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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

Report

Complaint No. 66/2015

**Regarding length of judicial proceedings before the Basic Court of
Prishtinë/Priština, branch in Graçanicë/Gračanica**

NOVICA FILIPOVIĆ

- To:
- Mr. Hamdi Ibrahim, President of the Basic Court in Prishtinë/Priština,
 - Mr. Isa Mustafa, Prime Minister of the Republic of Kosovo,
 - Mr. Enver Peci, presiding of Kosovo Judicial Council

The Ombudsperson, pursuant to Article 135, para. 3 of the Constitution of Republic of Kosovo, Article 16, para. 8 and Article 27 of the Law on Ombudsperson No. 05/L-019, on 6 November 2015 published the following report:

PROCEEDINGS BEFORE THE OMBUDSPERSON

1. On 05 February 2015, Mr. Novica Filipović (hereinafter “complainant”) has submitted a complaint to the Ombudsperson Institution (hereinafter "OI") regarding the length of contentious procedures in work environment against Kosovo Police (hereinafter “defendant”). The complainant has initiated court proceedings with previously Municipal Court in Prishtinë/Priština, actually Basic Court in Prishtinë/Priština branch in Graçanicë/Gračanica, on 25 May 2009, and the same was supplemented and amended on 03 February 2011 (P.1084/09). Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica has not delivered a judgement in the first instance for the complainant’s case. Complainant states that the Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica intentionally delays to act regarding his case.
2. On 5 February 2015, the complaint was registered before the OI (Complaint No. 66/2015).
3. On 12 February 2015, the Ombudsperson representative visited the case judge and requested from him, that due to the nature of the dispute, to do everything possible to review the case promptly and ensure timely issuance of the judgement. During the meeting the case judge explained to the OI legal adviser that complainant’s case will be treated with priority and that he will start the work on this case as soon as he gets approval from the Kosovo Judicial Council to continue the work in the Court of Gračanica. Actually, his engagement with this Court has expired on 31 December 2014 and since then he cannot work and set the hearings, since no official notification or confirmation for continuation of appointment in Graçanicë/Gračanica branch Court has been delivered to him. Until this formal condition is fulfilled by the Kosovo Council he is unable to continue his work in this Court.
4. On 15 May 2015, the Ombudsperson representative visited the Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica and was informed that the Court is out of function due to the fact that the previous judge was not appointed on the post neither has any other judge been appointed for this position in Graçanicë/Gračanica branch of Basic Court.
5. On 29 July 2015, the Ombudsperson sent a letter to the President of the Basic Court in Prishtinë/Priština asking him to provide the Ombudsperson with information about the actions taken/ or planned to be taken with the purpose to proceed with the complainant’s case within a reasonable timeframe.
6. On 11 August 2015, the Ombudsperson received a response from the case judge of the Basic Court of the Graçanicë/Gračanica branch, providing the information that the case has been assigned to a judge in 2013 when three hearing have been set and that the final action as per this has been taken on 26 November 2013. After this Basic Court, branch in Graçanicë/Gračanica did not take any other action concerning the case until appointment of the judge in this court on 1st of June 2015. Through the same letter the OI was informed that this court has several hundred cases which have

been assigned to the judge and that he will do everything to start reviewing complainant case as soon as he can.

7. On 05 October 2015, the complainant informed the Ombudsperson Institution that the Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica did not set any session regarding his case.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

The facts, insofar as they can be established, may be summarised as follows:

