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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

Prishtina, 25 November 2015

Report

Complaint No. 290/2015

Hivzija Bukvić

Against

**Ministry of Internal Affairs –
Department for Citizenship, Asylum and Migration - DCAM
Commission for Appeals for Citizenship**

To : Mr. Skender Hyseni
Ministry of Internal Affairs

Mr. Slaviša Mladenović
Language commissioner

Kosovo Ombudsperson, pursuant to Article 135, para. 3 of the Constitution of Republic of Kosovo and Article 16, para. 1 and Article 18 paragraph 1.2 of the Law on Ombudsperson No. 05/L-019 on 25 November 2015 publishes the following report:

I. SUMMARY OF CASE FACTS

Facts, proves and information, in possession of Ombudsperson Institution can be summarized as follows:

1. On 17.06.2014, Mr. Hivzija Bukvić (hereinafter "the complainant") through Istog Municipality filed a request for Kosovo Republic (RK) citizenship, registered under No. 1724/14.
2. On 24.09.2014 DCAM, after reviewing the request and the evidence attached in the first instance procedure brought the decision No. 1724/14, through which *complainant's* right for registration of RK citizenship in citizens' register has been rejected.
3. On 05/12/2014, DCAM delivered the decision No. 1724-1714 issued in Serbian language to the *complainant* and signed the confirmation of receiving the decision in question but this confirmation provided to him was only in Albanian language. In the above given decision *complainant's* name was incorrectly written as Burkić instead of Bukvić, as it has been written in *complainant's* request and attached documents.
4. On 23.12.2014 the *complainant* through his lawyer, filed a timely complaint with MIA- DCAM- CAC against the first instance decision No. 1724/14, to which he attached additional evidence, properly recorded in complaint text, and also asked attentively to pay attention and requested fixing of the mistake done on his surname.
5. On 10.02.2015, CAC in the second instance procedure reviewed the complaint of the *complainant* against the first instance decision and rendered decision No. 15/2015, with which the complaint of the *complainant* has been rejected and the first instance decision No. 1724/14, of the date 24.09.2014 has been confirmed. Moreover the same mistake previously done on the surname of complainant was repeated again.
6. On 04.06.2015 the complainant went to the MIA-DCAM with the intention to be informed whether CAC held any hearing and if any decision has been brought regarding his complaint lodged against the first instance decision of the date 23.12.2014. On that occasion he hardly managed to be understood by the official in Serbian language, and later got CAC decision No. 15/2015, in Albanian language as well as confirmation on receiving of the decision No. 1322 of the date 04.06.2015 to be signed by the *complainant*, which was again in Albanian language, language which the *complainant* hardly understands. Complainant exposed his disappointment in front of DCAM official and requested the decision to be translated and delivered to him in Serbian language but was informed by the official that special request need to be done in case he wants the decision to be translated in Serbian.

II. PROCEEDINGS BEFORE THE OMBUDSPERSON

7. On 04.06.2015. Mr. Hivzija Bukvić lodged a complaint with the Ombudsperson Institution (OI), on charges of human rights violation relating to the use of official languages in proceedings before the competent authority, the right to citizenship, as

well as breach of CAC Working Rules in case of exercising of legislative authority, upon deciding on *complainant's* request on gaining Kosovo Republic citizenship. *Complainant* also states that his surname was incorrectly written, instead of Bukvić was written Burkić in the decisions of above given Commission, in first and second instance.

8. On 08.06.2015 Mr. Bukvić lodged complaint with the OI against MIA regarding rejection of his request for citizenship and use of official languages, which was recorded with number A.No.290/2015.
9. On 09.06.2015 on investigation process, OI legal adviser in a meeting with DCAM director, revealed *complainant's* case and requested access to records of the *complainant's* case and set next meeting for 06/12/2015 in order to discuss DCAM first instance decision. OI legal advisor the same day asked to be admitted by the President of the Appeal Commission for citizenship regarding complainant's case, but he was not available.
10. On 12.06.2015 based on request No.1724/14 of the date 17.06.2014 OI legal advisor reviewed the case files in the second meeting with DCAM director and the head of Citizenship Unit/ responsible party, and requested from responsible party further explanations regarding: disrespect of Law on Use of Languages, as per Article 1, 2 and 4: the way how the documents submitted by the *complainant* for the citizenship were assessed: information provided to the *complainant* about the date of complaint review as per Article 10 of the AI for establishment and determination of Working Rules of the Citizenship Appeals Commission and notification of the party about CAC decision.

