



REPORT OF THE OMBUDSPERSON

Re: Further Request to Consider the Good Governance Issue

In

the Ombudsperson's Decision on the Inquiry in the Complaint of Sabit Januzi, Ismet Bahtijari, Haxhi Shala and Isni Kilaj Against the Kosovo Specialist Chambers and a Request for the Ombudsperson to exercise his power pursuant to Article 49(5) of the of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutors Office ("Law") to refer the question of the constitutional validity of KSC-BD-25/Rev1 to the Specialist Chambers of the Constitutional Court

Ref No. OMB-C-2024-02/03

Issued 10 July 2024

PUBLIC

The Ombudsperson of the Kosovo Specialist Chambers ("The Ombudsperson") sitting on 10 July 2024,

Having considered the aforementioned request to address the issue of a lack of good governance by the Registrar in adopting the Revised 2024 Legal Aid Regulations, decides as follows:

I. PROCEEDINGS BEFORE THE OMBUDSPERSON

1. The further request for consideration was registered with the Ombudsperson on 22 May 2024.

II. THE FACTS

2. The facts of the case that led to the original complaint, are set out in the original Report, OMB-C-2024-02/01.¹

¹ See [Report of the Ombudsperson in OMB-C-2024-02](#), at Section II, and [KSC-CC-2024-23 Referral by \(1\) Sabit Januzi, \(2\) Ismet Bahtijari and \(3\) Haxhi Shala to the Specialist Chamber of the Constitutional Court regarding the Constitutional Validity of KSC-BD-25/Rev1](#), 2 April 2024.



3. The request for reconsideration of the original Decision and the Ombudsperson's assessment are set out in OMB-C-2024-02/02.²

III. THE FURTHER REQUEST FOR CONSIDERATION (Good Governance Request)

4. This request for further consideration contains a request by Counsel on behalf of the complainants seeking the Ombudsperson to address their complaint relating to poor governance, specifically, the lack of consultation or notice by the Registrar in the adoption of the 2024 Legal Aid Regulations.
5. Counsel on behalf of the applicants referred to the following:
 - a. Their previous submissions to the Ombudsperson, dated 25 April 2025 and 9 May 2024. In these submissions, Counsel reiterate their concern that these Revised Regulations were adopted "without any notice or consultation". The complainants submitted that KSC-BD-25/Rev1 was adopted in the absence of any consultation process and argued that the process which lead to administrative decision lacked good governance on the part of the Registrar.
 - b. KSC-CC-2024-23/F00001, Counsel's original submission to the Specialist Chamber of the Constitutional Court (SCCC), and the arguments presented there in regards to the good governance issue.
 - c. In their submissions to the SCCC the complainants argued that:
 - i. The lack of consultation or notice constitutes an example of poor governance;
 - ii. The complainants constituted "obvious stakeholders" in the Revision of the Regulations whereas they were not consulted or informed;
 - iii. Whereas Regulation 3(2) of the 2020 Regulations required the Registrar to keep a record of the amendment procedure and enables her to make that record public, and whereas Article 41 of the Constitution provides a general right of access to public documents, including documents of public institutions and organs of State authorities such as the Registrar, the Registrar has been requested to make disclosure in relation to the amendment process and has declined with no reason provided;
 - iv. That poor governance is an obstacle to the realisation of Human Rights;

² See [Report of the Ombudsperson in OMB-C-2024-02/02](#).



- v. The complainants argue that although Regulation 3 of the 2020 Regulations provided for the possibility of future amendment, including by the Registrar *proprio motu*, it clearly envisaged amendment proposals to be ‘reasoned’ and to include consultation with an Independent Representative Body of Specialist Counsel.

IV. THE OMBUDSPERSON’S ASSESSMENT

A) Lack of Consultation

6. The role of the Ombudsperson of the Kosovo Specialist Chambers is to monitor, defend and protect the fundamental rights and freedoms of all persons interacting with the Kosovo Specialist Chambers (KSC) or Specialist Prosecutor’s Office (SPO). The jurisdiction of the Ombudsperson, as specified by Rule 29(2)(a) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (‘the Rules’) is to conduct inquiries into complaints received from any person asserting a violation of his or her rights by the Specialist Chambers or the Specialist Prosecutor’s Office.
7. Therefore, the Ombudsperson is only able to consider acts or omissions by the KSC and SPO insofar as they might have resulted in an unjustified interference with, or a violation of, the fundamental rights of persons interacting with these institutions.
8. Furthermore, in accordance with Rule 29(3)(b), a request to the Ombudsperson may be rejected if it does not demonstrate a violation of human rights.
9. Regarding the issue at stake, the Ombudsperson recalls that the Regulations adopted by the Registrar to administer the system of legal aid are adopted pursuant to Article 19(6) of the Law which states that “*The Specialist Chambers shall have the power to adopt internal rules, policies and practice directions that are necessary for its proper functioning, the security or fairness of proceedings or to give effect to the provisions of this Law.*”
10. The Ombudsperson further recalls Regulation 3(1) of the 2020 Regulations which states: “*The Registrar may amend these Regulations proprio motu or upon amendment proposals. Reasoned amendment proposals may be submitted to the Registrar by the President and the Independent Representative Body of Specialist Counsel. The Registrar may consult with the Independent Representative Body of Specialist Counsel regarding any amendment proposal.*” (Emphasis added)



