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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

REPORT

Complaint No. 305/2015

Regarding the non-execution of a final decision in the case E.nr.193 / 2008, of 18 March 2008, the Basic Court in Pristina

Alinexhat Zeqiri

To: Mr. Hamdi Ibrahim, President
Basic Court in Prishtinë

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:

Scope of this report

The scope of this Report is to draw attention of the Basic Court in Prishtina regarding the need of undertaking appropriate actions for execution of final decision of the case E. No.193/2008, of 18 March 2008, without further delays.

This report is based on individual complaint of Mr. Alinexhat Zeqiri, Mr. Abdulxhemil Zeqiri and Mr. Samet Ramadani (hereinafter *complainant*) and on complainant's facts and proves as well as case files that the Ombudsperson Institution (OI) has regarding delays of the judicial proceedings in execution of court's decision.

Legal base

According to Article 135, par. 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.*"

Similarly, Law No. 05/L-019 on Ombudsperson, Article 16 paragraph 8, reads: "*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, proves and information, in possession of Ombudsperson Institution (OI), disclosed by the complainant and gained from the investigation conducted, are summarized as follows:

1. On 10 March 2008, former Municipal Court in Prishtinë, has ascertained the final decision for the case C.No.182/2002 according to which the *complainant* was acknowledged the right to property and the same has not been enforced.
2. On 18 March 2008, the *complainant* has lodged in the court the proposal for enforcement of the final decision for the case C.nr.182/2002.
3. On 8 December 2009, final decision has been issued for redressing of the judgment C No.182/2002, of the Municipal Court in Prishtinë, on 1 December 2009, according to which *complainant* has gained the right to take in possession the contested property.
4. On 8 January 2010, the Municipal Court in Prishtinë, with judgement E.No.994/2009 has permitted enforcement of the case.
5. On 4 May 2010, the Municipal Court in Prishtinë, according to objection with ruling E.No.994/2009, has dismissed the challenging of the third parties as illicit.
6. On 30 August 2010, the District Court, with the decision Ac.No.625/2010 has decided according to third parties' complaint and dismissed complaints as ungrounded and confirmed first instance judgement, considering that conditions for enforcement of a final decision are at place.
7. On 9 November 2011, the Supreme Court in Kosovo, with the ruling No. Mlc.nr.13/2010, dismissed as ungrounded the request for protection of legality against

the ruling Ac.No.625/2010, of 30 August 2010, of the District Court in Prishtinë and the ruling of the Municipal Court in Prishtinë, E.No.994/2009, of 4th of May 2010.

8. On 10 June 2015, *complainant* has filed a claim with the OI for the delay of the procedure on execution of the court's decision by the Basic Court in Prishtinë.
9. On 2 July 2015, the Ombudsperson delivered a letter to the President of the Basic Court in Pristina, through which asked to be informed about actions taken or planned to be taken by the court, regarding *complainant's* case.
10. No response has been delivered to the Ombudsperson within the legal time frame from the Basic Court in Prishtinë.
11. On 16 September 2015, through the second letter the Ombudsperson repeated his request to be informed on actions taken or planned to be taken by the court, regarding *complainant's* case.
12. On 30 September 2015, Judge Mrs. Manushe Karaqi, through Basic Court administrator delivered an information letter to the Ombudsperson, stating "*that the case has been assigned to her on 6 November 2013, stressing that the effort of the Basic Court in Pristina of 28 December 2011, with the presence of Kosovo Police to execute the case was adjourned for 17 January, 2012, reasoning it with absence of creditors' physical workers to evict items from the premise. In order of enforcement of the case E.994/09 considering that parties are the same as in the case E.nr.193/200, a hearing session has been set on 25 March. But, since the judiciary was on strike during March, the session was adjourned as other cases have. At the end of the letter the case judge informed the Ombudsperson that the "Court continuously strives to undertake all necessary actions to thoroughly complete enforcement of this procedure"*".

Legal instruments applicable in Republic of Kosovo

Right to a fair and impartial trial / the right to a fair trial

13. In principle, the Constitution of the Republic of Kosovo, article 21 paragraph 2 reads: "The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution".
14. Special place within the scope of these rights, based on Article 31, paragraph 1 of the Constitution, takes the Right to a fair and impartial trial, which in pertinent part reads: "*Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers*". While paragraph 3 of the same Article stipulates: "*Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*".
15. Article 54, Judicial protection of rights of the Constitution of Republic of Kosovo, reads:

“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”.

