



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

---

# ANNUAL REPORT 2017

## No. 17

Prishtina, 2018

## Table of contents:

1. Ombudsperson's statement.....	8
1.1 Ombudsperson Institution .....	9
1.2 Mandate of the Ombudsperson Institution .....	9
2. Promotion of Human Rights.....	13
3. Access to the Ombudsperson Institution .....	17
4. Human rights situation in the Republic of Kosovo .....	18
4.1 Legislation .....	18
4.2 Judicial protection of rights .....	24
5. The role of the executive body in protection of human rights.....	31
5.1 Government of the Republic of Kosovo .....	31
5.2 The Special Chamber of the Supreme Court of Kosovo (SCSCK).....	33
5.3 The Privatization Agency of Kosovo (PAK).....	34
5.4 The issue of steel pipes factory (IMK) in Ferizaj.....	34
5.5 Kosovo Property Comparison and Verification Agency (KPCVA).....	35
5.6 Expropriations of immovable property .....	36
5.7 Conditioning vehicles registration to the payment of property tax .....	37
5.8 Energy Regulatory Office .....	38
5.9 Water Services Regulatory Authority .....	40
5.10 Independent Oversight Board for Civil Service in Kosovo.....	41
5.11 Responsibility for Living Environment .....	42
5.12 The rights of access to public documents.....	51
6. Rights of the child .....	53
6.1 The status of the rights of the child .....	53
6.2 Legal framework and the rights of the child.....	54
6.3 The right of children to education .....	55
6.4 Children with disabilities .....	56
6.5 Violence and the security situation in schools .....	57
6.6 Rights of the child in proceedings before administrative and judicial bodies .....	58
6.7 Social and health protection .....	59

6.8	Juvenile justice.....	59
7.	Equality before the law.....	60
7.1	Overview of the package of laws on human rights - prevention of and protection from discrimination.....	60
7.2	Persons with disabilities.....	63
7.3	Discrimination at work.....	68
7.4	Rights related to HIV/AIDS in Kosovo .....	74
7.5	Pensions .....	75
7.6	Social housing.....	78
7.7	Minority communities.....	78
7.8	Return and security .....	80
7.9	Education of communities .....	87
7.10	Rom, Ashkali and Egyptian Community .....	89
7.11	The use of languages .....	95
7.12	Gender equality .....	98
7.13	Law No. 05/L-020 on Gender Equality and bylaws .....	99
7.14	LGBT community .....	104
7.15	Freedom of religion in Kosovo .....	106
8.	National Preventive Mechanism against Torture .....	108
9.	Summary of reports with recommendations.....	114
9.1	Ex officio reports.....	114
9.2	Ex officio Report with recommendations no. 1/2017 concerning Flat rate (presumptive) invoicing of water expenses by water supply companies.....	114
9.3	Ex officio Report with recommendations no. 44/2017 concerning Procedural delays in treatment of cases by the Special Chamber of the Supreme Court.....	115
9.4	Ex Officio Report with recommendations no. 265/2017 concerning billing of electricity costs consumed in four northern municipalities of Republic of Kosovo .....	117
9.5	Ex-officio Report with recommendations no. 278/2017 concerning the failure to treat persons with chronic psychiatric disorders in compliance with legal procedures.....	119
9.6	Ex Officio Report with recommendations no. 575/2016 concerning the Right on Education of persons deprived of liberty – failure to comply with legal deadline for commencement of educational process in the Correctional Centre in Lipjan.....	120
9.7	Ex Officio Report with recommendations no. 582/2017 concerning of Handling of unfinished business by the previous legislature, according to the Rules of Procedure of the Assembly of the Republic of Kosovo .....	121