11. It is clear from Regulation 3(1) that there is no legal requirement for the Registrar to consult with the Independent Representative Body of Specialist Counsel (IRBSC) regarding **any amendment**. Indeed, the discretion to consult is limited to amendment proposals by the President and the IRBSC and not to amendments introduced *proprio motu* by the Registrar. Furthermore, there is no reference to any further stakeholders being consulted.
12. The complainants may hold the view that the process that led to the introduction of the 2024 Legal Aid Regulations lacked consultation, but the reality of the situation is that the Registrar is not legally obliged to consult with anybody regarding any amendments to the Legal Aid Regulations and her discretion to consult is limited to consultation with the IRBSC on amendment proposals by the President and the IRBSC.
13. Any submissions made by the complainants in respect of a lack of consultation with the IRBSC will not be considered by the Ombudsperson as the complainants have no locus standi in that regard and cannot be seen as representatives of the IRBSC.
14. In relation to the four complainants, the Ombudsperson notes that on or before 22 February 2024, none of the four complainants had applied for legal aid with the Kosovo Specialist Chambers pursuant to the 2020 Legal Aid Regulations. In fact, the Ombudsperson is informed that all four complainants had applied for legal aid with the Kosovo authorities.
15. After 22 February 2024, the Registry received completed legal aid requests pursuant to Regulation 6 of the amended Legal Aid Regulations from the four complainants:
 - Mr. Edwards submitted, on behalf of his client Mr. Kilaj, a completed request for legal aid on 15 April 2024;
 - Dr. Gerry submitted, on behalf of her client Mr. Bahtijari, a completed request for legal aid on 16 April 2024;
 - Mr. Cadman submitted, on behalf of his client Mr. Shala, a completed request for legal aid on 2 May 2024;
 - Mr. Rees submitted, on behalf of his client Mr. Januzi, a completed request for legal aid on 29 May 2024.
16. In addition to the views set out in paragraphs 10-12 above, the Ombudsperson fails to see how any of the four complainants, or their Counsel would be entitled to be



consulted or to be put on notice of any proposed amendments to the 2020 Legal Aid Regulations given that they only applied for legal aid within the KSC some months after the introduction of the amended Legal Aid Regulations. In this regard, the Ombudsperson rejects the submission on behalf of the four complainants that they were “*obvious stakeholders*”.

17. The Ombudsperson must reject this part of the complaint in its entirety, pursuant to Rule 29(3)(b), as the complainants have failed to demonstrate that the process that led to the introduction of the 2024 Regulations has either interfered with or violated their fundamental right to a fair trial.

B) The Failure to Disclose

18. In its submission to the SCCC, Counsel on behalf of the complainants submitted that the Registrar had declined to make disclosure in relation to the amendment procedure, whereas Article 41 of the Constitution establishes a general right of access to public documents.
19. Reference is made by Counsel to Regulation 3(2) of the Legal Aid Regulations which states that the Registrar is required to keep a record of the amendment procedure, and enables her to make it public. The provision states that the Registrar “*may, as appropriate, make public the amendment procedure or parts thereof*” (emphasis added), but it does not contain an obligation for her to do so.
20. Counsel further refer to Article 41 of the Kosovo Constitution (the Constitution), which provides a general right of access to public documents, submitting that it would include documents of public institutions and organs of State authorities such as the Registrar. However, Article 41(2) states: “*Documents of public institutions and organs of State authorities are public, except for information that is limited by the law due to privacy, business trade secrets or security classification*”.
21. The Ombudsperson recalls Article 62 of Law No.05/L-053 on the Specialist Chambers and Specialist Prosecutor’s Office (the Law), which states that “*Given the security and privacy considerations, the documents, papers, records and archives of the Specialist Chambers, the Registry and the Specialist Prosecutor’s Office shall not be considered public documents of Kosovo*”, and further states that, “*There shall be no general right of access to the records or archives of the Specialist Chambers, including the Registry, and the Specialist Prosecutor’s Office*”. The Ombudsperson is satisfied that



Article 62 of the Law is aligned to the exemption provision of Article 41(2) of the Constitution.

22. In accordance with Article 62 of the Law, the records of the amendment procedure of the Legal Aid Regulations are not public documents and the Registrar is not under any obligation to make them public. No right of access to these documents accrues from Article 41 of the Constitution.

23. Therefore, the Ombudsperson must reject this part of the complaint pursuant to Rule 29(3)(b), as it does not demonstrate a violation of the Complainants' fundamental rights by the Specialist Chambers.

V. CONCLUSION

24. The Ombudsperson rejects the complaint in its entirety.

PIETRO SPERA

Ombudsperson, Kosovo Specialist Chambers

Dated this 10 July 2024

At The Hague, The Netherlands