8. On 25 May 2009, the complainant has lodged complaint with the Municipal Court in Prishtinë/Priština, branch in Graçanicë/Gračanica against Kosovo Police due to unlawful dismissal from the work and the same complaint was amended and supplemented on February the 3rd, 2011 due to compensation of personal incomes from employment relationship (P.br. 1084/09). After submission of the complaint, the branch of Basic Court in Graçanicë/Gračanica up to 26 November 2013 held only three sessions and since then, the mentioned court did not take any other action regarding complainant case.
9. The complainant has previously filed a claim with the OI, on 8 February 2011, due to the decision of Police director and Police Inspectorate of Kosovo to terminate working relation of the complainant who held a position of a sergeant in the Department for cooperation with communities in Prishtinë/Priština, while later was transferred in Obiliq/Obilić. The complaint was admitted by OI and recorded with the number 25/2011.
10. On 11 July 2011 the Ombudsperson in the course of the procedure ascertained that Kosovo Police with its deeds, according to the Complainant, in the given case has violated complainant's right for work and exercising of profession through which the right to work is guaranteed in sense of constitutional category (OI Report Novica Filipović against Kosovo Police, published on 11 July 2011). Then the Ombudsperson found that the complainant was unlawfully dismissed from the work and recommended to the Ministry of Internal Affairs of Kosovo to undertake necessary steps and without further delays to protect complainant's rights, as per regarding the right to work. But, the Ministry of Internal Affairs of Kosovo never responded to OI Report nor has implement recommendations provided by Ombudsperson.
11. After the above mentioned Report was published, OI proceeded complainant's case to the Municipal Court in Prishtinë/Priština, branch in Graçanicë/Gračanica. After the given Court set two trial sessions for the complainant case, on 01 August 2013 the Ombudsperson decided to close the case no. 25/2011. Upon closure of complainant's case against Kosovo Police, the competent court in Graçanicë/Gračanica after

receiving financial expert report on 26 November 2013, suspended the work on complainant's case in above mentioned court.

12. Within the period from January of 2014 up to February of 2015 the complainant several times has sent written urgencies to the Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica, but resulted without any success.
13. Till the date this report has been published, Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica, even six years after the complaint has been lodged, did not issue judgement regarding the complainant's case.

II. RELEVANT LAW INSTRUMENTS

14. Article 1 of the Code on Civil Procedure No. 03/L-006 and the Law on amending and supplementing the Code on Civil Procedure 04/L-118 (further in the text "the Code on Civil Procedure") reads , in pertinent part:

„The Code on Civil procedure defines the rules of procedure on the basis of which the courts examine and settle civil disputes of natural and legal persons, unless otherwise is provided by a particular law”.

15. Article 10 point 1 of the Code on Civil Procedure 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.”

16. Article 475 of the Code on Civil Procedure reads:

„ In contentious procedures in work environment, especially is setting the deadlines and court sessions, the court will always have in mind that these cases need to be solved as soon as possible. [...]

17. Paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) (hereinafter “the European Convention on Human Rights” or “the Convention”) reads, in pertinent part:

„ In the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing within a reasonable time [...].“

18. Article 13 of the European Convention on Human Rights 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..“

ANALYSES

The right to a fair hearing within a reasonable time: Article 6. of the European Convention on Human Rights

19. The complainant has submitted a complaint regarding the length of the civil court proceeding with previously Municipal Court, now Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica . He complains that he is waiting for first instance judgement of the Basic Court for more than 6 years. Since the above given Court, after four years of inaction on complainant's case, set three sessions in 2013 and two years have passed since this decision taken and the court did not undertake any procedural step regarding the case, which according to the nature itself requests urgency in action, as it is about a contentious procedures in work environment. The complainant complains that the case has remained unsolved for a relatively long time and specifically that such conduct is in violation of his right to a fair hearing within reasonable time, as guaranteed under para.1 of Article 6 of the European Convention on Human Rights, which states:

„ In the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing within a reasonable time, [...].“

20. The same principle can also be found in Article 10 of the Code on Civil Procedure, which says:

[unofficial translation]

“The court shall conduct the proceedings without any unnecessary delay [...].”

