



Republika e Kosovës • Republika Kosovo • Republic of Kosovo
Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

REPORT

OF

OMBUDSPERSON

A. no. 731/2021

on the delay of court proceedings before the Basic Court in Prishtina for the case

C. no. 2115/19

To: Ms. Albina Shabani Rama, President
Basic Court in Prishtina

Prishtinë, May 23rd, 2024

Purpose of the Report

1. This Report aims to draw the attention of the Basic Court in Prishtina (BCP) to the need for taking action to review and decide, without further delay, on the case C. no. 2115/19.
2. This report is based on the complaint of Mr. Ardian Gashi (hereinafter: the complainant) and is supported by the facts and evidence provided by the complainant, as well as the case files held by the Ombudsperson Institution (OI), concerning the delay in judicial proceedings in the case C. no. 2115/19.

Legal Basis

3. According to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo: *“The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed.”*
4. Moreover, Law no. 05/L-019 on Ombudsperson, Article 16, paragraph 8, defines: *“The Ombudsperson may provide general recommendations on the functioning of the judicial system. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in case of delays of procedures.”*

Summary of Facts

The facts, evidence, and information held by the OI can be summarized as follows:

5. Regarding this matter, the complainant claims that his late father, Mr. Idriz Gashi, had purchased an immovable property recorded in cadastral parcel P-71914030-01112-0, with an area of 51 ares and 90 square meters, located in Dragoc. The complainant asserts that this parcel was not registered in the cadastral survey, and as a result, ownership has not been formally registered.
6. On June 26th, 2019, the complainant filed a lawsuit with the Basic Court of Prishtina (BCP), requesting confirmation of ownership rights over the immovable property recorded in cadastral parcel P-71914030-01112-0.
7. The complainant stated that the case was registered in court under number C. no. 2115/19. Furthermore, the complainant alleges that the Basic Court of Prishtina had not undertaken procedural actions until he submitted a complaint to the Ombudsperson Institution.
8. On December 30th, 2021, the Ombudsperson received a complaint from Mr. Ardian Gashi against the Basic Court of Prishtina, alleging delays in judicial proceedings concerning case C. no. 2115/19.
9. On February 15th, 2022, the Ombudsperson sent a letter to the Basic Court of Prishtina requesting information about the case.
10. On March 3rd, 2022, the Basic Court of Prishtina responded, informing the Ombudsperson that the case had been assigned to the relevant judge on July 20th, 2019. Furthermore, in its response, the Basic Court of Prishtina stated that after the case had been registered and assigned, the ruling along with the request for a response to the lawsuit had been sent to the defendant. However, the postal service returned it with the justification that the defendant had moved. In this regard, the Basic Court of Prishtina clarified that the ruling with the request for a response to the lawsuit was then sent to an

alternative address, specifically to a witness proposed by the plaintiff. At the end of the letter, it was stated that the case would proceed once the defendant submitted a response to the lawsuit.

11. On September 13th, 2022, the Ombudsperson sent a letter to the Basic Court of Prishtina requesting information regarding the case in question.
12. On September 27th, 2022, the Basic Court of Prishtina responded, informing the Ombudsperson that the judge handling the case was finalizing cases from 2014 and, due to the heavy workload, had not been able to take any further action.
13. On April 19th, 2023, the Ombudsperson again sent a letter to the Basic Court of Prishtina, requesting information about the status of the case in question.
14. On May 11th, 2023, the Basic Court of Prishtina responded, informing the Ombudsperson that the judge in charge was overwhelmed with older cases and that case C. no. 2115/19 would be processed according to the order of cases received by the court and based on the court's priorities.
15. On February 1st, 2024, the complainant's representative informed the Ombudsperson's representative that the Basic Court of Prishtina had not taken any action regarding the case in question.

Legal instruments applicable in the Republic of Kosovo

16. Article 21 of the Constitution of the Republic of Kosovo defines: *"The Republic of Kosovo protects and guarantees human rights and fundamental freedoms [...]."*
17. The right to a fair and impartial trial is defined by Article 31.1 of the Constitution: *"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers."*
18. Judicial protection of rights, as established in Article 54 of the Constitution, stipulates: *"Everyone enjoys the right to judicial protection in the event of a violation or denial of any right guaranteed by the Constitution or by law, as well as the right to effective legal remedies if it is determined that such a right has been violated."*
19. The European Convention for the Protection of Fundamental Human Rights and Freedoms (ECHR), according to the Constitution of the Republic of Kosovo, is a legal document directly applicable in the Republic of Kosovo and takes precedence, in case of conflict, over the provisions, laws, and acts of other public institutions.¹ Paragraph 1 of Article 6 of the ECHR guarantees: *"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."*
20. Law no. 03/L-199 on Courts, Article 7, paragraph 2 defines: *"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."*
21. Whereas Article 7, paragraph 5 of the Law on Courts defines: *"All courts should function in an expeditious and efficient manner to ensure the prompt resolution of cases."*

¹ Constitution of the Republic of Kosovo, Article 22.

