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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution**

REPORT WITH RECOMMENDATIONS

C. No. 438/2015

Isuf Qorrolli

**Concerning lengthy judicial proceedings in review of the lawsuit submitted in the
Basic Court in Ferizaj**

**To: Mr. Bashkim Hyseni – President
Basic Court in Ferizaj**

**Mr. Nehat Idrizi – Presiding
Kosovo Judicial Council**

Prishtinë, 15 June 2017

PURPOSE OF THE REPORT

This Report is based on individual complaint of Mr. Isuf Qorrolli (hereinafter *complainant*) and rests on complainant's evidence and proves as well as on case files in possession of the Ombudsperson Institution (OI).

The purpose of this Report is to draw attention of the Basic Court in Ferizaj concerning the need of undertaking appropriate actions, without further delays, to review and decide upon the lawsuit lodged by the complainant in 2003.

LEGAL BASE

According to the Law No. 05/L-019 on Ombudsperson, the Ombudsperson, among others, has the following competencies and responsibilities:

- “to provide general recommendations on the functioning of the judicial system ” (Article 16, par. 8).
- “to inform 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, subparagraph 5);
- “to publish notifications, opinions, recommendations, proposals and his/her own reports,” (Article 18, par. 1, subparagraph 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, subparagraph 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, subparagraph 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, subparagraph 9).

Through delivering this Report to the responsible institutions as well as its publishing in media, the Ombudsperson aims to accomplish the following legal responsibilities.

Summary of facts

Facts, proves and information in possession of the Ombudsperson Institution (OI) submitted by the complainant and gathered from the investigation conducted, can be summarized as follows:

1. On 7 March 2003, the complainant filed a lawsuit related to the attestation of ownership in the Municipal Court in Ferizaj regarding the property in which the complainant is a co-owner with 1/3 of the ideal part of the immovable property.
2. On 21 October 2003, an initial hearing has been set which has been adjourned for 11 November 2003, with the reason that a summon for hearing has not been served to the defendant.
3. On 14 October 2003, the hearing session continued by presenting of evidence and proposal has been granted to the authorized party of the claimant *-complainant* to be heard in the capacity of the party, as well as the witnesses proposed in the lawsuit.
4. On 7 May 2004, witness hearing session has continued.
5. On 17 March 2005, the next session on administration of evidences through interrogation of witnesses was held and the subsequent hearings were postponed for an indefinite period.
6. On 21 November 2005, the next hearing was held on administration of evidence through hearing of the present witnesses.
7. On 15 December 2005, the session has been adjourned for indefinite period after ascertains that a summon has not been served to the defendant.
8. On 25 April 2006, a session has continued with administration of proves and hearing of present witnesses as well as with the issued judgment the defendant has been obliged that within 20 days inform the Court whether or not to hear one of the witnesses.
9. On 28 June 2006, the session with administration of evidence and hearing of present witness continued as well as through the judgment the defendant has been obliged to submit documentary evidence in two copies at the next hearing.
10. On 11 September 2006, the session has been adjourned for 4 October 2006.
11. On 4 October 2006, a session continued with administration of evidences and cross-examining of present witnesses, in course of which, one of the witnesses was dismissed due to close kinship, producing further continuation of the procedure.
12. On 12 March 2007, a session continued with hearing of claimant *-complainant* and the defendant and a financial expertise has been set.
13. On 13 April 2007, the session has been adjourned on indefinite time period.
14. On 24 July 2007, the session continued by cross-examining present witnesses.

