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OMBUDSPERSON'S REPORT

Complaint No. 700/2021

Dragica Gašić

Versus

Municipality of Gjakova/Đakovica

Addressed to: Mr. Ardian Gjini, Mayor
Municipality of Gjakova/Đakovica

Prishtinë, 25 August 2022

Purpose of the Report

The Report has been drafted based on the individual complaint of Mrs. Dragica Gašić and aims to analyze complainant's complaining claims as well as generally the case circumstances, in relation to the liabilities of municipal administration bodies for undertaking actions regarding complainant's return process, who was moved from the municipality of Gjakova/Đakovica due to the war that took place in Kosovo in 1999.

Constitutional and legal bases of Ombudsperson's actions

1. Pursuant to Article 132 of the Constitution of Republic of Kosovo: "*The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.*" While in Article 135, paragraph 3, defines: "*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.*"
2. According to the Law No. 05/L-019 on Ombudsperson, Article 16, the Ombudsperson, among others, has the following powers and responsibilities:
 - "*To investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international instruments of human rights, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority.*" (Article 16, paragraph 1).
 - "*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*" (Article 18, paragraph 1, subparagraph 1.2).
 - "*To publish notifications, opinions, recommendations, proposals and his/her own reports*" (Article 18, paragraph 1, subparagraph 1.6).
 - "*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, paragraph 1, subparagraph 1.5).
 - "*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).

By delivering this Report to responsible Institutions, the Ombudsperson intends to perform his responsibilities according to the above-mentioned constitutional and legal provisions.

Case circumstances

3. On 10 December 2021, Mrs. Gašić, through her legal representative Mr. Predrag Miljkovic, had submitted a complaint to the Ombudsperson Institution against the Municipality of Gjakova/Đakovica. In the complaint, she stated that she had submitted a request to the Directorate for Urbanism of the Municipality of Gjakova/Đakovica to permit her to renovate the apartment and change the entrance door, but no response has been provided to her. In the complaint addressed to the Ombudsperson, she described the return process and emphasized: *“The return of Dragica Gašić as a displaced person who legally restored the right to use the apartment, Municipality of Gjakova/Đakovica. (...) on any basis. (...) disables, prevents or evicts from the apartment without giving any valid justification.”*
4. According to the data available to us, on 6 May 1997, from municipal government of that time, with Decision no. 01-360-391 for granting on apartment, the complainant had acquired the right to use the apartment in Gjakovë, on "Orize" street, no. 8, floor 2, apartment no. 1677, with 53.58m², for an indefinite period. The contract was endorsed between the complainant and the Public Enterprise for Housing and Municipal Construction Services of Gjakova/Đakovica .
5. The complainant had left the apartment in 1999 for security reasons, as she claimed, because of the war in Kosovo. During the following years, according to the complainant, third parties had repeatedly occupied the immovable property.
6. On 27 June 2003, Housing and Property Claim Commission, with Request no. DS005311, submitted by Mrs. Gašić against the defendant A. R., issued Decision no. HPCC/D/79/2003/C, by which the Commission had ordered:
 1. *For the applicant or the holder of the property right, as the case may be, to return possession of the property that is the subject of the request;*
 2. *That the respondent or any other person who is in the property or, where the resident has not participated in the case, all persons who are currently in the property, to vacate the same within 30 days from the day of delivery of this decision; and*
 3. *If the respondent or any other person found in the property does not comply with the order to vacate the property within the period determined, they will be evicted from it.*
7. On 17 October 2003, the Housing and Property Claim Commission, with Request no. DS602543, submitted by Mrs. Gašić against the defendant F. E., has issued Decision HPCC/D/93/2003/C, by which the Commission had ordered:
 1. *The applicant or the holder of the property right, as the case may be, is given possession of the requested property;*
 2. *The respondent and any other person who is in the property, or when the current resident has not participated in the case, all persons who are currently in the property to vacate the same within 30 days from the delivery of this decision; and*