Responsible party stated that documents submitted in the case of the complainant were insufficient to prove meeting the criteria set in Article 32 of the Law on Citizenship No.04 / L-215, as well as Articles 3 and 4 of AI No.05 / 2014 on standards that include evidence of former Yugoslavia citizenship and permanent residence in the territory of Kosovo until 1 January 1998, while as per the issue of use of language of the party in the proceedings in the second instance decision, CAC should have taken in consideration use of languages as well as recognition of procedures foreseen by AI No. 06/2014. As per informing of the party on CAC decision, it was found that *complainant* was not notified within the legally required deadline, although complainant has written in his application his contact phone numbers as well as his case files contained also his complaint with the address of his attorney- at- law. During the meeting OI legal adviser recommended to the responsible party, to translate as soon as possible CAC decision No. 15/2015, in Serbian language, native language of the *complainant*, as well as to translate confirmation document of decision receiving, which was given to the *complainant* to sign, while in decisions No.1724 / 2014 and No. 15 / 2015 the mistake occurred on *complainant's* surname to be corrected and the same be delivered to the *complainant*.

11. On 26.06.2015, OI legal advisor was informed by *complainant* that he received a telephone call from DCAM on 24/06/2015 asking him to go and take the translated decision from Albanian to Serbian language as well as mistakes which both DCAM decisions contained have been properly corrected. On 26.06.2015, the complainant took all these documents and signed a new confirmation for document receiving

No.2971 of the date 06/26/2015, which was actually given printed in both official languages and from that day he can use legal remedies on his disposal.

12. On 27.07.2015 the complainant informed OI legal advisor that on 23.07.2015 he has lodged a complaint against CAC decision No. 15/2014 with the Basic Court in Prishtine, Administrative Department.
13. After several attempts, on 08.10.2015, OI legal adviser appointed and held a meeting, with the president of CAC regarding *complainant's* case. The procedure of obtaining process of the decision No.15/2015 as per Article 10 and 14 of AI No. 06/2014 as well as assessment of the documents attached to *complainant's* complain have been reviewed in the meeting. OI legal adviser requested access to the minutes of the CAC meeting, in order to be informed on the course of the hearing and evidence exanimated in current case, but the same was not provided to her, so it remained unclear whether or not the minutes of the meeting have ever been kept, which is an obligation under Article 14, paragraph 1 of the Administrative Instruction No.06 / 2014. CAC president mentioned that Commission has not been given due attention to the procedure and that in complainant's case, DCAM which performs secretarial work for CAC, has accomplish its liabilities as per Article 10 of the given Administrative Instruction and was not reminded by the Commission, when the meeting was appointed, on liabilities anticipated by Working Rules. After OI legal advisor requested an opinion on assessment of several evidences, submitted in OI by the complainant such as: a backup copy of the ID document of the former Yugoslavia no. SK119805, a copy of ID CP10774513, confirmation of Istog Municipality no.05 / 2014 dated 11.06.2014, which confirms the applicant's residence in Kosovo from 1965 to 1999, which was issued for the purpose of obtaining *complainant's* citizenship and a copy of the passport of the former Yugoslavia No. 095,456 valid from 22.08.1994 till 08.22 1999. CAC president explained that such proves have not been given or mentioned on *complainant's* complain especially a copy of former Yugoslavian passport, since in case he was aware of this, surely would have decided on favor of complaint. From the statement of CAC president, OI legal adviser ascertained that CAC lacked careful review and examine of all the evidence since same documents were listed on reasoning of CAC decision, which means that it has been presented to CAC as an evidence, which uncontestably prove the residency of the *complainant* in compliance with Article 32 of the Law on Citizenship of Kosovo and Article 3 and 4 of the AI No.05/2014, as well as the quoted confirmation issued by Istog municipality.

