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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

Prishtinë, on 16 May 2016

REPORT WITH RECOMMENDATIONS

A. no: 431/2015

Ismet Rusinovci

against

Ministry of Agriculture, Forestry and Rural Development (MAFRD)
and Agency for Agricultural Development (AAD)

To: Mr Memli Krasniqi, Minister
Ministry of Agriculture, Forestry and Rural Development
Str. “Nëna Terezë”
10000 Prishtinë

Mr Elhami Hajdari, Chief Executive Officer
Agency for Agricultural Development
Str. “Nazmi Gafurri”
10000 Prishtinë

Subject: Recommendations related to the complaint filed by Mr Ismet Rusinovci, on behalf of his spouse Mrs Kimete Isufi regarding the allocation of a grant for construction of a stable and associated buildings and agricultural mechanisms in AAD

Legal basis: Constitution of the Republic of Kosovo, Article 135, paragraph 3 Law No. 05/L-019 on Ombudsperson, Article 16

Scope of the report

The scope of this Report is to draw attention of the Ministry of Agriculture, Forestry and Rural Development (MAFRD), namely the Minister of this Ministry, Mr Memli Krasniqi and Chief Executive Officer of Agency for Agricultural Development (AAD), Mr Elhami Hajdari, to:

1. The right of Mrs Isufi to be informed regarding the complaint filed on 15.06.2015, against the decision of AAD, REF: 07/4, dated 02.06.2015 within the time limits in conformity with the Law no. 02/L-28 on the Administrative Procedures of the Republic of Kosovo.

Ombudsperson' powers

2. Based on Article 18, paragraph 1.2 of the Law on Ombudsperson no. 05/L-019, the Ombudsperson responsibility is *“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;*

Description of the issue:

3. This report is based on the complaint filed on 10 July 2015 with OI, by the complainant Mr Ismet Rusinovci, on behalf of his spouse, Mrs Kimete Isufi, against MAFRD, namely AAD, regarding the issue of application to a grant for construction of a stable and associated buildings and agricultural mechanism, dated 7 April 2015, with the application number 19/157.
4. On 2 June 2015, AAD took a decision to reject the request of the farmer Mrs Kimete Isufi for a grant and the part of the reasoning of the decision states that the farmer is from Municipality of Shtërpçë.
5. On 15 June 2015, Mrs Isufi filed a complaint for review against this decision, but she received no response to date to the complaint filed with MAFRD.
6. On 5 June 2015, AAD published the list of evaluation of applications for 2015, and the part containing notes of Mrs Isufi, with serial number 128, the complainant claims that notes are not correct, starting from Municipality of application and the name of project.
7. On 16 September 2015, the Ombudsperson sent a letter to the Minister of MAFRD, Mr Memli Krasniqi requesting data and information regarding the reasons for failing to respond by this Ministry, to the complaint for review of Mrs Isufi, filed on 15 June 2015 with MAFRD.
8. On 5 October 2015, Ombudsperson received the response from MAFRD, which stated that *“After application made by Mrs Kimete Isufi from village Nishefc, Municipality of Prishtinë, AAD conducted administrative controls of the application and established that based on Article 5, paragraph 2.4 and 2.9 of Administrative Instruction No. 01/2015 of MAFRD on Measures and Criteria of Support for Agriculture and Rural Development for 2015, the applicant's file was missing the*

copy of a sketch of the building and calculation of expenditures, and because of this reason a decision on her rejection was taken”.

9. The party claims that after the AAD decision for the rejection of her request, Mrs Isufi file a complaint for review with MAFRD on 15 June 2015 with the Commission for Review of Complaints, which reviewed the complaint and issued a recommendation for the case review on 28 July 2015, protocol no. 3263 and considering Article 33 of Administrative Instruction no. 01/2015 of MAFRD. Following this, AAD, according to Commission’s recommendations, reviewed the file of Mrs Kimete Isufi and on 17 August 2015, this Commission established that the copy of the sketch of the building and the calculation of expenditures was not again in the file of the project, as is foreseen by Administrative Instruction No. 01/2015 of MAFRD, and owing to this reason, the project in question was not qualified for support. The party claims that she was not informed about this rejection from AAD.