3. *If the respondent or any other person on the property does not comply with the release order within the specified time they will be evicted from the property.*
8. On April 2, 2004, the complainant submitted to the Housing and Property Directorate a request for property administration following Decision no. HPCC/D/79/2003/C of the Housing and Property Claim Commission.
 9. On 22 October 2004, among others, also on the basis of A. R.'s request, the Housing and Property Claim Commission, with Decision HPCC/REC/40/2004, in 202 identified requests (among which A. R.'s request as well) had ordered that the request for reassessment should be rejected.
 10. On 16 February 2007, the consent of the right holder, namely the complainant, was signed for the said apartment to be included in the program of the leasing scheme by the Kosovo Property Agency.
 11. On 26 May 2008, Mrs. Gašić had filed a complaint with the Housing and Property Directorate regarding the approved request for rent payment and claimed that until then only one rent payment had been paid to her, on 8 November 2007, and since that date she had not received no other payment as compensation for rent under case DS005311.
 12. On 24 July 2020, at the Kosovo Property Comparison and Verification Agency, the complainant submitted a request for the repossession of the property KPA#DS05311.
 13. On 9 June 2021, the Kosovo Property Comparison and Verification Agency issued the *Protocol on the Keys Delivery - Handover*, which proved that Mrs. Gašić had received from the Housing and Property Directorate the keys to the property - object of request no. DS005311.
 14. On 10 June 2021, UNHCR representatives drafted an assessment form for voluntary returnees from minority communities, which stated: *“The lady has returned to the apartment which was occupied, but was released by the Kosovo Property Agency (KPA) and the Kosovo Police. The apartment is completely empty, we urgently need furniture and food. She suffers from diabetes, takes insulin, so she needs a refrigerator to keep the insulin safe. The apartment needs renovation as it is in a very bad condition.”*
 15. On 10 June 2021, the representatives of the Municipal Cadastral Office (MCO) of Gjakova/Đakovica, upon receiving the information from the OSCE and the UNHCR about the complainant's return, visited the complainant's apartment. During the visit MCO, IOM and UNHCR representatives identified the basic needs, according to the UNHCR assessment form for voluntary returnees, they found that the apartment lacked furniture, the floor was damaged as well as doors and windows.
 16. On 11 June 2021, the Head of MCO of the Municipality of Gjakova/Đakovica sent a request via e-mail to the Ministry of Communities and Returns (MCR) emphasizing the need for urgent delivery of food and hygiene products and to find the possibility of renovating the apartment as soon as possible, because it was very damaged and lacked basic living conditions.
 17. On 16 June 2021, the head of the office of the MCO of Gjakova/Đakovica sent an invitation to the Municipal Commission for Return by e-mail to hold a session on 18

June 2022, with the agenda: “*Finding solutions for renovation of the apartment of the returnee Dragica Gašić.*”

18. On 21 June 2021, the meeting of the Municipal Return Committee was held. Representatives of the local government, MCR, IOM, UNHCR, OSCE participated in the meeting. In the minutes of the meeting it has been ascertained that the complainant had returned to Gjakova/Đakovica on her own initiative and not in an organized way through the MCO.
19. According to the minutes from the meeting of 21 June 2021 of the Municipal Commission for Return of the Municipality of Gjakova/Đakovica, it is understood that on 9 June 2021, the Head of the Office for Communities of the Municipality of Klina and the OSCE notified the Head of the Office for Communities of the Municipality of Gjakova/Đakovica (hereinafter: OCM in Gjakovë) for the return of the returnee Mrs. Gašić. In the aforementioned minutes, it was noted that the representatives of the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), the Organization for Security and Cooperation in Europe (OSCE) had expressed their readiness for the registration of the complainant as a returnee. According to the minutes from this meeting, the Municipal Commission for Return concluded that the renovation of the apartment could not be approved because the legal requirements for ownership had not been met. In fact, it was found that the apartment was on the ownership of Municipality of Gjakova/Đakovica, while the complainant was only a lessee of the property.¹
20. According to the complainant's assertions, after returning to the apartment, she had received a donation for entrance door replacement from the so-called Office for Kosovo in the Government of Serbia, and this same Office had hired a company from Klina to install it. On the same day, continuously based on complainant's assertions, officials of the Gjakova/Đakovica Municipal Inspectorate had banned replacement of the entrance door and had verbally informed her that for any adjustments in the apartment she had to request permission from the municipal bodies. In that event, a fine of 400 euros have been imposed on the person who was engaged in fixing the entrance door.
21. On 30 June 2021, Mrs. Gašić addressed a letter to the Municipality of Gjakova/Đakovica with a request for permission to replace the entrance door, but according to her, she had not been served with the response on her request until the day she addressed the Ombudsperson.
22. On 16 July 2021, Ombudsperson's representative held a meeting with the responsible officials of the MCO of Gjakova/Đakovica in order to receive information regarding the concerns raised, which were reported in the media regarding the situation created after the return of the complainant in Gjakova/Đakovica, and especially related to the actions taken by the Municipality of Gjakova/Đakovica.
23. At the meeting it has been emphasized that after the news of the return of Mrs. Gašić in Gjakovë had been disclosed in media, the situation was further complicated, also emphasizing that she had stayed for ten days in the apartment and has not been

