



REPORT OF THE OMBUDSPERSON

Following an Inquiry in the Complaint of Sefer Goxhuli Against the Kosovo Specialist Prosecutor's Office

Ref. No. OMB-C-2022-04

Issued on 28 February 2023

PUBLIC

The Ombudsperson of the Kosovo Specialist Chambers ('the Ombudsperson') sitting on 28 February 2023,

Having considered the aforementioned complaint, further to the authority of the Ombudsperson prescribed in Article 162(11) of the Kosovo Constitution, Article 34(9) of the Law on Specialist Chambers ('SC') and Specialist Prosecutor's Office ('SPO') and Rules 28 and 29 of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers ('RPE') on the establishment of the Office of the Ombudsperson and the Office of the Ombudsperson Complaints Procedure ('Complaints Procedure') adopted by the Ombudsperson on 12 September 2018,

Having deliberated, issues the following Report:

I. COMPLAINT BEFORE THE OMBUDSPERSON

1. The complaint was registered with the Ombudsperson on 13 December 2022.

2. In accordance with the provisions of Section 14.3 of the Ombudsperson's Complaints Procedure, in the handling of complaints and inquiries, the Ombudsperson's Office may, for the purpose of protecting the legitimate interests of a complainant or a third party, treat specific information contained in a complaint or other document or material received as confidential. The complainant has confirmed that he has no objection to having his identity disclosed and the Ombudsperson has concluded that there are no compelling reasons to treat any information received from the complainant as confidential.
3. The Specialist Prosecutor submitted a Response to the complaint on 9 February 2023. The Ombudsperson acknowledges the arguments raised in the Response from the Specialist Prosecutor and has given each due consideration in this assessment.

II. THE FACTS

4. Having considered the correspondence from the complainant, including the Specialist Prosecutor's submissions, the facts are limited to a general summary as follows.
5. On 11 November 2022, the complainant was interviewed by two of the staff of the SPO.
6. At the outset of the interview, one staff member read from a document and referred to the Republic of Kosovo as 'Kosovo I Metohija'.
7. The complainant did not raise his objection to and concerns on the use of the phrase 'Kosovo I Metohija' at this point as he was advised not to do so by his legal counsel. However, at the end of interview, he did put his concerns about the use of the phrase on record.

III. THE COMPLAINT

8. The complainant states that the use of this term to refer to The Republic of Kosovo was deeply offensive as it is the term used by Serbia when referring to the Republic of Kosovo in a pejorative manner.

9. He further submits that the use of such a label to describe Kosovo is repugnant and raises concerns about the understanding that SPO has of the State and the people that they represent. He alleges that the use of the term 'Kosova Metohia' by the SPO representative contradicts Article 1 of the Constitution of Kosovo.
10. The complainant further submits that the SPO is regulated by the legislation which was approved by the Assembly of the Republic of Kosovo and that its objective is to administer justice in the name of the people of Kosovo.
11. At the termination of interview, the complainant did put his concerns about the use of the phrase on record and alleges that he was met with indifference by the prosecuting lawyers who did not appear to realise and/or care what they had said.
12. The complainant further alleges that the use of the term was not as a result of a simple linguistic error on the part of the SPO representative, pointing to the fact that the representative in question was reading from a document when he used the term.
13. The complainant requests a number of remedies in order to redress the issues set out in his complaint, including the immediate cessation of the use of the term by the SPO and the provision of training and education to KSC-SPO staff on the origins of the term and why it is deemed offensive. He also requests that a written explanation of why the term was used to be sent to himself, the European Parliament and the US State Department.

IV. RESPONSE OF THE SPECIALIST PROSECUTOR'S OFFICE

14. On 9 February 2023, the SPO responded to the Ombudsperson.
15. The SPO confirmed that the complainant was interviewed by the SPO's office in The Hague on 11 November 2022.
16. The SPO also confirmed that the term 'Kosovo i Metohija' ('Kosovo and Metohija', in English) was used in the interview with the complainant and acknowledged that this was done in error.
17. The SPO stated that this term is not part of the SPO standard practice, including in any template or *pro forma* document in use by the SPO.

18. The SPO rejected the assertion made by the complainant that they were indifferent to his complaint, which was brought to their attention at the termination of the interview.
19. The SPO informed the Ombudsperson that following the interview, several steps were taken to determine how this error had occurred and prevent it from happening again. In addition, staff were further educated on the context of this term.
20. The SPO submitted that the complaint should be dismissed *in limine* pursuant to Rule 20(3)(b)-(c) and that the remedial measures taken by the SPO have meaningfully addressed the Complaint to the extent reasonable and permitted.