21. At the outset, the Ombudsperson notes that contentious procedures in work environment are considered as civil rights as per the Article 6 of the Convention, which is, therefore applicable to the proceedings at issue in the instant case.
22. The Ombudsperson recalls that the European Court of Human Rights has established that in a case involving the determination of a civil right, the length of proceedings is normally calculated from the time of the initiation of the court proceedings (see *Sienkiewicz v. Poland*, judgment of 30 September 2003) to the time when the case is finally determined and/or the judgment has been executed (see *Vocaturo v. Italy* (II), judgment of 24 May 1991).
23. The Ombudsperson notices that the procedures initiated at that time with the Municipal Court, currently with the Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica on 25 May 2009 continues until today and that more than six years in the first judicial instance.
24. The Ombudsperson recalls that reasonableness of the length of proceedings must be assessed in the lights of the particular circumstances, regarding the criteria laid down by legal practice, in particular the complexity of the case, the conduct of the complainant and the authorities dealing with it, as well as what was at stake for the complainant (see *Gollner v. Austria*, judgment of 17 January 2002).

25. The Ombudsperson observes that complainant's case does not appear to be very complex, and the complainant's conduct also does not appear to have contributed to any delay.
26. With respect to the conduct of the judicial authorities, the Ombudsperson notes that according to the notification obtained from the Basic Court, branch in Graçanicë/Gračanica, the delay in reviewing the complainant's case was due to dysfunctionality of the Basic Court in Graçanicë/Gračanica, actually due to not appointment of the judges in this branch as well as due to backlog of the case judge (see above paragraph 3, 4 and 6 *supra*).
27. The Ombudsperson recalls that in the above-mentioned case *Vocaturro v. Italy*, the Italian Government pleaded that the reason for the delay in the proceedings was the backlog of cases in the relevant courts. In that case, the Court held that Article 6, para. 1 imposes on States the duty to organize their legal systems in such a way their courts can meet the Convention requirements. Nonetheless, a temporary backlog of work does not involve liability on the part of States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind (see *Milasi v. Italy*, judgement of 25 June 1987. See also, *Foti and others v. Italy*, judgment of 10 December 1982).
28. Taking in consideration the conduct of judicial bodies, the Ombudsperson observes that from 26 November 2013 until now, actually nearly two years the branch of the Basic Court in Graçanicë/Gračanica did not undertake any action regarding complainant case. The Ombudsperson notes that regardless that Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica was not functional for a certain period of time prior and after 2013, the Basic Court in Prishtinë/Priština should have taken certain actions in the way that cases which request urgency in resolving, as is the complainant 's case, decide within reasonable timeframe. The fact of court's inactivity has created *status quo* situation, which has lasted for 6 years from the time the complainant has lodged a claim in the court and which has remained actually on the same position as it was in 2009 when his complain has been filed with the Court with intention of protecting his rights in the field of labor relationship.
29. Even taking into account the fact that the judiciary is facing huge number of unresolved cases due to the lack of judges, the responsible courts still have the obligation to provide justice in a timely manner. In this regard, the Ombudsperson also recalls that Article 10 of the Code on Civil Procedure states that courts "shall conduct the proceedings without any unnecessary delay".
30. In the time since 26 November 2013 until today's date, the branch of Basic Court in Graçanicë/Gračanica does not appear to have taken any action in the matter. It thus did not treat the instant case with the due diligence required by Article 6, para. 1 of the Convention and Article 10 of the Code on Civil Procedure. The matter before the Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica, was not complex and could thus have easily been resolved and no obstacle existed that the court could not avert but which might contribute on a legitimate delay of case reviewing. Moreover, the Ombudsperson notes that the case was and is of a particular importance to the

complainant, since it has to do with his work and return to his working position, while the court in the actual case even after 6 years did not issue first instance judgement.

31. In the light of the above, the Ombudsperson considers that the failure of the authorities to recruit an adequate number of judges in the branch of Basic Court in Graçanicë/Gračanica (see para. 3,4 and 6) in order to deal with the present workload cannot be considered as a valid justification for such delay in procedure before Basic Court, branch in Graçanicë/Gračanica. Ombudsperson observes that it falls to the responsibility of the Government of Kosovo and Kosovo Judicial Council to guarantee the timely disposition of civil court proceedings through the appointment of an adequate number of judges or through other appropriate means.

conclusion

32. The Ombudsperson concludes therefore that there has been a violation of the right to a fair hearing within a reasonable time guaranteed under para.1 of Article 6 of the European Convention on Human Rights.

