



JUDICIAL PING -PONG REGARDING THE RIGHT TO INHERITANCE DEMANDED BY MS. AFËRDITA STATOVCI

*(Property object of inheritance dispute,
13 years of delays, 2 times the case returned for retrial)*

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Content

I. Introduction.....	3
II. The History of the inheritance right in Ms. Afërdita Statovci’s case.....	4
III. Chronology of the 13 years delay (2006-2019) of the court process for the inheritance of Mrs. Afërdita Statovci	5
IV. Violations of principles and constitutional and legal provisions in treating the case of Mrs. Afërdita Statovci	6

I. Introduction

CLARD and Legal Aid Center of Kosovo Law Institute (LAC – KLI), within their area of expertise provide free legal aid to citizens who need it. In this regard, CLARD for more than ten years has provided legal aid and representation to Ms. Afërdita Statovci regarding her right to inherit. Since 2006, claimant Statovci has started the inheritance procedure in order to be provided with her legal right, namely ½ of the property that her father and uncle have bought back in 1975. In accordance with the law on Contested Procedure and the Law on Inheritance she filed a claim against the seller of the property and her uncle, regarding the transfer of real property, providing of the property deed and the identification of the right to real property.

Since the beginning of the judicial process, CLARD continuously has represented Ms. Statovci and has raised awareness for institutional stakeholders and the public regarding continuous violations, unlawful treatment, biased, unprofessional and not in timely manner handling of the case of Ms. Afërdita Statovci.

For 13 consecutive years, demanding her own right to inheritance, Ms. Afërdita Statovci has experienced the ping – pong of the judicial instances, that have returned her case for retrial two (2) times. The delays in handling this case are of different nature, which have directly affected the violation of the claimant’s basic rights, violating constitutional and legal principles as well as the practices of the European Court of Human Rights, that are applicable in the Republic of Kosovo.

CLARD and LAC – KLI have joined their forces in further proceedings regarding the issue of violation of the rights of the claimant Ms. Afërdita Statovci. These organizations will continue to represent the case of Ms. Statovci, using all available legal remedies, including bringing the case to the Constitutional Court of the Republic of Kosovo.

II. The History of the inheritance right in Ms. Afërdita Statovci's case

- The property which is object of Ms. Afërdita Statovci's dispute was bought in 1975 by claimant's the father and uncle.
- The property consisted of ½ of the 60m² house in the village Sllatinë e Madhe, in Fushë Kosovë municipality; ½ of 65m² of house number 2, in the village Sllatinë e Madhe, in Fushë Kosovë municipality; ½ of land parcels (*construction, agricultural, first grade grazing land*) in the village of Sllatinë e Madhe, Fushë Kosovë with a surface of 657m²; ½ of the land parcel with a surface of 361m², in the village of Harilaq, municipality of Fushë Kosovë.
- The above-mentioned property was purchased in 1975 and was registered in the name of the seller, but the same property was used by the claimant's uncle and father.
- In 1988, Mr. Ramiz Statovci, claimant's father had died, leaving his wife and daughter as the only legal heir to the share of the property, which according to the law belonged to the deceased;
- His daughter, Ms. Afërdita Statovci in 2006 started the inheritance procedure for the purpose of identifying the legal right, namely ½ of the property that her father and uncle had bought in 1975;
- The claimant Afërdita Statovci, in accordance with the Law on Contested Procedure and the Law on Inheritance, filed a claim against the seller and her uncle regarding the transfer of real property, providing of the property deed and the identification of the right to real property;
- During the judicial process, according to the claim of Ms. Afërdita Statovci regarding the above-mentioned property, the heirs of the seller of the property, respectively the legal successor of the seller, during the court hearing had admitted that the property had been purchased by the father of the claimant (*Afërdita Statovci*), whereas the defendant, namely the uncle of the claimant had challenged the claim stating that part of the list of heirs should also be the claimant's aunts and thus had removed the claimant from the possession of the disputed property.
- The defendant did not provide any evidence that the property object of the dispute was purchased as a result of the sale of the claimant's grandfather properties, which is alleged by the defendant.

III. Chronology of the 13 years delay (2006-2019) of the court process for the inheritance of Mrs. Afërdita Statovci

1. The civil case of Afërdita Statovci started on **27/02/2006** when the same through the lawsuit demands the recognition of the right to inheritance
2. On **26/06/2009** the former Municipal Court in Pristina takes a Judgment by **which the lawsuit is approved to the claimant Afërdita Statovci as grounded and the same acquires the right from the inheritance base as the owner of the ½ ideal part of the disputed property.** In this procedure Mrs. Statovci's mother had given up from her part of the inheritance in favor of the claimant Mrs. Afërdita Statovci. This judgment becomes final with the clause of date **15/10/2009.**
3. The former Municipal Court in Pristina with the Ruling No. 204/2006 of date **12/11/2009** **has removed the clause of plenipotentiary** of the same judgment where Mrs. Statovci had acquired the right to inheritance.
4. Mrs. Statovci submitted appeal against this ruling whereby the former District Court in Pristina, with the ruling of date **02/06/2010**, approved the appeal and annulled the ruling of the former Municipal Court, returning in the review the issue of the abolition of the clause of omnipotence.
5. The former Municipal Court in Pristina, respectively the former President of this Court, Mr. Nuhi Uka (*died*), deciding on review with the ruling of date **14/10/2010**, **abolishes** the clause of omnipotence by the final decision with which to Mrs. Afërdita Statovci was recognized the right to inheritance.
6. The former District Court in Pristina, reviewing the appeal claims of the respondent with the Ruling of date **13/01/2012**, annuls Judgment C.no.204 / 2006 of date 26/06/2009 and returns the case for retrial to the first instance court.
7. The Basic Court in Pristina with Judgment C.326 / 12 of date **23/09/2016** in the review procedure again recognizes the right of inheritance for Mrs. Afërdita Statovci.
8. The Appeal Court in Pristina, deciding on the complaining claims of the respondent party with the Ruling Ac. 4678/16 of date **02/05/2019**, approves the appeal of the respondent party and returns the case for retrial to the first instance court.
9. The Basic Court in Pristina registers the case returned for retrial with the number C.1523 / 2019 and the same is expected to be assigned.

IV. Violations of principles and constitutional and legal provisions in treating the case of Mrs. Afërdita Statovci

1. Constitutional principles regarding the treating of the case within a reasonable deadline;
2. Constitutional principles regarding the effective right of legal remedies;
3. Claimant Mrs. Afërdita Statovci 13 years has been denied of the right guaranteed by the constitution of the use of property;
4. Courts in Kosovo have decided against the basic principles set forth in the Constitution of the Republic of Kosovo, which is based on the principles of freedom, equality, respect of the human rights and freedoms and the rule of law, non-discrimination, the rights of property.
5. Courts in Kosovo have decided contrary with the practice of the European Court for Human Rights and Freedoms for a fair, impartial and reasonable time court process, a practice that is mandatory under Article 53 of the Constitution of Kosovo.
6. The Court, through this case, builds discriminatory practices against women and their rights on property and their realization in inheritance, that is in contradiction with the constitutional and legal values in Kosovo and state policies and strategies,
7. Moreover, this issue of reviewing the inheritance from 2006 so far was treated by 16 judges and from this it is noticed that this justice system through this way of treating cases does not provide legal certainty for the citizens of the country.