III. RELEVANT INSTRUMENTS

14. Constitution of Republic of Kosovo (hereinafter Constitution of RK), in Article 5 paragraph 1 reads:
„ *The official languages in the Republic of Kosovo are Albanian and Serbian.*”
15. Constitution of RK, in Article 14 defines:
„ *The acquisition and termination of the right of citizenship of the Republic of Kosovo are provided by law.*”

16. Constitution of RK, in Article 24, paragraph 1 and 2 reads:

- “1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.”*
- 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.”*

17. Constitution of RK, in Article 31 stipulates:

„ Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.”

18. Law on Protection from Discrimination No. 05/L -021, in Article 1, paragraph 1 reads:

*„[...] establish of a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, color, birth, origin, sex, gender, gender identity, sexual orientation, **language**, [...] or any other grounds, in order to implement the principle of equal treatment. „*

19. Law on use of Languages No. 02/L-37 (hereinafter Law on use of Languages) reads:

“The equal status of Albanian and Serbian as official languages of Kosovo and the equal rights as to their use in all Kosovo institutions;”

20. Article 2 of the Law on use of Languages states:

- 2.1. “Albanian and Serbian and their alphabets are official languages of Kosovo and have equal status in Kosovo institutions.”*
- 2.2. “All persons have equal rights with regard to use of the official languages in Kosovo institutions.”*

21. Law on use of Languages in Article 4 reads:

- 4.1. “In the central institutions of Kosovo the equality of the official languages applies.”*
- 4.2. “Every person has the right to communicate with, and to receive available services and public documents from, the central institutions of Kosovo in any of the official languages. All central institutions have a duty to ensure that every person can communicate with, and can obtain available services and public documents from, their organs and institutions in any official language.”*

22. Law on Citizenship of Kosova No. 04/L-215, Article 32, paragraph 1,3 and 4 reads:

“1. All persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in the Republic of Kosovo shall

be citizens of the Republic of Kosovo and shall be registered as such in the register of citizens irrespective of their current residence or citizenship.”

“3. The registration of persons referred to in paragraphs 1. and 2. of this Article in the register of citizens shall take effect upon the application of the person who fulfills the requirements set out in this Article.”

“4. The competent body shall determine in sub-legal acts the criteria which shall constitute evidence of the citizenship of the Federal Republic of Yugoslavia and habitual residence in the Republic of Kosovo on January 1, 1998.”

23. Law on Administrative Procedure No. 02/L-28 (hereinafter LAP) in Article 3, paragraph 1 reads:

“Principle of legality

3.1. Public administration bodies shall exercise their administrative activity in compliance with the applicable legislation in Kosovo, within the scope of competences vested in them, and for the purposes that such competences were vested for.”

24. LAP in Article 5, paragraph 2 stipulates:

5.2. “The public administration bodies shall not differentiate natural and legal persons during administrative proceeding on the basis of gender, language, political or other affiliation, national or social origin, wealth, birth or any other status.”

25. LAP in Article 55, paragraph 1 reads:

55.1. „ The competent body shall ask and shall be acquainted with all the facts necessary to reaching the final decision, employing all the means of verification provided for by the Law. 55.2. For publicly known facts, as well as the facts known to the administrative body due to its functions, no verification is required.”

26. LAP in Article 56, paragraph 2 reads:

56.2. „In order to support their claims, the interested parties may, along with their request to initiate administrative proceeding, attach various documents or evidence. The interested parties may also request the competent public administration body to undertake any action required to allow use of evidence by the party in the course of administrative proceeding.”

27. LAP in Article 112 states:

„ The administrative acts shall be made public eight days upon its issuance, unless otherwise specified under the law.“

28. Administrative Instruction (MIA) No. 05/2014 about the criteria that contain evidence about the citizenship of the Federal Republic of Yugoslavia and permanent residence in the territory of Kosovo on 1 January 1998, (hereinafter AI No. 05/2014), in Article 3 paragraph 1,3 and 4 reads:

„1. All persons that were citizens of Federal Republic of Yugoslavia on January 1, 1998 and had permanent residence in Kosovo on this date and that document their status, are considered to be citizens of Kosovo and are will be registered as such in the register of citizens..”

