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**REPORT
OF
OMBUDSPERSON**

A.no. 108/2023

**on the delay of court proceedings before the Special Chamber of the Supreme Court of
Kosovo for the case C-III-12-1875**

To: Mr. Sahit Sylejmani, Acting Supervising Judge
Special Chamber of the Supreme Court of Kosovo

Prishtina, October 28th, 2024

Purpose of the Report

1. The purpose of this report is to draw the attention of the Special Chamber of the Supreme Court of Kosovo (SCSCK) to the need for the appropriate actions to be taken in order to decide on case C-III-12-1875 without further delays.
2. This report is based on the complaint of Mr. Fejaz Dauti (hereinafter referred to as the complainant) and is supported by facts, evidence, and case documents held by the Ombudsperson, regarding the delay in the judicial proceedings in case C-III-12-1875.

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. Based on the information provided by the complainant, it was noted that proceedings for case C-III-12-1875 are ongoing before the SCSCK.
6. Regarding this matter, the complainant stated that in 2010, he had initially filed a lawsuit with the Municipal Court in Prizren, which in 2012 was declared incompetent to review the case. Consequently, on November 6th, 2012, the case was transferred to the SCSCK for examination and decision-making.
7. On February 2nd, 2023, the Ombudsperson received a complaint from Mr. Fejaz Dauti, filed against the SCSCK concerning the delay in judicial proceedings related to case C-III-12-1875.
8. On March 6, 2023, the Ombudsperson sent a letter to the acting supervising judge of the SCSCK, requesting information regarding the case in question.
9. On March 16th, 2023, the acting supervising judge of the SCSCK responded, informing the Ombudsperson that the complainant's case would be reviewed in the order it was received by the court.
10. On April 4th, 2018, the complainant, together with Mr. Sami Piraj, filed a lawsuit with the SCSCK and proposed a security measure against the Kosovo Privatization Agency. Regarding the security measure, the Specialized Panel issued a ruling on June 7, 2018, rejecting the proposal for its imposition.
11. On June 27th, 2024, the complainant informed the Ombudsperson's representative that, concerning his case, the SCSCK had not taken any action until the time he contacted the Ombudsperson's representative.

Legal instruments applicable in the Republic of Kosovo

12. Article 21 of the Constitution of the Republic of Kosovo defines: *“The Republic of Kosovo protects and guarantees human rights and fundamental freedoms [...].”*
13. The right to a fair and impartial trial is defined by Article 31 of the Constitution: *“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.”*
14. 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.”*
15. 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.”*
16. Law no. 06/L-054 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.”*
17. 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.”*

Legal Analysis

18. 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).
19. 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.
20. 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).
21. 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

¹ Constitution of the Republic of Kosovo, Article 22.

and outcome of their cases within a reasonable time (see the judgment in *Zimmermann and Steiner v. Switzerland*, July 13th, 1983).

22. 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 March 11, 2021, when the complainant submitted the appeal to the Court of Appeals, until the publication date of this report.
23. 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.*"
24. 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 *Kudla 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.
25. 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).
26. 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).
27. 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).
28. 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

29. 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 March 11, 2021, 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.*

30. 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 Special Chamber of the Supreme Court of Kosovo:

- **Without further delays, undertake all necessary actions to review and decide on case C-III-12-1875.**

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/L-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