Legal basis

10. The Constitution of the Republic of Kosovo, Article 31 stipulates: *“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.”*
11. The Constitution of the Republic of Kosovo, Article 32: *“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.”*
12. European Convention on Human Rights (ECHR) is a legal applicable document under the Constitution of the Republic of Kosovo and has priority in case of conflicts to provisions and laws and other acts of public institutions. Article 6, paragraph 1, ECHR expressly states that: *“In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time.*
13. Law No. 02/L-28 on Administrative Procedure of the Republic of Kosovo:
- Article 11: *“The public administration bodies, within the scope of their competences, shall decide on any request, submitted by natural and legal persons”.*
- Article 38.4: *“The manager of public administration body shall immediately review the request for action submitted by the interested parties and shall undertake the following action:*
- a) he/she shall notify the requesting party in writing that the request has been endorsed and that the administrative proceeding has commenced, or*
- b) he/she shall notify the requesting party in writing that the request has not been endorsed and that the party may lodge an appeal against the decision, as per procedure set out in article 101 herein, or;*
- c) he/she shall notify the requesting party that further administrative action is required before the body may respond to the request. In this case, the body shall set a reasonable deadline for completion of the required actions.*
- Article 90.1: *“Individual and collective administrative acts are serviced to interested parties no later than 30 days”.*
- Article 109: *“The interested parties shall be served the administrative acts through which:*

- a). decisions regarding their claims are reached;
- b). obligations or fines are cited, or damages inflicted;
- c). the legal interests or rights of the parties are granted, abolished, expanded or limited, or their enjoyment is otherwise limited.

Article 131.1: *“The competent administrative body shall review the administrative appeal and shall issue a decision in the course of 30 days upon submission of appeal”*.

14. In conformity with Article 33, paragraph 4 of Administrative Instruction no. 01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015: *“Commissiona for Review of Complaints should provide a response in writing within a 30 days period, with full reasoning, addressed to the complainant”*.

Legal analysis

15. Based on the summary of facts of the case of the complaint filed by Mr Ismet Rusinovci, on behalf of his spouse, Mrs Kimete Isufi against MAFRD, namely AAD, OI concludes that AAD received the documentation for application for a grant on 7.4.2015, with application number 19/157, according to the confirmation for the acceptance of documents signed by the applicant Mrs Isufi and the regional officer.
16. The checklist of documents submitted by the applicant states that ***“in case any obligatory document is missing, the AAD officer shall not accept the application, but he/she will register the applicant and he/she will give him/her a copy of this annex, circling documents which the applicant is missing. The applicant is due to complete the documents until the call for application is over. In case when only a copy of document is requested, the applicant will write by hand on the copy “as in the original” and will bring the original to the regional officer for view, who verifies the compatibility of the copy and returns the original to the applicant”***. Such a thing is not stipulated in Administrative Instruction No. 01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015, namely in Article 27, the inspection of application in the regional office, paragraphs: 2, 4 and 5.¹
17. However, the AAD decision dated 02.06.2015, REF:07/4, received by the complainant Mrs Isufi, states that *“During the administrative control of the applicant’s documentation Kimete Isufi it has been established that the applicant failed to pass the threshold eligibility for applications, based on the Administrative Instruction and the Applicant’s guidelines. The application is missing the following documents: Administrative Instruction no. 01/2015, Article 9, Paragraph 2, sub paragraph 2.4, item 2.4.9, reads: For construction projects, upon application, applicants should submit: 2.4.9.1: Copy of building sketches and a calculation of expenditures of material and works foreseen. The applicant did not bring the sketch. Therefore, considering the above, AAD has taken a rejection decision.”* Thus, according to AAD, the rejection of the request for grant to Mrs Isufi is done because she has not presented the sketch and has not made a calculation of expenditures. However, the checklist of documents submitted by the applicant states that ***“in case any obligatory document is missing, the AAD officer shall not accept the application***. Therefore, the complainant claims that documents required were

¹ Paragraph 2: *“Respective regional offices for agriculture will check whether the application is completed”*. Paragraph 4 *“In case any obligatory document is missing, the AAD officer shall not accept the application, but he/she will register the applicant and he/she will give him/her a copy of this annex, circling documents which the applicant is missing. Paragraph 5 states that “The applicant can complete the documents until the call for Application is over.”*

received by the regional officer, based on the confirmation on acceptance of documents signed by him and by the applicant, dated 7.4.2015, with application no. 19/157, Municipality of Prishtinë. Thus, the checklist for submission of documents requires no other document, in case of any obligatory document is missing, then the regional officer would not accept the application, **but he/she will register the applicant and he/she will give him/her a copy of this annex, circling documents which the applicant is missing**, as is defined in the Administrative Instruction No.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015, namely in Article 27, paragraphs 2,4 and 5.