9.8	Ex Officio Report with recommendations no. 594/2017, concerning effective defences in criminal proceedings and guarantee of equality of parties - assignment of the defence council at the public expenses .....	123
9.9	Ex-officio Report with recommendations no. 551/2017, concerning the Revocation of certain competencies of Kosovo Property Comparison and Verification Agency according to Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency .....	125
9.10	Ex officio report with recommendations no. 707/2017 concerning the freedom of expression (media) and safety of journalists .....	127
10.	Reports based on complaints .....	130
10.1	Report with recommendations no. 12/2017, pertaining unequal treatment in determination of salary coefficient for the officials of Municipal Directorate of Education in Prishtina .....	130
10.2	Report with recommendations no. 347; 729; 730; 333/2015 concerning the Municipalities conditioning citizens to pay property tax upon registration of vehicles.....	131
10.3	Report with recommendations no. 11/2017 concerning non-enforcement of the work contract and the final decision in administrative proceeding by the Municipal Directorate of Education in Shtime .....	132
10.4	Report with recommendations no. 597/2014 Related to the length of judicial proceedings in the Basic Court in Prishtina.....	133
10.5	Report with recommendations no. 438/2015 concerning lengthy judicial proceedings in review of the lawsuit submitted in the Basic Court in Ferizaj .....	134
10.6	Report with recommendations no. 765/2016 related to the right to life and positive obligations for efficient investigations .....	134
10.7	Report with recommendations no. 592/2016 regarding the non-recognition of work experience for former police officers pursuant to the Law on Internal Affairs of 1978 .....	136
10.8	Report with recommendations no. 71/2015 concerning the delay of judicial proceedings on deciding upon the Case No. 82/ 2013, in the Basic Court in Mitrovica .....	137
10.9	Report with Recommendation no. 500/2015 regarding the delay of the procedure in the Court of Appeals in the Case AC. No. 3141/2013.....	138
10.10	Report with Recommendation no. 929/2016 regarding the delay of procedure in the Court of Appeals in the case AC. no. 1553/2014 .....	139
10.11	Report with Recommendation no. 503/2015 regarding the delay of the procedure in the Court of Appeals in the Case AC.1926/14 .....	140
10.12	Report with Recommendation no. 161/2015 regarding the delay of the procedure at the Court of Appeals in the case AC. No. 1457/2014 .....	140
10.13	Report with Recommendation no. 238/2015 regarding the delay of the procedure in the Basic Court of Prizren on the case C.No.450/2009 .....	141
10.14	Report with Recommendation no. 236/2017 regarding the delay of procedure in the Court of Appeals in the case AC. No. 1717/2015 .....	142

10.15 Report with Recommendation no. 306/2016 regarding the delay of the procedure in the Court of Appeals, in the case AC. No. 3194/2015 .....	143
10.16 Report with recommendation no. 262/2014 regarding the delay of the procedure in the Court of Appeals in the Case AC.no.3930/2016 .....	144
10.17 Report with recommendation no. 477/2017 concerning the delay of the procedure in the Court of Appeals in the case AC No. 1168/14.....	145
10.18 Report with recommendation no. 553/2017 regarding the delay of the procedure in the Court of Appeals, in the case AC No 2823/16.....	146
10.19 Report with Recommendation no. 690/2017 regarding the delay of the procedure in the Basic Court in Prishtina - Branch in Lipjan.....	147
10.20 Report with Recommendation no. 431/2017 concerning the restriction of the right to access public documents.....	148
11. Reports of the National Preventive Mechanism against Torture.....	151
11.1 Report with recommendations concerning the monitoring of the Correctional Centre in Dubrava .....	151
11.2 Report with recommendations concerning the monitoring of the Detention Centre for Foreigners in Vranidoll .....	152
11.3 Report with recommendations concerning the monitoring of the Asylum-Seekers Centre . .....	153
11.4 Report with recommendations concerning the monitoring of the Regional Police Custody Centre in Prishtina .....	154
11.5 Report on the monitoring of border crossing points at Prishtina International Airport “Adem Jashari”, border crossing point “Hani i Elezit” and border crossing point “Vërmicë”	156
11.6 Report with recommendations on the visit to Special Institute in Shtime .....	158
11.7 Report with recommendations on the visit to the Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime .....	160
11.8 Report with recommendations on the visit to the High Security Prison .....	162
11.9 Report of the National Preventive Mechanism against Torture on the visit to the Detention Centre in Prizren .....	163
11.10 Report of the National Mechanism for the Prevention of Torture on visit to Elderly and People without Family Care Home.....	166
11.11 Report of the National Mechanism for the Prevention of Torture on Visits to Police Stations .....	168
12. Recommendation Letters.....	171
12.1 Recommendation Letter - Complaint no. 318/2016 .....	171
12.2 Recommendation Letter - Ex officio no. 700/2016.....	171