The right to an effective remedy: Article 13 of the European Convention on Human Rights

33. The complainant complains that the absence of an effective remedy for the violation of his right to a fair hearing with a reasonable time, as guaranteed under Article 6 of the European Convention on Human Rights, constitutes a violation of his right to an effective remedy under Article 13 of the Convention, which states:

„ 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 “.

34. With respect to the applicability of Article 13, the Ombudsperson recalls that the European Court of Human Rights has repeatedly stressed that the excessive delays in the administration of justice in respect of which litigants have no remedy constitutes a threat to the rule of law within a domestic legal order (*see e.g., Bottazzi v. Italy*, judgement of 28 July 1999 and *Di Mauro v. Italy*, judgement of 28 July 1999.). The Ombudsperson also recalls that although in the European Court of Human Rights has held that the requirements of an effective remedy should be interpreted to mean that a remedy may be regarded as effective with respect to a restricted scope of recourse inherent in a particular context (*Klass and others v. Germany*, judgement of 6 September 1978.), it has also held the following:

„As regards an alleged failure to ensure trial within reasonable time [...]no such inherent qualifications on the scope of Article 13 can be discerned. On the contrary, the place of Article 13in 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). "

35. Article 13 directly reflects a State's obligation to protect human rights first and foremost with their own legal system and thereby establishes an additional guarantee for an individual to ensure that he or she effectively enjoys these rights. Seen from this perspective, the right of an individual to trial within a reasonable time will be less effective if there is no opportunity to first submit this claim to a national authority. The requirements of Article 13 reinforce those of Article 6 (see the above-mentioned *Kudla judgement*). Article 13 thus guarantees an effective legal remedy before national authority for an alleged breach of the requirement under Article 6 to hear a case within a reasonable time.. As the present case deals with a complaint concerning the length of proceedings, Article 13 of the Convention is applicable.
36. With respect to the requirements of article 13 of the European Convention, the Ombudsperson recalls that the effect of this Article is to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (*Kaya v. Turkey*, judgment of 19 February 1998). Any such remedy must be effective in practice as well as in law (*Ilhan v. Turkey*, judgement of 27 June 2000). In connection with a complaint about the length of proceedings, the Ombudsperson recalls that an "effective remedy" in the sense of Article 13 of the Convention would either have to be able to prevent the alleged violation or its continuation, or to provide adequate redress for any violation that had already occurred (see the above-mentioned *Kudla judgement*).
37. The Ombudsperson observes that no specific legal avenue exists whereby the complainant in the present case could have complained about the length of proceedings with any prospect of obtaining either preventive or compensatory relief.

Conclusion

38. The Ombudsperson concludes, therefore that there has been a violation of the complainant's right to an effective remedy as guaranteed under Article 13 of the European Convention of Human Rights.

RECOMMENDATIONS

39. The Ombudsperson recommends that the President of the Basic Court in Prishtinë/Priština, should:

- **Ensure, considering previous delays occurred, that the Basic Court in Prishtinë/Priština, branch in Graçanicë/Gračanica to continue with the proceeding of complainant's case, without any further delay.**

40. The Ombudsperson recommends that the Government of Kosovo in cooperation with Kosovo Judicial Council should:

- **Provide financial means and appoint sufficient number of judges to the Basic Court and its branches or to take other necessary means to ensure timely review of cases and delivery of judgments to all parties within a reasonable time.**

41. The Ombudsperson recommends that the Assembly or the Government of Kosovo should :

- **To initiate drafting of an effective legal remedy in the sense of Article 13 of the European Convention on Human Rights, providing both preventive and compensatory relief with respect to complaints about excessive length of proceedings in civil cases.**

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo and Article 25 of the Law on Ombudsperson No.05/L-019, I would like to ask you to inform the Ombudsperson of the actions taken in response to the preceding Recommendations by the Basic Court, Kosovo Judicial Council, Government of Kosovo and Assembly of Kosovo.. Furthermore, we would kindly ask you to submit your response regarding this issue within a reasonable time, but no later than 6 December 2015.

Sincerely,


Hilmi Jashari

Ombudsperson