18. Further, if we analyse the AAD decision dated 2.6.2015, submitted to OI by the complainant Mr Rusinovci, states that *“Based on the request filed by the applicant, Kimete Isufi from Municipality of Shtërpcë, through which she requested support for Agriculture and Rural Development, namely in the sub measure 101.4.a. Milk sector from cows”*. Based on claims of the complainant Mrs Isufi, for a start, she is not from Shtërpcë and this is the second mistake made by AAD, after the first, which is the Evaluation List of Applications for 2015, on 5.6.2015, in the part for notes for Mrs Isufi, with serial no. 128, which figured that the place of application was Malisheva, while the decision in question states that the place of application is Shtërpcë. The letter of MAFRD Minister, Mr Memli Krasniqi sent to OI on 20.9.2015, he mentioned the mistake made by the AAD officers, which instead of the place of application Prishtina, it was Malisheva, but Mr Krasniqi gave no data on the reasons of mistake issued in the decision on 02.06.2015 of AAD, which wrote that the place of application of the applicant is Shtërpcë.
19. The decision of AAD dated 2.6.2015 submitted by the complainant to OI also mentioned that the complainant requested support for Agriculture and Rural Development, namely in sub measure 101.4.a. Milk sector from cows. The complainant asserts that his spouse Mrs Isufi applied for the construction of a stable for sheep and goats, as can be understood from the business plan, namely in page 3, in the description of main assets owned by the applicant (*Table 1, item no.3: sheep, lambs, goats and goat kids*) and not for cows, as is mentioned in the decision in question *“101.4 a. Sector of production of milk from cows”*, also the Evaluation List of Applications for 2015, dated 05.06.2015 published by AAD, writes down measure *101.4.a. Sector of production of milk from cows*, also in the notes for Mrs Isufi in this list, with serial no. 128, mentioned *“Construction of the stable for milking cows”*. However, the response of Mr Krasniqi sent to OI, reads that *“Mrs Isufi applied in the sector of production of milk from sheep/goats”*. Therefore, based on these data, we found a number of irregularities while treating and assessing the request for a grant made by Mrs Isufi.
20. In addition, the reasoning of the decision dated 2.6.2015 of AAD, submitted by the party to OI highlights that *Administrative Instruction No.01/2015, Article 9, paragraph 2, sub paragraph 2.4, item 2.4.9, reads that: For construction projects, upon application, applicants should submit: 2.4.9.1: Copy of building sketches and a calculation of expenditures of material and works foreseen*. Therefore, OI has analysed the Administrative Instruction in question that Article 9, which deals with Milk Sector, paragraph 2, deals with *“acceptable investments”* while sub paragraph 2.4. deals with *“Investments in modernising the food system and water supply”*, whereas item 2.4.9 does not exist at all in this Article, as this Article, thus, Article 9, ends with paragraph 2.7 and then paragraph 3 follows, therefore, 2.4.9 does not exist at all. Therefore, the reasoning of AAD decision dated 2.6.2015, REF: 07/4 the legal basis is wrong, because it does not refer to the sketch of the building, as you have specified. In conformity with Law Nr. 02/L-28 on Administrative procedure, namely Article 86, paragraph 1 *“Rationale shall be clearly formulated and shall*

include an explanation of legal and factual basis of the act". In addition, article 86, paragraph 3 of this law reads that: "*Rationale with unclear, contradictory or inaccurate data is equal to lack of rationale*". Ombudsperson concludes that legal basis of the AAD decision dated 2.6.2015 is inaccurate, therefore, this may serve as sufficient argument, not only for the act in question to be called an unjustified act, but also invalid at the same time.²

21. We remind that Mrs Isufi filed a complaint for review on 15.06.2015 in MAFRD and among others she mentioned that "*the complainant is not from Shtërpcë*". In the response of MAFRD Minister, Mr Krasniqi sent to OI on 5 October 2015, among others made it known that the Commission for Review of Complaints has reviewed the complaint of Mrs Isufi, thereby issuing a Recommendation for review of the case.³ Subsequently, AAD according to the Commission's recommendations, reviewed the file of Mrs Isufi and ascertained the copy of the sketch of the building and the calculation of expenditures was not again in the file of the project, as is foreseen by Administrative Instruction No. 01/2015 of MAFRD, and owing to this reason, the project in question was not qualified for support.
22. However, based on assertions of the complainant to OI, Mrs Isufi has still not received the notice for review of the complaint, dated 28.7.2015 from AAD, as is noted in the notice of Mrs Isufi is the Municipality of Shtërpcë, although in her complaint for review dated 15.6.2015, she had mentioned that she is not from this Municipality. Moreover, Law No. 02/L-28 on Administrative procedure, in cases of visible inaccuracies or mistakes has foreseen the obligation of the body to conduct corrections, as is mentioned in Article 96 "*In cases when an administrative act is valid, but contains visible inaccuracies or mistakes, the administrative body, which issued such an act, shall, at its discretion or at a **request of parties** to administrative proceeding, correct material mistakes and visible inaccuracies of the act without changing its content. Correction of administrative acts containing visible inaccuracies or mistakes may be done at any time.*"
23. Therefore, considering that human rights and freedoms guaranteed based on international instruments, and foreseen by Constitution are directly applicable in the Republic of Kosovo,⁴ Ombudsperson draws the attention that **the right to be informed** is guaranteed by Universal Declaration of Human Rights, which guarantees everyone "*The freedom to seek, receive and impart information and ideas through any media and regardless of frontiers*".⁵
24. In addition, in conformity with Article 53, of the Constitution of the Republic of Kosovo: "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*", Ombudsperson points out that according to European Court on Human Rights (ECtHR), freedom to receive information, shall include freedom to collect and seek information, through all possible legal sources.⁶