16. Article 6, paragraph 1 of ECHR reads: *“In 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...”*
17. Article 13 of ECHR, foresees the right on effective remedy according to which: *“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.”*
18. Law on Courts No. 03/L-199, in Article 7 par. 2 determines: *“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”.*
19. Article 1 of the Law on Contested Procedure No. 03/L-006, in pertinent part reads: *“By the law on contested procedure are determined the rules of procedure through which courts examine and settle civil justice disputes of physical and legal persons, unless otherwise provided for by a particular law”.*
20. While according to Article 10, par. 1 of the same law: *“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”.*

Legal analyses of the case

Regarding violation of the Right to fair and impartial trial, the right to a regular process

21. Taking in consideration complainant’s claim regarding the failure of Basic Courts to decide on his case, the Ombudsperson, based on analysis of the evidence and facts presented, notes that the right to a fair hearing within a reasonable time and the right to an effective legal remedy, guaranteed by above mentioned legal acts, has not been achieved, since the Basic Court has delayed on execution of complainant’s case for more than 7 years, the proceedings of which were initiated in 2002 and no final decision has been rendered until the day this report has been published; excessive delays of the judicial procedures and not execution of court’s decision are apposite to the right to fair trial within a reasonable time, as guaranteed by Article 31, 32 and 54 of the Constitution of the Republic of Kosovo as well as paragraph 1 of Article 6 of the ECHR.
22. The Ombudsperson finds that since 2002, when the *complainant* initiated a lawsuit with the Municipal Court in Prishtina, more than 13 years have passed. While as of 18 March 2008, when the *complainant* submitted a proposal to the court for enactment of a final decision on the case C.nr.182 / 2002 more than 7 years have passed, and yet a possibility has not been given to him to attain his property right since his case has remained still in the procedure with the Basic Court in Prishtina, which has not taken any tangible deed to close the case in compliance with the laws at force.

23. The Ombudsperson considers of deep concern the fact that since Basic Court in Prishtine has made its first struggle on 28 December 2011, to execute the decision in presence of Kosovo Police and which has been adjourned for 17 of January 2012, more than 3 years have passed. Additionally, there is no vivid attempt even today by the Court to decide upon the case in compliance with laws at force.
24. The Ombudsman reminds that ECHR para. 1 of Article 6 does not foresee any fixed deadline on determination of the reasonableness of the proceeding duration. Basic Court in Pristina, in the present case, cannot use as an excuse the complexity of the case for enforcement of a final decision with attempts that is undertaking continuously all needed actions to accomplish thoroughly this enforcement procedure.
25. In majority of cases, European Court on Human Rights (ECtHR) has pointed out that the right of the party to decide upon his/her case within a reasonable time limit, comprise a core element of the right to fair and impartial trial (see case *Azdajic v. Slovenia*, 8 October 2015).
26. The Ombudsperson draws attention on Article 6 of the ECHR according to which everyone is entitled to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...). In the current case failure to enforce the final court's decision for the case C.No.182/2002, comprise breach of this Article.
27. The Ombudsperson considers of a deep concern the fact that 13 years judicial procedure, as is *complainant* case, shall create an overall situation of legal uncertainty, shall reduce and lose the trust of citizens in judiciary and rule of law state.
28. Actually, lack of efficient legal remedy, in a sense of infringement of his right to fair and public hearing and within reasonable timeframe, guaranteed by Article 6 of the ECHR, comprise violation of his right an effective legal remedy according to Article 13 of the ECHR (see case *M.A v. Cyprus*, 23 July 2013).
29. Article 13 of ECHR, explicitly stressing state's liability to primarily protect human rights through its legal system, provides additional guarantees to individual that he/she enjoys these rights efficiently.
30. The Ombudsman points out that requirements set in Article 13 support and strengthen those of Article 6 of ECHR. Thus, Article 13 guarantees an effective remedy before a national authority for an alleged breach of requirements according to Article 6, to review a case within a reasonable time. Since the complainant's case has to do with the duration of proceedings in reviewing his case, Article 13 of the ECHR is applicable.
31. The Ombudsperson notes that no form or particular legal opportunity was provided to the *complainant* or was at his disposal through which he might complain for the lengthy procedure, in reviewing of the case with meaning or hope to achieve any kind of relief, in a form of injustice prevention or compensation for the injustice endured from the Court.

32. Thus the Ombudsperson, in compliance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo, “[...] *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.*”, and Article 16, paragraph 8 of the Law on 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 above legal analyses in a capacity of recommendation provider, attending above given proves and evidence, aiming improvement of the work of legal system in Kosovo,

RECOMMENDS

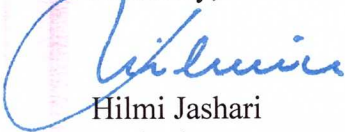
Basic Court in Prishtinë

1. *To undertake immediate measures for execution of Court’s final decision of the case E. No. 193/2008, of 18 March 2008, of the complainant Mr. Alinexhat Zeqiri.*

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo and Article 28 of the Law on Ombudsperson No.05/L-019, I would like to ask you to inform the Ombudsperson of the actions that the Basic Court in Prishtina will undertake regarding this issue in response to the preceding Recommendation.

Expressing our gratitude for the cooperation, we would like to be informed regarding this issue within the reasonable time frame, but no later than **6 December 2015**.

Sincerely,



Hilmi Jashari
Ombudsperson

Copies: - Mr. Enver Peci, Presiding, Kosovo Judicial Council.