12.3	Recommendation letter - Ex officio No. 43/2017 .....	172
12.4	Recommendation letter – Complaint no. 549/2015.....	173
12.5	Recommendation letter – Complaint no. 914/2016.....	174
12.6	Recommendation letter – Complaint no.792/2016.....	175
12.7	Recommendation letter - Ex officio no. 87/2017 .....	176
12.8	Recommendation letter – Complaint no. 497/2016.....	177
12.9	Recommendation letter – Complaint no. 24/2016.....	178
12.10	Recommendation letter – Complaint no. 312/2017.....	179
12.11	Recommendation letter – Complaint no. 619/2017.....	180
12.12	Recommendation letter – Complaint no. 742/2015.....	181
12.13	Recommendation letter – Complaint no. 692/2017.....	182
12.14	Recommendation letter – Complaint no. 315/2016.....	183
13.	Amicus Curiae.....	184
13.1	Ombudsperson's Legal opinion in the capacity as a Friend of the Court (Amicus Curiae), concerning the state of homophobia and transphobia .....	184
13.2	Ombudsperson’s legal opinion as Amicus Curiae in relation to the claims against the Liquidation Authority that are being dealt with in this Court by former employees of the Socially-Owned Enterprise “Sharr Salloniti” from Hani i Elezit .....	186
13.3	Ombudsperson's legal opinion, as Amicus Curiae, related to the claim of the Municipality of Ferizaj, against the Ministry of Labour and Social Welfare, .....	189
14.	Requests for interim measures.....	191
14.1	Request for the Repeal of Article 55, paragraphs 4-5, and Articles 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of Law no. 05/L-087 on Minor Offenses and for the immediate abrogation of these provisions until the final decision of this Court .....	191
14.2	Claim and the request for postponement of the execution of the decision.....	194
14.3	Request for suspension of enforcement of the decision - Ex officio case 551/2017 .....	196
15.	Activities of the Ombudsperson Institution in the field of promotion for 2017 .....	198
16.	International cooperation.....	199
	Table: Participation in international training .....	203
16.1	Cooperation with counterparts and other international organisations .....	203
16.2	Projects with the support of international organisations .....	204
16.3	Membership in international organisations .....	207
16.4	Reporting to different international mechanisms .....	208
17.	Media and public relations .....	208

18.	Financing.....	213
18.1	OIK Budget .....	213
18.2	Financing of the OIK from the Budget of the Republic of Kosovo .....	213
19.	Statistics.....	216
19.1	Statistical summary of complaints and cases for 2017 .....	216

## **1. Ombudsperson's statement**

Fundamental human rights and freedoms are the core of the legal order in the Republic of Kosovo. For the 17<sup>th</sup> time, the Assembly of the Republic of Kosovo is provided with annual summarised substantial and statistical data, as a reflection of the respect, protection and promotion of human rights in our country.

The fulfilment of the constitutional obligation to present an annual report to the Parliament of the country this year is taking place at phase of intensification of the lawmakers' role towards the responsibilities of public authorities to respond to the recommendations of the Ombudsperson, and therefore restoration of violated rights.

In light of focusing on the reporting period 1 January – 31 December 2017, the Report presents the situation of human rights in the Republic of Kosovo in the field of legislation - the process of drafting, reviewing and adopting laws; judicial protection of rights, with an emphasis on: delays in court procedures, prescription of cases, non-execution of court decisions, private enforcement agents, legal representation of citizens, as well as deficiencies of judiciary with regards to the protection of human rights, in compliance with international standards, in particular the European Convention on Human Rights and Fundamental Freedoms (ECHR) and case law of the European Court on Human Rights (ECtHR).

Annual Report 2017 is also focused on the role of the executive in protecting human rights; children rights; equality before the law – prevention and protection from discrimination, as well as reporting of the National Prevention Mechanism against Torture.

This annual report also reserves a special space to the promotion of fundamental human rights and freedoms, as an obligation deriving from international documents and standards on human rights, as well as from the Law on Ombudsperson.

Always having the institutional independence as the basis, guided by principles of impartiality, confidentiality and professionalism, the Ombudsperson Institution remains committed and uncompromised in fulfilling the core reason of its establishment: rule of law and priority of human rights – as a guarantee for proper functioning of a democratic and aspiring country for effective implementation of highest internationally recognized standards and guaranteed in our country with the Constitution of the Republic of Kosovo, as the highest legal act.

Confident that the conclusions and recommendations summarised in this Annual Report will have your deserved attention, I emphasise that the respect of normative definitions and inter-institutional cooperation are a necessity to achieve common objectives as a democratic state.