„3. To prove FRY citizenship, a person must present one of the official documents as defined below and issued before January 1, 1998 or evidence:

3.1. Citizenship Certificate of FRY;

3.2. Birth Certificate, marriage certificate;

3.3. Passport of FRY, Identification Card of FRY;

3.4. Any other document that proves the citizenship of FRY

4. „In case there are no official documents from paragraph 3 of this article, another evidence can be taken into consideration, including the evidence that prove that this person has completed all conditions in FRY citizenship. CD within MIA assesses this evidence and takes an appropriate decision.”

29. AI No. 05/2014, in Article 4 paragraph 1, point 1.2 states:

“A person proves that he/she was a permanent resident of Kosovo on January 1, 1998, based on article 32 of the Law No.04/L-215 on Citizenship of Kosovo no matter their current residence or citizenship, if it meets any of these criteria:

1.2. Resided in Kosovo for a continual period at least 5 years before January 1, 1998;”

30. Administrative Instruction (MIA) No. 06/2014 on establishment and defining of working rules for the commission for appeals for citizenship (hereinafter AI No. 06/2014), in Article 4 reads:

„ DCAM/DC will serve as a secretariat of the Commission of Complaints for Citizenship. „

31. AI No. 06/2014 on establishment and defining of working rules for the commission for appeals for citizenship, in Article 10, paragraph 1,2 and 3 reads:

1 „The Secretariat will notify appealing party no later than eight (8) days prior to the day of the session that the Commission for Appeals for Citizenship will review the appeal. „

2. This notification will provide to the appealing party the possibility to request that within three (3) days, in case the appealing party wants, to have a hearing before the Commission for Appeals for Citizenship.”

3. *In case the Appealing Party does not file a request for hearing within the timeframe, Commission for Appeals and Citizenship may review the appeal in the session based on submitted reports.*”
32. AI No. 06/2014, in Article 11, paragraph 1,2 and 3 states:
- “1. *Appealing Party and the DC are entitled to be present in the session of review of appeal.*
 2. *Appealing Party may be represented by a lawyer authorized in written.*
 3. *Parties will be notified in written for the time, date and place where the session will take place, at least three (3) days prior to the session.*“
33. AI No. 06/2014, in Article 14, paragraph 1 and 2 reads:
- „1. *For each session of the Commission of Complaints for Citizenship, meeting minutes are held in written that are then signed by the leader, all participants, and holders of the meeting minutes.*“
34. Universal Declaration of Human Rights (10 December 1948), in Article 15 states:
1. *“Everyone has the right to a nationality”.*
 2. *“No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*
35. Convention on Protection of Human Right and Fundamental Freedoms (4 November 1950), in Article 6, paragraph 1 (hereinafter "Convention "), in an pertinent part reads:
- „ Everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal [...], which will decide on disagreements relating to rights and liabilities [...]. “

IV ANALYSES

36. Initially, the Ombudsperson observes that concise provision of Article 15 of Universal Declaration of Human Rights of 1948 states that each person, regardless the place of residence, has the right to be legally connected with the state, based on citizenship, as one of fundamental human rights.
37. Since citizenship status is an important condition for acquisition of many rights (political, civil, economic, social, cultural and others), urgent solution of this matter is demanded and the competent national authorities are bound to respect legal acts and remove administrative obstacles, which might lead to some form of discrimination against any citizen in the process of citizenship obtaining in order to

facilitate accomplishment of status issue, since the citizenship can be described as "the right to enjoy the rights."