¹ Minutes from the first meeting of the Municipal Commission for Return of the Municipality of Gjakova, of 21 June 2021.

disturbed by anyone. According to the statements of the responsible representative of the MCO of Gjakova/Đakovica, they can provide accommodation to the complainant by paying her the rent of the another apartment on her choice, the fact that they are obliged to do according to Regulation No. 01/2018 on the Return of Displaced Persons and Durable Solutions.

24. In the same meeting, it was emphasized that the Municipality of Gjakova/Đakovica had prepared a lawsuit for the dissolution of the given contract for apartment renting and application of the security measure would be requested.
25. On 23 August 2021, the Municipality of Gjakova/Đakovica submitted to the Basic Court in Gjakova/Đakovica "*The lawsuit for annulment of the contract for renting of the apartment with a proposal for appointment of the security measure*". In the request for the determination of the security measure, the Municipality requested from the court: "The Opponent of Security, Dragica Gašić, is PROHIBITED to personally stay, use or live in the apartment according to certificate 144/21 of 28.06.2021 that is in the cadastral unit -70705028-05102-2-45-4-12-0 for which, according to the certificate, it has been proven that the Municipality of Gjakova/Đakovica is the only owner."
26. The Basic Court in Gjakovë had reviewed the lawsuit in an urgent procedure and on 9 August 2021, it had rejected the part that referred to the security measure, while the procedure related to the main issue of the dispute remained to be reviewed in a regular procedure.
27. On 9 March 2022, the representatives of the Ombudsperson held a meeting with the representatives of the Municipality of Gjakova/Đakovica, in order to be informed about the procedures that the Municipality of Gjakova/Đakovica has undertaken or plans to undertake regarding complainant case.
28. On 5 April 2022, the representative of the Ombudsperson met with the representative of the Kosovo Property Comparison and Verification Agency (KPCVA) to analyze the submitted documents and additional information related to accomplishment of decision on eviction of the KPCVA in the complainant case.
29. On 6 April 2022, Ombudsperson's representative met with the representatives of the Municipality of Gjakova/Đakovica, from whom it was informed that the complainant, in the request submitted on 30 June 2021 for the replacement of the entrance door, had received a response from the Municipality on 13 August 2021. The persons responsible in this case have clarified that, since the complainant claims that she has not received an answer, the same response will be delivered to her immediately, jointly with the copy of the letter of 13 August 2021 attached, as well as the last notification addressed to the complainant, of 6 April 2022, were submitted to the representative of the Ombudsperson.
30. In the announcement of Gjakova/Đakovica Municipality of 6 April 2022, it was stated: "*In order to process the request for permission to replace the entrance door, you must submit and document the right to use this residential unit with the relevant cadastral documentation within 7 days, otherwise the procedure will be suspended.*"
31. On 17 May 2022, Ombudsperson's representative met with the complainant, who emphasized that due to deterioration of her health condition, she was admitted to the

hospital and after returning to her apartment, she found a letter under the door. As she points out, she did not understand the content of the letter because it was in the Albanian language and she immediately sent the given letter to her legal representative.

32. On 17 May 2022, the representative of the Ombudsperson spoke with the complainant, who emphasized that she was visited by an official of the Ministry of Environment, Spatial Planning and Infrastructure, who offered her a document and informed her about the possibility of purchasing the apartment within 2 years. In fact, that document was a copy of the Law on Sale of Apartments in Which there is Tenure Right.
33. On 6 June 2022, Ombudsperson's representative had a talk with complainant's legal representative, the lawyer Mr. Predrag Miljković, who has expressed dissatisfaction that the response of the Municipality of Gjakova/Đakovica is not in accordance with Law no. 02/L-37 on the Use of Languages. According to him, the Municipality should communicate with the complainant in her own language, because she does not understand any language other than Serbian.
34. In addition, the legal representative of the complainant has emphasized that with the response of the Municipality of Gjakova/Đakovica, of 13 August 2021, the proof of the right to use the apartment was requested, which was unreasonable, due to the fact that when the lawsuit was filed in court, the Municipality has cited the Contract for the use of the apartment as evidence, which results that the Municipality had knowledge of the complainant's right of residence.
35. With the submission filed with the Basic Court in Gjakovë, in the case initiated by the responsible party, the complainant had emphasized that as of 1999 until today, she has continuously made payments on behalf of real estate tax in the sense of municipal obligations, while she testifies that by providing the evidence in the form of invoices, which she submitted to the court for assessment.