## **1.1 Ombudsperson Institution**

According to the Constitution of the Republic of Kosovo (Articles 132-135) the Ombudsperson Institution of Kosovo (OIK) is defined as a constitutional category, specifically as an independent constitutional institution.<sup>1</sup> The Ombudsperson supervises, promotes and protects fundamental rights and freedoms of natural and legal persons from illegal and improper actions or omissions of public authorities, institutions and persons or authorities exercising public authorizations in the Republic of Kosovo (hereinafter: public authorities), as well as the establishment of the National Preventive Mechanism against Torture (NPMT).<sup>2</sup> Additionally, the Ombudsperson represents an equality mechanism for promoting, monitoring and supporting equal treatment without discrimination on grounds recognized by the Law on Gender Equality and the Law on Protection from Discrimination.<sup>3</sup> According to the Constitution, the Ombudsperson has one or more deputies<sup>4</sup>, while the Law on Ombudsperson provides that the OIK is composed of: Ombudsperson, five (5) Deputy Ombudspersons and the staff of the OIK.<sup>5</sup>

## **1.2 Mandate of the Ombudsperson Institution**

The mandate of the Ombudsperson Institution is defined by the Constitution of the Republic of Kosovo and the Law on Ombudsperson, according to which the Ombudsperson receives and investigates complaints from any person, inside or outside the territory of the Republic of Kosovo, who claims that his or her rights and freedoms have been violated by public authorities in Kosovo.

The OIK is independent in the exercise of its duties and does not accept instructions or intrusions from public authorities, which are obliged to respond to the requests of the OIK and submit all requested documentation and information in conformity with the law.

In its work, OIK is guided by the principles of impartiality, independence, the supremacy of human rights, confidentiality, and professionalism<sup>6</sup> and has organizational, administrative and financial independence in the fulfilment of the obligations provided for by the Constitution and the law.<sup>7</sup>

In the framework of his constitutional<sup>8</sup> and legal<sup>9</sup> powers, the Ombudsperson conducts investigations on complaints received from any natural or legal person related to allegations of the violation of human rights provided for by the Constitution, laws and other acts, as well as by international human rights instruments, and especially by the

---

<sup>1</sup> Constitution of the Republic of Kosovo, Articles 132-135.

<sup>2</sup> Ibid., Article 132 and Law no. 05/L-019 on Ombudsperson, Article 1, paragraph 1.

<sup>3</sup> Law no. 05/L-019 on Ombudsperson, Article 1, paragraph 2.

<sup>4</sup> Constitution of the Republic of Kosovo, Article 133, paragraph 2.

<sup>5</sup> Law no. 05/L-019 Ombudsperson, Article 5.

<sup>6</sup> Ibid, Article 3, paragraph 1.

<sup>7</sup> Ibid., Article 3, paragraph 3.

<sup>8</sup> Constitution of the Republic of Kosovo, Article 132.

<sup>9</sup> Law no. 05/L-019 on Ombudsperson, Article 16.

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The Ombudsperson may conduct investigations on his own initiative (*ex officio*) if testimonies, facts, findings or knowledge gained from public information or other sources provide an indication of the violation of human rights. Likewise, the Ombudsperson uses mediation and reconciliation, and can also provide good services to citizens of the Republic of Kosovo located abroad. It provides services free of charge.

If during the investigation conducted regarding human rights issues the Ombudsperson observes the presence of criminal offence, he/she can request from respective competent Prosecution initiation of investigation as well as may appear in the capacity of the Court's friend (*amicus curiae*) in judicial proceedings dealing with human rights, equality issues and protection from discrimination. The Ombudsperson does not intervene on cases and other legal procedures, except in the cases related to administration of justice (delays of judicial procedures and failure to execute judicial decisions), but the Ombudsperson may provide general recommendations on the functioning of the judicial system, as well as can initiate matters with the Constitutional Court of Kosovo in accordance with the Constitution and the Law on Constitutional Court.<sup>10</sup>

The National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPMT)<sup>11</sup> functions within OIK.. The Ombudsperson, in the framework of responsibilities as NPMT, is obliged to visit regularly and without notice all places where persons deprived of liberty are held (including police custody, detention on remand, stay at medical institutions, customs detention, immigration detention, and any other place when it is suspected that there may be violations of human rights and freedoms); as well as establish a special mechanism to perform all NPMT functions. The Ombudsperson must cooperate with international and domestic mechanisms in the field of the prevention of torture and other forms of cruel, inhuman, or degrading treatment or punishment. In addition, the Ombudsperson may issue suggestions and recommendations to persons and responsible institutions where persons deprived of liberty are held, of whatever kind and in whatever premises and circumstances in which they are being held, with the aim of improving their treatment and conditions.