38. Constitution of the Republic of Kosovo included the same principle, in Article 24, paragraph 1 and 2 and Article 31, which to every person guarantees equal legal protection without discrimination on any ground, as well as equal protection of rights before state bodies and holders of public powers, which is specifically regulated by the Law on Protection from Discrimination No. 05 / L-021.
39. In the current case, the Ombudsperson recalls that the issue of the equal status of Albanian and Serbian languages, as official languages in Kosovo, as well as their equal application within all Kosovo institutions, is regulated by the Constitution (Article 5) and by the Law on use of Languages no. 02 / L-37, and this matter, as such, shall be fully respected and implemented without any exemption, since based on undisputable facts of the *complainant's* case, listed under 10 and 11 of this report, this was not respected.
40. The Ombudsperson ascertained violation of *complainant's* right for use of official languages in Republic of Kosovo. This *complainant's* right was brought in compliance with the Law on Use of Languages only after such issue has been attended and recommended by OI legal advisor.
41. The Ombudsperson recalls that the principle of legal treatment, as per Article 3, paragraph 1 of the LAP, provides to applicants certain guarantees, including also that "*Public administration bodies exercise their administrative activity in compliance with the law [...] within the limits of power [...] and in conformity with the goal.*"
42. As per the procedure of MIA competent bodies itself, in the current case, given the undisputable facts set out in paragraph 12 of the Report, the Ombudsperson concludes that in terms of Article 10 of AI 06/2014, the working procedure was not respected and that the *complainant* was not informed about the date of his case review in CAC and in spite of this the *complainant* was not given the opportunity and was denied the right to attend, or be represented by an attorney-at-law in the reviewing process of his complaint and provide additional information regarding his request. Actually he was denied the possibility to attend procedures, to participate on them and undertake all allowed legal actions in administrative proceedings in terms of relevant provisions of the LAP. Such action can be characterized as arbitrariness of MIA competent authorities while exercising their jurisdiction and being such represents obstacles for access to rights.
43. The Ombudsperson observes that DCAM-CAC in terms of Article 55, paragraph 1, of the LAP, due to the importance of the right on which is to be decided, should use other methods of verification as well, which for a competent authority are easily accessible to verify the evidence, to inspect the existing evidence of citizens' personal documents from period prior to 1 January 1998, which are in possession of the Ministry.

"55.1. The competent body shall ask and shall be acquainted with all the facts necessary to reaching the final decision, employing all the means of verification provided for by the Law."

44. As per review and evaluation of the evidence presented in this case and based on verified facts presented in paragraph 12 of this Report, interpretation of the law and the procedure itself, the Ombudsperson observes that MIA/ DCAM-CAC has not carefully reviewed all the evidence in case file and due to this, while deciding material and formal mistakes have occurred.
45. The Ombudsperson, in terms of assessing proves presented in the current case, commencing from state facts disclosed within point 12 of this Report, notes that the *complainant* meets the requirements in compliance with Article 32 of the Law on Kosovo Citizenship, Article 3, paragraph 1.3 and 4 and Article 4, paragraph 1.2 of AI 05/2014 for registering in KR register of citizens.

CONCLUSION

46. As a result of what has been stated above, the Ombudsperson finds that during administrative procedure the MIA/DCAM-CAC, as a competent body in the current case has breached *complainant's* right for citizenship, *complainant's* right for use his mother tongue and the right to an impartial trial, rights which are guaranteed with legal provisions at force.

RECOMMENDATIONS

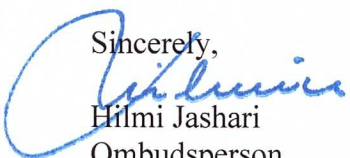
The Ombudsperson recommends the MIA:

- *To ensure that during administrative activities DCAM-CAC gives due consideration and attentiveness to all factors which interlink with specific administrative act. DCAM should establish a fair balance between public and private interests in order to avoid unnecessary intrusions on rights and interests of natural and legal persons. Bringing the case before the Court does not comprise effective legal remedy having in mind adjournment of judicial procedures beyond reasonable time limits, which signifies violation of rights set by Article 31 and 32 of Constitution.*
- *To ensure that in all cases when deciding about citizenship, DCAM-CAC fully respects the Law on Use of Languages during decision taking procedures.*

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 on actions that the MIA of Kosovo will undertake regarding this issue in response to the preceding Recommendations.

Moreover, we would kindly ask you to deliver the response regarding this issue within reasonable time frame, but no later than 25 December 2015.

Sincerely,


Hilmi Jashari
Ombudsperson