15. On 7 September 2007, the session continued by hearing of the defendant and request of the *complainant* to hear other witnesses was rejected with a ruling as well as *complainant's* proposal for submission of administered evidence and other evidence to the Court within the period of 8 days was approved.
16. On 4 October 2007, Basic Court in Ferizaj, based on Judgment No. C.no.133/03 has partially approved as grounded the lawsuit of the complainant.
17. On 27 October 2010, with the Decision No. Ac. no. 887/2008, after *complainant's* appeal, District Court returns for retrial in the first instance Court by quashing the judgment of the Municipal Court in Ferizaj C.no.133/03 of 4 October 2007.
18. On 20 June 2011, a court session has been set on attestation of the ownership but due to the death of the defendant, the procedure on this issue has been terminated on the bases of Article 277 of the LCP.
19. On 6 September 2012, with the ruling C.no.606/11 the lawsuit has been turned to the *complainant* for adjustment of the lawsuit within the deadline of 8 days.
20. Trial sessions set on 6 November 2012, 4 December 2012 and 26 December 2012, failed to be held.
21. On 10 July 2013, the complainant addressed a claim to the Basic Court in Ferizaj through which requested that the Court assign attorney at law to the defenders, bearing himself the expenses, solely for continuation of the trial sessions.
22. On 17 July 2013, the *complainant* addressed the Basic Court in Ferizaj with the submission for amending and supplementing of the provisional measure based on the Ruling no. 74/13 of the date 1 July 2013, of the Basic Court in Ferizaj.
23. On 18 July 2013, the Basic Court in Ferizaj, with the Ruling overturned complainant's proposal for provisional measure setting.
24. On 19 February 2015, the *complainant* addressed Urgency to the Basic Court in Ferizaj requesting acceleration of the procedure in reviewing and deciding upon the case but until present no answer has been served to the complainant as per this case.
25. On 3 September 2015, the *complainant* lodged a complaint with the Ombudsperson Institution concerning lengthy judicial proceedings against Basic Court in Ferizaj for deciding upon his case.
26. On 30 November 2015, the Ombudsperson addressed the Basic Court in Ferizaj in order to be informed related to the phase in which the procedure rests in complainant's case as well as what actions have been taken by this Court to process the case further without other delays.
27. On 8 December 2015, the Ombudsperson received a response by the Basic Court in Ferizaj according to which this case will be handled with priority and that the next session was set for 24 December 2015.

28. On 9 February 2016, Ombudsperson's representative met with the *complainant* who claimed that the trial session set for 24 December 2015 has been held in the course of which the judge requested that the complainant submit all evidences and proves. The *complainant* claimed that all evidences and proves have been again submitted to the court but until present he has not been subpoenaed and that the case still remains open.
29. On 2 November 2016, Ombudsperson's representative met with the complainant and was informed that no any other hearing was held in the Court about his case.
30. On 15 June 2017, Ombudsperson's representative again met with the complainant and obtained the information that no steps forward were taken as per his case, no any hearing has been set or held regarding it.

Legal instrument applicable in the Republic of Kosovo

The right on fair and impartial trial / the right into a regular process

31. Principally, the Constitution of Republic of Kosovo, in Article 21, paragraph 2 stipulates: *"The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution"*
 32. Special place within this right, within the meaning of Article 31, paragraph 1 of the Constitution, occupies the right to fair and impartial trial, which stipulates: *"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers"*. While paragraph 2 of the same Article determines: *"Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law"*.
 33. Article 54, Judicial Protection of Rights of the Constitution of Republic of Kosovo, stipulates:
"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".
 34. Article 6, paragraph 1 of the ECHR provides that: *"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 which will decide upon disputes related to his/her rights and liabilities of the civil nature..."*
 35. Article 13 of the ECHR, foresees the right for 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"*
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- notwithstanding that the violation has been committed by persons acting in an official capacity.”*
36. Law no. 03/L-199, on Courts in Article 7 par. 2 provides that: *“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”*.
37. Law No. 03/L-006 on Contested procedure, Article 1, 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.”*
38. 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

39. Based on analyses of facts and evidences, the Ombudsperson, observes that the right on regular judicial process within reasonable legal timeframe as well as the right to effective legal remedies, guaranteed by legal acts mentioned above have not been fulfilled, since the Basic Court has delayed reviewing and deciding upon complainant’s case for more than 14 years, procedures of which have been initiated since 2003 and have not yet been finally determined until the day of issuance of this Report; that excessive delays of judicial proceedings are contrary with the right on regular judicial process, within reasonable timeframe, guaranteed by Article 31, 32 and 54 of the Constitution of republic of Kosovo and paragraph 1 of Article 6 of the ECHR.
40. The Ombudsperson notes that as of 2003, when the *complainant* lodged a lawsuit with the Municipal Court in Ferizaj, 14 years have passed. While from 27 October 2010, when by Ruling No. Ac. no. 887/2008, upon complainant's appeal the District Court returns the case for retrial to the first instance court, 6 years have passed and he has not yet been given the opportunity to accomplish judicial protection of his rights since his case is on the process of reviewing at the Basic Court in Ferizaj.
41. The Ombudsperson observes that since 2003, when the lawsuit in the Basic Court in Ferizaj has been initiated by *complainant* and until the first ruling when lawsuit of the complainant has been partially approved, more than 4 years have passed and later it has been return for reconsideration on 27 October 2010 (from District