The Ombudsperson performs other functions provided for by the Law on Protection from Discrimination, the Law on Gender Equality, and other legislation in force; collects statistical data concerning cases of discrimination and equality presented to the OIK, which he also publishes; reports and makes recommendations on policies and practices on combating discrimination and promoting equality; cooperates with social partners and

---

<sup>10</sup> Constitution of the Republic of Kosovo, Article 113, paragraph 2, and Article 135, paragraph 4; Law no. 05/L-019 on Ombudsperson, Article 16, paragraph 10; Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo, Article 29.

<sup>11</sup> *Ibid.*, Article 17.

NGOs that deal with issues of equality and anti-discrimination, as well as with international bodies similar to the Ombudsperson.<sup>12</sup>

The Ombudsperson also has further legal responsibilities: not only to investigate alleged violations of human rights and acts of discrimination, but also to work to eliminate them; to draft and approve specific procedures for receiving and handling complaints from children, as well as the creation of a specialized team for children's rights and of a permanent programme for raising the awareness of children regarding their rights and the role of Ombudsperson Institution in their protection; to inform about human rights and to make recommendations to the Government, the Assembly, and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality, and non-discrimination; to publish notifications, opinions, recommendations, proposals and his/her own reports; to recommend promulgation of new Laws in the Assembly, amendment and supplementation of the Laws in force as well as promulgation or amendment and supplementation of sub-legal and administrative acts by institutions of the Republic of Kosovo; to prepare annual, periodical and other reports on the situation of human rights and freedoms in the Republic of Kosovo; to recommend the harmonization of domestic legislation with international standards on human rights and freedoms, equality, and discrimination, and to conduct research on the issue of human rights and fundamental freedoms, equality, and discrimination in the Republic of Kosovo; to cooperate, in accordance with the Constitution and legislation in force, with all local and international institutions dealing with the protection of human rights and freedoms; to keep-safe the confidentiality of all information and data he or she receives, paying special attention to safety of complainants, damaged parties, and witnesses, in conformity with the Law on personal data protection (an obligation binding on the Ombudsperson, his deputies and the OIK staff, even after the end of the mandate or employment contract).<sup>13</sup>

Citizens can file complaints against public administration, according to a simple and free of charge procedure. Complaints addressed to the OIK can refer to actions, inactions or decisions of public administration that applicants may consider unfair or unfavourable. When reviewing such complaints, actions of the OIK's lawyers involve offering legal advice, accompanied by requests for data from the public administration, the courts and other important institutions concerning the complaints filed, as well as by supervision of certain administrative and judicial proceedings.

In cases that require immediate action, the Ombudsperson submits requests for interim measures. If Ombudsperson considers that immediate measures must be taken by public authorities, he may legally request that the competent administrative body undertake or suspend a particular action, as an interim measure to prevent irreparable damage to complainants or to their property.

---

<sup>12</sup> Law on Ombudsperson no. 05/L-019, Article 16, paragraphs 13-16.

<sup>13</sup> Ibid., Article 18.

If the requests for intervention and efforts to mediate are not successful, the Ombudsperson may issue a report, ensuring public analysis and exposure for violations of human rights or of applicable laws, along with recommendations for the public institution, to avoid violations. Reports are the last advocacy tool of the institution; the report is addressed to the authority that has committed the violence, while the copy of the report is delivered to the Assembly of Kosovo and to other relevant organisations. While annual report for the previous year, is presented to the Assembly by the Ombudsperson until 31 of March of the following year, which is reviewed in the plenary session in the Assembly during the spring session.<sup>14</sup>

The Ombudsperson, within legal liabilities as well as with the intention to accomplish efficiently the mandate determined by the Constitution and by the Law on Ombudsperson<sup>15</sup>, on 18 January 2017 approved *Regulation No. 01/2017 on job description and classification of job positions in the Ombudsperson Institution*, *Regulation No. 02/2017 on the procedure of recruitment, appointment and probationary work of employees in the Ombudsperson Institution* and *Regulation No. 03/2017 on career advancement and transfer of employees of the Ombudsperson Institution*, which were published in the Official Gazette of the Republic of Kosovo (OGRK) on 23 January 2017 and entered into force on the same day.