Case analyses

36. The Ombudsperson emphasizes that the principle of equality is the fundamental principle of the state legal order, the basis on which the legal order is based and built, but also a fundamental right of citizens guaranteed by the Constitution.²
37. In this regard, the decisions of the administration bodies affect the realization of the rights of citizens provided by law. They establish general norms in a wide field of administrative activity, therefore, either from the point of view of human rights or from the point of view of the rule of law, it is important that the decisions of administrative bodies are legal and in accordance with the standards of human rights. The unique application of the law, including administrative law, is undoubtedly an obligation of any legal system.
38. It is undisputed the fact that the complainant was placed in a municipally owned apartment on the basis of a contract for the use of the flat and a rental contract, by acquiring the right to use it to meet her family's housing needs, subject to the terms

² The Constitution of the Republic of Kosovo, in Article 24, defines: "*Everyone is equal before the law. Everyone enjoys the right to equal legal protection, without discrimination.*"

defined in the apartment rental agreement, of 6 May 1997. The same agreement has determined the rights and obligations of the parties in the use, management and maintenance of the apartment. The right to use the apartment is a right confirmed by the later decisions of the Kosovo Property Agency (see paragraphs 6-13).

39. Based on the review of the relevant documentation, the Ombudsperson does not have any information available if in the cases of other municipally owned properties, which by nature are of the same or similar status to the property that is now the subject of the dispute, the Municipality of Gjakova/Đakovica has not undertaken any administrative or judicial measures against other persons who live in those housing facilities. Also, there is no data if the Municipality of Gjakova/Đakovica has ever taken measures even against third parties who have occupied the same apartment.
40. The obligations of local authorities regarding the return of refugees and displaced persons are determined by the Constitution of the Republic of Kosovo, which in Article 156 [Refugees and Internally Displaced Persons] states: "*The Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession.*" This defines the obligation of state bodies to work in two directions: "*promote*" - which means works in the direction of creating a suitable and safe environment for return; and "*facilitate*" - meaning the creation of facilities for persons wishing to return to the country.
41. This constitutional obligation was confirmed by the Constitutional Court of the Republic of Kosovo when giving assessments on proposals for constitutional amendments. Amendment 17 proposed by the government provided for the deletion of Article 156 of the Constitution. The Court emphasized that the deletion of this Article diminishes human rights: "The Court considers that the proposed deletion of Article 156 of the Constitution could diminish some rights and freedoms defined in Chapter II of the Constitution."³
42. From the complaint submitted to the Ombudsperson, the complainant emphasized the failure of the Municipality of Gjakova/Đakovica to respond to her request to obtain consent for the renovation of the apartment and that the responsible party delivered its notices and administrative decisions to her only in the Albanian language. The Constitution of the Republic of Kosovo, Article 5 [Languages], paragraph 1, states: "*The official languages in the Republic of Kosovo are Albanian and Serbian.*"
43. In the spirit of this constitutional provision, the Law on the Use of Languages ensures equal status of the use of the Albanian and Serbian languages, as official languages in Kosovo, in all institutions of Kosovo. This law, among other things, in Article 7 emphasizes the use of official languages also at the municipal level. Article 7, paragraph 7.1, states: "*In municipal institutions applies the equality of the official languages of the municipality.*" While subsequent paragraph, 7.2 determines: "*Every person has the right to communicate with, and to receive available services and public documents from, municipal institutions and officials in any of the official languages. Every municipal representative and executive body has a duty to ensure*

³ See the case KO 13/12, of 12 May 2012, paragraph 82.

that every person can communicate with, and can obtain available services and public documents from, any municipal institution or organ in any official language.”