Legal Analysis

22. The Ombudsperson draws attention to Article 53 of the Constitution of the Republic of Kosovo, which mandates that human rights and freedoms must be interpreted in accordance with the decisions and practices of the European Court of Human Rights (ECHR).
23. The ECtHR has emphasized in several cases that the right of a party to have their case decided within a reasonable time is a fundamental element of the right to a fair and impartial trial, as guaranteed by Article 6 of the European Convention on Human Rights.
24. The Ombudsperson finds that ECtHR case law has established that the duration of proceedings is generally calculated from the time judicial proceedings are initiated (see, among others, the judgment in *Moldovan and Others v. Romania*, July 12th, 2005, and the judgment in *Sienkiewicz v. Poland*, September 30th, 2003) until the case is concluded and/or the judgment is executed (see the judgment in *Poitier v. France*, November 8, 2005).
25. Regarding the failure to inform the party about the stage of their case, the Ombudsperson finds that, according to ECtHR rulings, one of the factors to be considered is the conduct of the competent judicial and administrative authorities. It is the responsibility of the court to organize its work in such a way that individuals are informed about the progress and outcome of their cases within a reasonable time (see the judgment in *Zimmermann and Steiner v. Switzerland*, July 13th, 1983).
26. According to the Court's case law (see *Poiss v. Austria*, §50; *Bock v. Germany*, §35), the time calculation for handling a judicial case begins from the moment the lawsuit is filed with the competent court. In the present case, this period starts from August 29th, 2017, when the complainant submitted the appeal to the BCP, until the publication date of this report.
27. At the same time, the absence of effective remedies to address the violation of the right to due process within a reasonable time, a right guaranteed by Article 6 of the European Convention on Human Rights, constitutes a violation of Article 13 of the Convention [Right to an Effective Remedy], which states: "*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.*"
28. Furthermore, Article 13 of the ECHR directly reflects the state's obligation to first protect human rights through its legal system, thus establishing an additional guarantee for individuals to effectively enjoy their rights. From this perspective, an individual's right to due process within a reasonable time would be less effective if there were no possibility to first submit a complaint to a domestic authority. The requirements of Article 13 support those of Article 6 (see the judgment in *Kudła v. Poland*). Therefore, Article 13 guarantees an effective remedy before a domestic authority for an alleged violation of Article 6's requirements to review a judicial case within a reasonable time. Since the present case concerns a complaint regarding the duration of proceedings, Article 13 of the Convention is applicable.

29. Regarding the application of Article 13, the Ombudsperson recalls that the ECtHR has repeatedly emphasized that significant delays in the administration of justice, particularly when parties lack effective remedies against such delays, pose a threat to the rule of law within the domestic legal order (see *Bottazzi v. Italy*, July 28th, 1999, and *Di Mauro v. Italy*, July 28th, 1999).
30. With regard to the requirements of Article 13, the Ombudsperson recalls that the effect of this article is to ensure the existence of a domestic legal remedy that addresses the substance of “a contested complaint” under the Convention and provides appropriate redress (see *Kaya v. Turkey*, February 19th, 1998). Such a remedy must be effective both in practice and in law (see *Ilhan v. Turkey*, June 27th, 2000).
31. Regarding complaints about delays in proceedings, the Ombudsperson notes that “effective remedies,” within the meaning of Article 13, should have been capable of preventing the alleged violation from occurring or continuing, or providing adequate redress for any violation that had already taken place (see the aforementioned *Kudla* judgment).
32. The Ombudsperson observes that in the domestic legal system, there is no legal mechanism through which the complainant could have lodged a complaint about procedural delays to obtain any form of preventive or compensatory relief.

Findings of the Ombudsperson

33. The Ombudsperson recalls that, according to the ECtHR’s judicial practice, the duration of proceedings is calculated from the initiation of judicial proceedings, which in the present case is June 26th, 2019, and finds that such a delay, without a final decision, violates:
- *The right to a fair trial and due process within a reasonable time limit, as defined and protected by Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the ECHR;*
 - *The right to effective legal remedies, as protected by Article 32 of the Constitution of the Republic of Kosovo and Article 13 of the ECHR;*
 - *The right to judicial protection of rights, as defined in Article 54 of the Constitution of the Republic of Kosovo.*
34. Taking into account the aforementioned circumstances, based on Article 135, paragraph 3, of the Constitution of the Republic of Kosovo, and Article 16, paragraph 8, of Law No. 05/L-019 on the Ombudsperson, as well as the above legal analysis, with the aim of improving the functioning of the judicial system in Kosovo, the Ombudsperson hereby:

RECOMMENDS

To the Basic Court in Prishtina:

- **Without further delays, undertake all necessary actions to review and decide on case C. no. 2115/19.**

In accordance with Article 132, paragraph 3, of the 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/I-019 on Ombudsperson (“Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question.”), please kindly inform us about the actions taken regarding the matter in question.

Respectfully,

Naim Qelaj
Ombudsperson