- Court in Prishtina), more than 5 years have passed as well as 8 years from the death of the defendant in 2011 have passed. It is observed that through the years Court hearings were suspended without any admissible justification thus, this is a sufficient argument that the *complainant's* lawsuit has not been examined by the Court in accordance with Articles 31, 32 and 54 of the Constitution of the Republic of Kosovo and paragraph 1 of Article 6 of the ECHR.
42. The Ombudsperson reiterates that Article 6 par. 1 of the ECHR does not foresees any absolute deadline on determination of the reasonableness of the lengthy proceedings. In the current case, the Basic Court in Ferizaj cannot use as justification the complexity of the case and actions taken by this Court until now that the case has remained open in the procedure.
 43. In majority of cases European Court of Human Rights (ECtHR) pointed out that party's right that his/her case is decided in the reasonable timeframe represents crucial element of the right on fair and impartial trial (see case *Azdajic vs. Slovenia*, 8 October 2015).
 44. The Ombudsperson draws attention on Article 6 of the ECHR, which secures the right to everyone that his case shall be heard fairly and within a reasonable time by an independent and impartial tribunal established by law (...).
 45. The Ombudsperson notes that the *complainant* attests that his right to a fair and impartial trial has been breached having in mind the fact that in order to achieve omnipotent decision in the civil dispute, the procedure has lasted for more than 14 years. This is attested with the drawn parallel of the present case with the judicial decisions of the ECtHR. (See case *Kutic versus Croatia*, No. 48778/99, 4 October 2001), where ECtHR found that the request was grounded based on the reasonability of time for suspending of the procedures and liability of the judiciary for a regular process without delays until the final solution is rendered.
 46. Moreover, the Ombudsperson considers that a 14-year court procedure, such is *complainant's* case, shall create a general situation of legal insecurity, reduce and lose the confidence of citizens in justice and the rule of law.
 47. Actually, the absence of an effective remedy, in the meaning of violation of his right to a fair and timely review of the case, guaranteed by Article 6 of the ECHR, constitutes violation also of his right to an effective legal remedy based on Article 13 of the ECtHR (see case *M.A v. Cyprus*, 23 July 2013).
 48. Article 13 of the ECHR, particularly emphasizes state's liability that its utmost priority is protection of human rights through its legal system, providing additional guarantees to everyone that he/she enjoys these rights efficiently.
 49. The Ombudsperson draws attention that the requests of Article 13 support and reinforce those of Article 6 of the ECHR. Thus, Article 13 guarantees an effective legal remedy before a national authority, for an alleged violation of requests according to the meaning of Article 6, to review a case within reasonable time.

Since complainant's case, deals with lengthy procedure in reviewing of his case, Article 13 of the ECHR is applicable.

50. The Ombudsperson notes that no opportunity or specific legal alternative existed or has been placed on *complainant's* disposal through which he could have complained for the lengthy proceedings, in the case review with the hope or anticipation to achieve any kind of relief in the form of prevention of injustice or obtaining any remuneration for the injustice endured by the Court.

FINDINGS

51. The Ombudsperson, based on entire evidence presented and facts gathered as well as according to laws at effect, ascertains that complaint of the complainant related to the lengthy proceedings on fulfillment of his property right, according to the legislation, is grounded and legitimate.
52. The Ombudsperson finds that in the present case, human rights and fundamental freedoms have been infringed, because of the fact that lengthy proceedings by the Basic Court in Ferizaj, on review and decide upon the case, has surpassed the deadline of 14 years and in the absence of such decision, no alleged right can be accomplish by the complainant.

RECOMMENDATIONS OF THE OMBUDSPERSON

Based on these ascertainments and in compliance with Article 135, paragraph 3 of the Constitution of Republic of Kosovo and Article 16, paragraph 4 and 8 of the Law No. 05/L-019 on the Ombudsperson, the Ombudsperson recommends to the :

Basic Court in Ferizaj

1. ***To undertake actions, without further delays, to review and decide upon the case C.no.133/2003 dated 7 March 2003, of Mr. Isuf Qorolli, which according to ruling Ac.no.887/2008, of the District Court in Prishtinë, has been returned over in the proceedings in Basic Court in Ferizaj.***

Kosovo Judicial Council

2. ***To initiate compiling of legal instrument which would constitute effective legal remedy in the meaning of Article 13 of the European Convention on Human Rights, which ensures lenience in the form of preventive or compensatory related to the complaints for lengthy proceedings.***

In conformity with Article 132, paragraph 3 of 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 Law no. 05/L-019 on Ombudsperson (*“Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, ... must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”*), You are kindly asked to inform us on actions to be undertaken by you about this issue.

Respectfully submitted,

Hilmi Jashari
Ombudsperson