants. Thus, failure to enforce court decisions produces effects leading to situations contradictory to the principle of the rule of law, a principle which the authorities of the Republic of Kosovo are obliged to adhere to.<sup>1</sup>
38. The right to an impartial trial would remain only an illusion if the final decision of a court or tribunal, including administrative decisions, fail to be executed (*Czernin v Czech Republic*).<sup>2</sup>
39. In addition to delayed court proceedings, the ECtHR ascertains that the delay in execution of a decision issued may also constitute a violation of the right to a trial within a reasonable time as guaranteed by Article 6 of the ECHR. For instance, the ECtHR ascertains: "*The right to court as covered by Article 6 would be illusory if a state's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party*". It also ascertains: "*Effective access to court includes the right to the execution of a court decision without unreasonable delays*".<sup>3</sup>
40. The Ombudsperson recalls that the competent authorities have a positive obligation to establish a system for enforcing decisions that is effective both in the legal and practical sense ensuring their implementation without undue delays (see *Pecevi v. the Former Yugoslav Republic of Macedonia, no. 21839/03, 6 November 2008*).

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<sup>1</sup> Article 7, paragraph 1 of the Constitution of the Republic of Kosovo; see also the ECtHR's case of *Romashov v. Ukraine*, no. 67534/01, Judgment of 25 July 2004).

<sup>2</sup> ECHR Communiqué 823/1998, KB Dok CCPR/C/83/D/823/1998 (2005), paragraph 7.5.

<sup>3</sup> See *Yuriy Nikolayevich Ivanov v. Ukraine*, GJEDNJ, Application No.40450/04, 15 October 2009, par. 51, citing *Hornsby v. Greece*, ECtHR, Application No.18357/91, 19 March 1997, par. 40 and *immobiliare saffi v. Italy*, Application No.22774/93, par. 66

41. With regard to the applicability of Article 13, the Ombudsperson calls to mind that ECtHR has repeatedly emphasized that major delays in the administration of justice regarding disputing parties with no effective remedy constitute a threat to the rule of law in the domestic legal order (see Judgment of 28 July 1999 in the case of *Bottazi v Italy* and Judgment of 28 July 1999 in the case of *Di Mauro v Italy*).
42. The Ombudsman estimates that the *effective legal remedy*, in view of Article 13 of the ECHR, should enable prevention of the alleged violation or its continuation.
43. The Ombudsperson stresses that the right to effective legal remedies is guaranteed by the Constitution and local laws and therefore this right should be practically applied and adhered to by all, including KEDS.

## Conclusions

44. Based on the assessment above, the Ombudsperson stipulates that failure to execute the final court decision constitutes a violation of the human rights/complainants' right to effective remedies guaranteed by the aforementioned legal acts, since KEDS has delayed the enforcement of the complainants' case, where the proceedings have been initiated since 29 September 2016 and have not yet been completed until the day of issuance of this report.
45. The Ombudsperson finds that the excessive delay and non-implementation of the respective decision is in conflict with the right to a fair trial within a reasonable time, guaranteed by Articles 31 and 54 of the Constitution of the Republic of Kosovo and Articles 6 and 13 of the ECHR.

Hence, the Ombudsperson, pursuant to 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 4, of the Law on Ombudsperson: “*The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights*”; based on the above legal analysis, in the capacity of the recommender, referring to the aforementioned arguments,

## RECOMMENDS

KEDS - Kosovo Electricity Distribution and Supply Company J.S.C shall:

- **Undertake immediate actions to execute the final Decision (CP.no.3086/16) of the Basic Court in Prishtina dated 8 June 2018, confirmed by the Court of Appeals with the Decision AC.no.3208/18 dated 12 November 2018, on the case of Zylqyfli Bajcinca and others.**

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 the Law on 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 issue in question”), we kindly ask you to inform us of the actions undertaken regarding the matter in question.*

Respectfully,

Hilmi Jashari  
Ombudsperson