² See commentary of Law on Administrative Procedure, 2014, First edition, Mr Mazllum Baraliu and Mr Esat Stavileci.

³ Based on Administrative Instruction no. 01/2015 of MAFRD, Article 33.

⁴ Article 19 [Applicability of International Law], 1. International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law.

⁵ Article 19, of Universal Declaration of Human Rights and Freedoms, issued and promulgated by the General Assembly of the United Nations, on 10 December 1948.

⁶ *Freedom of expression*, a guide on the implementation of Article 10 of European Convention of Human rights, p. 13, paragraph 13., case Autronic vs. Switzerland, 1990.

Ascertainment of Ombudsperson

25. Failure to notify the complainant related to the review of her complaint, on 28.7.2015 by the Commission for Review of Complaints for Rural Development projects for 2015. OI ascertains that this failure to notify occurred since the copy of the notice in question of the address of Mrs Isufi is wrong (Municipality of Shtërpçë), although in her complaint for review on 15.6.2015 sent to MAFRD, she highlighted that she is not from Shtërpçë.
26. Ombudsperson assessed that Checklist of documents submitted is not consistent with criteria set out in Administrative Instruction no.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015 and Applicant's guidelines. It should be mentioned that among the criteria the sketch of the building is specified. Ombudsperson assessed that the applicant made a calculation of expenditures of material, based on the business-plan for construction of the stable and associated buildings, and the agricultural mechanism, in page 8.
27. OI ascertained that Mrs Isufi has still not received the decision of the Commission for Review of Complaints, therefore, she cannot use legal remedies, as is set forth in Article 33, paragraph 6 of Administrative Instruction no.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015, which cites that *"The applicant may address to the competent court against the decision of the Commission for Review of Complaints, in a period of time of 30 days"*. Inability to use legal remedies is in full conflict with Article 13 *"Right to an effective remedy"* of European Convention on Human Rights.⁷ In addition, in conformity with Article 90, paragraph 1 of Law No. 02/L-28 on Administrative procedure reads that: *"Individual and collective administrative acts are serviced to interested parties no later than 30 days"* and Article 33, paragraph 4 Administrative Instruction no.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015 cites that *"Commission for Review of Complaints should provide a response in writing, with full reasoning, addressed to the complainant within period of time of 30 days"*. Ombudsperson also ascertained that in conformity with Law no. 02/L-28 on Administrative Procedure, namely Article 132, paragraph 1 cites that *"If the body that issued or refused to issue the appealed administrative act decides to endorse the request for review, it shall issue appropriate decision."*

Therefore, Ombudsperson

RECOMMENDS

The Ministry of Agriculture, Forestry and Rural Development

1. *To harmonise the checklist of documents submitted with the Administrative Instruction no.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015 and Applicant's guidelines, specifying that the checklist should highlight criteria required based on this Instruction, and among them also the sketch of the building.*

⁷ Article 13 of European Convention on human rights cites that "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".

2. *To issue and sent the decision of the Commission for Review of Complaint to Mrs Isufi, as is set out in Article 33, paragraph 4 of Administrative Instruction no.01/2015 on Measures and Criteria of Support in Agriculture and Rural Development for 2015.*

In conformity with Article 132, paragraph 3 of the Constitution of the Republic of Kosovo and Article 28 of the Law on Ombudsperson no. 05/L-019, I would like to be informed on actions planned to be taken by MAFRD and AAD, in response to the preceding recommendations.

Expressing our gratitude for the cooperation, please be informed that we would like to have your response, regarding this issue, within a reasonable legal time, but no later than **30 (thirty) days** from the day of the receipt of this report.

Sincerely,

Hilmi Jashari
Ombudsperson

Copy to:

- Mr Abit Hajredini, Head of Office for Good Governance, Office of the Prime minister
- Mrs Emine Kelmendi, Human Rights Unit coordinator, MAFRD
- Parliamentary Commission on Human Rights, Gender Equality, Missing Persons and Petitions of the Republic of Kosovo
- Parliamentary Commission for Agriculture, Forestry, Environment and Spatial Planning.