The powers of Ombudsperson to review issues dealing with the protection from discrimination in general and gender discrimination in particular were provided for by two other basic laws on human rights (Law on Protection from Discrimination and Law on Gender Equality).

Thus, according to the Law on Gender Equality,<sup>16</sup> the Ombudsperson is a gender equality institution that deals with cases related to gender discrimination, in accordance with procedures provided for by Law on Ombudsperson.

On the other hand, according to the Law on Protection from Discrimination,<sup>17</sup> the Ombudsperson is an independent institution, which undertakes promotion and protection of human rights and deals with cases of discrimination in accordance with the Law on Ombudsperson. The Office of Good Governance (OGG) within the Office of the Prime Minister (OPM) 20 is responsible for monitoring the implementation of the Ombudsperson's recommendations dealing with the implementation of the Law on Protection from Discrimination.<sup>18</sup>

---

<sup>14</sup> Ibid., Article 29

<sup>15</sup> Law No. 05/L-019 on Ombudsperson, Article 37

<sup>16</sup> Law no. 05/L-020 on Gender Equality, Article 13.

<sup>17</sup> Law no. 05/L-021 on Protection from Discrimination, Article 9.

<sup>18</sup> Ibid., Article 10, paragraph 1, subparagraph 1.2.

## **2. Promotion of Human Rights**

In 2017, the Ombudsperson has paid special attention to the promotion of human rights and fundamental freedoms, as an obligation deriving from international human rights documents and standards, as well as the Law on the Ombudsperson.

The Ombudsperson considers that the state should continue strengthening undertakings of appropriate measures to promote the understanding of civil, political, economic, social and cultural rights of all citizens within its jurisdiction through publications, full access and equality in all domestic and international human rights documents, including periodic reports from the state to bodies established by international human rights instruments.

Similarly, it remains for local institutions to strengthen actions towards promotion and education of human rights and fundamental freedoms at all levels of education, as well as to ensure that educational programs and trainings are advanced in terms of recognition of human rights.

The media also plays an important role in promoting human rights. The Ombudsperson notes that television stations, radio stations and the daily press should include more programs and shows aimed at education and promotion of human rights and freedoms for different target groups in their program schemes. In particular, kids' shows must feature topics on human rights and their respect.

Aimed at public awareness through various activities such as education, training, information and research to further strengthen tolerance, peace and friendly relations between nations and among all racial, ethnic and religious groups, the Ombudsperson, bearing in mind its important role and responsibility in maintaining democracy, encourages individuals, non-governmental organizations and relevant institutions to intensify activities to promote human rights and fundamental freedoms.

### ***Promotion of human rights by the Ombudsperson***

Based on the competencies and responsibilities of the Ombudsperson Institution granted by the Constitution, the law and international human rights standards for promotion, provision of information, training, education, reporting and research, cooperation with non-governmental organizations and civil society in general, regarding human rights and fundamental freedoms, taking initiatives, giving statements, attitudes and opinions on the promotion of human rights guaranteed by acts and international human rights standards, constitutions and laws, the Ombudsperson during the reporting year has established the Department for Cooperation, Reporting and Promotion of Human Rights.

The scope and responsibilities of the department include cooperation with local and international institutions as well as organizations dealing with the protection and promotion of human rights, public information on the work of the institution through annual and special reports, organization of joint roundtables, seminars and conferences, awareness raising on human rights aware and efforts to combat all forms of discrimination, especially through information and education including through training,

direct contacts with law enforcement actors and through media cooperation. The Department, among other things, has the authority to recommend the competent authorities in the Republic of Kosovo on matters relating to the promotion, promotion and protection of human rights and freedoms, equality and non-discrimination, as well as to cooperate with social partners and non-governmental organizations dealing with issues of equality, non-discrimination and human rights.