44. Regulation (GRK) No. 01/2018 on the Return of Displaced Persons and Durable Solutions, in Article 3 (definitions), paragraph 1, subparagraph 1.16, provides a definition of vulnerable persons, used within the meaning of this regulation: *“Vulnerable Persons – means displaced persons and returnees who are in need for special measures as result of their decreased functional capacity, due to illness or disabilities or as consequence of their family situation, age or gender.”*
45. Regulation (GRK) No. 01/2018 on the Return of Displaced Persons and Durable Solutions, in Article 15 (Sheltering and housing assistance), paragraph 1, points out: *“1. The scheme of housing and sheltering categories is as follows:*
- 1.1. Rent;*
 - 1.2. Repairs;*
 - 1.3. Construction or reconstruction;*
 - 1.4. Support through allocation of land with tenure rights for special cases, in accordance with the applicable Law on Allocation for Use and Exchange of Immovable Property of Municipality;*
 - 1.5. Support through social housing programs according to the applicable law, until the durable solution of housing.”*

While in paragraph 2 stipulates:

- “2. Rent is provided as temporary accommodation measure for returnees until durable solution on housing in cases when:*
- 2.1. There are no financial resources available to afford housing;*
 - 2.2. There are no family members that could accommodate returnees;*
 - 2.3. There is no housing property available;*
 - 2.4. Property is available but is not immediately accessible due to re- possession of the property, renovation or (re)construction;*
 - 2.5. Rent for returnees of serious category is provided for a period between 3 and 12 months, subject to financial capacities;*
 - 2.6. Upon expiry of deadline for accommodation, relevant municipality in accordance with the applicable law shall provide sheltering through social housing programs according to the applicable la.”*

Ascertainments of the Ombudsperson

46. From the information available to the Ombudsperson, it can be concluded that Mrs. Gašić had individually and spontaneously decided to return to the apartment with already confirmed right of possession. Although the relevant municipal authorities were not notified in advance and the return process was not coordinated through them, it does not mean that those same authorities are split from the responsibility that they have to properly administer the processes taking place in the territory where their competence lies. The return of displaced persons has a complex dimension in itself

and the authorities must be aware and responsible for how they fulfill their obligations and the role.

47. The standard of good administration means an active and committed attitude of the administration body towards the performance of tasks within its scope and the legal performance of those tasks to achieve the goal for which this body has been given public powers.
48. Regulation (GRK) No. 01/2018 on the Return of Displaced Persons and Durable Solutions should serve as a basis on which the municipal authorities would exercise their activity in the direction of creating a suitable environment for the return of the complainant, and that in this case it seems that its full implementation was lacking.
49. The Ombudsperson finds that the long period of administrative procedures in the Municipality of Gjakova/Đakovica, as well as inefficient communication, has created an unclear situation for the complainant, regarding her possibility to peacefully enjoy the guaranteed rights. The municipal bodies failed to provide the complainant with her right to use a right confirmed by administrative decisions.
50. The Ombudsperson states that the official communication of the administrative bodies with the complainant is contrary to Article 5 of the Constitution of the Republic of Kosovo and the Law on Use of Official Languages.
51. The right to use the apartment was confirmed by the decisions of the competent body that deals with property issues of this nature in Kosovo. No judicial proceedings and no other administrative action to dispute this, was undertaken by the municipal bodies in relation to this property, until the time of the complainant's return.

Therefore, based on what has been stated above, the Ombudsperson, pursuant to Article 135, paragraph 3, of the Constitution of Republic of Kosovo “[...] *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.*” According to the meaning of Article 18, paragraph 1.2, of the Law on Ombudsperson: “(...) *The Ombudsperson has the responsibility to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases (...)*”; as well as to: “*To recommend (...) promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo.*” (Article 18, paragraph 1.7), Therefore, the Ombudsperson

RECOMMENDS

Municipality of Gjakova/Đakovica:

- ***To comply with Regulation No. 01/2018 for the Return of Displaced Persons and Durable Solutions, to give permission to the complainant to adapt the interior of the given property, as well as to enable her to use it freely and without other obstacles.***

- ***The municipal administration bodies to implement the Law on Use of Languages and the official communication with the complainant to take place according to the requirements of the Law on Use of Languages.***

Pursuant to Article 132, paragraph 3, of the Constitution of 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 the 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 steps to be undertaken regarding this issue.

Warmly submitted,

Naim Qelaj

Ombudsperson

Copy:

Office of Language Commissioner