V. THE LAW

21. In accordance with Rule 29(2)(a) of the RPE, the Ombudsperson may conduct inquiries into complaints received from any person asserting a violation of his or her rights by the Specialist Chambers ('SC') or the SPO.
22. The SC and the SPO are obliged to act in compliance with the rights enshrined in the Constitution and the international human rights standards set out in that same instrument, which include both the European Convention on Human Rights ('ECHR')¹ and the International Covenant on Civil and Political Rights ('ICCPR')². These instruments are binding on both the SC and the SPO.
23. Rule 28(2) of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers ('RPE') sets out the scope of the Ombudsperson's jurisdiction, which is limited to monitoring, defending and protecting the fundamental rights of persons interacting with the KSC and the SPO.
24. Pursuant to Article 162(2) of the Constitution of the Republic of Kosovo ('Kosovo Constitution,' or 'Constitution')³, the SC and the SPO are to act in accordance with Chapter II of the Constitution. Particularly, the provision notes that both "*shall uphold the protections enshrined within Chapter II of the*

¹ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (4 November 1950), ('ECHR').

² UN General Assembly International Covenant on Civil and Political Rights (16 December 1996), UN Treaty Series Vol. 999 ('ICCPR').

³ Constitution of the Republic of Kosovo, June 2008 (with 2020 amendments).

Constitution, and in particular shall act in compliance with the international human rights standards guaranteed by Article 22 and subject to Article 55”.

25. As a matter of substantive law, the Ombudsperson is empowered to apply the human rights instruments as set out in Chapter II of the Kosovo Constitution. In particular, the Ombudsperson notes the provisions of Article 22 of the Kosovo Constitution, which set out the direct applicability of human rights and fundamental freedoms guaranteed by international agreements and instruments. Therefore, the ECHR and its Protocols and the ICCPR and its Protocols are of particular relevance to the work of the Ombudsperson as they set out the minimum standard for the protection of human rights to be guaranteed by public authorities in a democratic society.

VI. THE OMBUDSPERSON’S ASSESSMENT

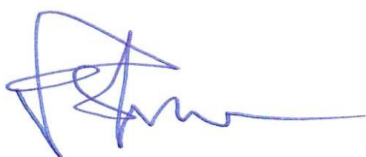
26. Before considering the complaint on its merits, the Ombudsperson has to decide whether to accept the complaint, considering the applicable law and, in particular, the admissibility criteria set out in Rule 29(3) of the RPE.
27. Accordingly, the Ombudsperson must first determine whether a request fulfils these admissibility requirements before moving to an examination of the merits of the complaint.
28. The Ombudsperson notes that the complainant did not allege the violation of any specific rights by the SPO. However, it is clear from complaint that the complainant was both concerned and offended by the use of the term ‘Kosova Metohia’ by the SPO during his interview.
29. The Ombudsperson recalls that it is not a pre-requisite for a complainant to invoke specific human rights instruments or provisions in his or her complaint, as any such requirement would place an unjustifiable burden on complainants. In cases where no specific human rights provisions are invoked, the Ombudsperson will assess these complaints in the context of Chapter II of the Kosovo Constitution and Article 28 and 29 of the Rules.⁴

⁴ Report of The Ombudsperson, Following an Inquiry in the Complaint of [REDACTED] against the Kosovo Specialist Prosecutor’s Office, Ref No. OMB-C-2021-05, issued on 22 September 2022, public, paras. 85, 90.

30. The Ombudsperson acknowledges that the use of the term ‘Kosova Metohia’ was offensive to the complainant. However, the Ombudsperson is mindful of the fact that use of the term was unintentional and used in error, and that the SPO took several steps to determine how this error had occurred in order to prevent it from happening again. In addition, the SPO undertook measures to ensure staff were fully aware of the context of this term. Having reviewed the Kosovo Constitution, the relevant human rights instruments, and in particular the ECHR and the ICCPR, the Ombudsperson is satisfied that the complaint has failed to demonstrate that its subject matter falls within the scope of application of any enumerated right.
31. Therefore, the Ombudsperson must reject the complaint pursuant to Rule 29(3)(b) of the RPE as it has not demonstrated a violation of human rights by the SPO.
32. The Ombudsperson is satisfied that the SPO has taken appropriate steps to ensure that the error in the use of the phrase ‘Kosova Metohia’ will not occur again.
33. In respect of the complainant’s request for additional remedies, the Ombudsperson notes that the SPO is independent in the performance of its functions⁵ and that there is no legal basis for the SPO to report to various, external political entities, as requested by the complainant.

VII. CONCLUSION

34. For the aforementioned reasons, the Ombudsperson has concluded that the complaints made against the Specialist Prosecutor must be rejected pursuant to Rule 29(3) (b) of the RPE.



Pietro Spera,
Ombudsperson, Kosovo Specialist Chambers.
Dated this 28 February 2023 At the Hague, The Netherlands

⁵ See, *inter alia*, Articles 3-5, 35 Of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office.