In this regard, bearing in mind that the quality and effective promotion of human rights and fundamental freedoms is an essential element and a driving force for the effective implementation of human rights, the Ombudsman has set the promotion of human rights and fundamental freedoms as the first strategic objective in the Strategy and Development Plan of the Ombudsperson Institution 2017-2019.<sup>19</sup>

The achievement of the first objective, *“Building of citizens’ trust to the Ombudsperson Institution and promotion of human rights and fundamental freedoms”* is based on one of the pillars of the constitutional and legal mission of the Ombudsperson Institution for the promotion of human rights, through awareness raising and public information by means of the media and direct communication, as well as transparency of activities and OI’s work, as one of the forms of accountability before citizens, through which the reliability of all citizens of the Republic of Kosovo is increased in the Ombudsperson Institution, without distinction, including minorities.

The Ombudsperson’s priorities defined in this strategy are as follows:

1. Public awareness raising on human rights and fundamental freedoms, promotion of the mandate and education on human rights with relevant institutions for the implementation of constitutional and legal standards in the country;
2. Empowerment of the image of Ombudsperson Institution and maximisation of its impact;
3. Strengthening of the role of OI in the promotion of transparency, accountability and integrity, and its recognition as an institution exercising its mandate independently, impartially and professionally;
4. Networking and promoting activities of Ombudsperson Institution through institutional communication in the country;
5. Empowerment of cooperation with media and civil society;
6. Public challenging of discrimination and inequality.

In order to raise awareness and educate the public on human rights and fundamental freedoms, and to promote the institution's mandate, the Ombudsperson and his

---

<sup>19</sup> The Strategy and Development Plan of the Ombudsperson Institution 2017-2019, is the basic document for annual work planning and activities of the Ombudsperson Institution, and this document is also intended to serve as a guide throughout these years for the promotion, protection and advancement of human rights in accordance with the applicable legislation and vision of the Ombudsperson.

collaborators during the reporting year have implemented several activities, such as the organization of and participation in the roundtables and conferences; medial presentations; organization of awareness campaigns with different groups, ranging from students of different education levels, students, civil servants, human rights workers, prosecutors and judges, Kosovo Police, marginalized groups and communities. It is worth pointing out that these actions and activities have directly influenced the strengthening of the Ombudsperson's image, maximizing its impact.

During 2017, two television spots were broadcast on the promotion of the OIK's legal mandate and competencies deriving from the legal package on human rights, i.e., Law on the Ombudsperson, Law on Protection from Discrimination and Law on Gender Equality. In addition, the "Know Your Rights" television spot was broadcast aimed at promotion of the platform with the same name.<sup>20</sup>

During the year, special importance was given to the intensification of the activities in networking the Ombudsperson Institution with public institutions, civil society and international organizations through various forms.

The institution's cooperation with international human rights mechanisms, national institutions of other countries that are competent in the fields of human rights protection and promotion, and international human rights organizations operating in Kosovo continued during the reporting year.

The Ombudsperson attended the International Conference on "Reclaiming Human Rights in Europe: How to Grow Democratic Space", held on 11 and 12 May 2017 in Zagreb, where topics such as fighting terrorism, integrating and respecting differences, combating discrimination, preserving democracy in Europe, etc., were tackled. There the Ombudsperson signed the Zagreb Declaration, which aims to remind the role and commitment of human rights institutions at the national level for protection and promotion of human rights, as well as cooperation. This event was implemented under the auspices of IOI, ENNHRI and EQUINET.

On 15 September 2017, the Ombudsperson and his counterparts from Bosnia and Herzegovina, Croatia, Montenegro, Macedonia, Slovenia and Serbia signed at the conference held in Ljubljana, Slovenia, the Declaration on the Cooperation of Ombudsmen Regarding the Environment and Human Rights. On the other hand, taking in consideration the role of the Ombudsmen to receive and deal with complaints concerning environmental issues, which impact not solely respective states but also neighbouring

---

<sup>20</sup> "Know Your Rights" is an online platform through which the Ombudsperson Institution aims to promote the rights of young people aged 16-29, in accordance with the legislation in force in Kosovo. The platform provides guidance on some of the rights in the fields of education, health, non-majority communities, employment, family, justice system, community work, social benefits, and youth empowerment. Rights descriptions are associated with a mapping of the institutions responsible for enforcing those rights as well as those to which young people can address complaints in case of violation of their rights. The platform also contains detailed information on the process of filing complaints to the Ombudsperson Institution and offers the possibility of reporting violations directly through the "Know Your Rights" platform.

states and even further to global context, as well as noting that public participation in environmental processes is below the desired level, they signed unanimously establishment of Network of Ombudsmen for the Environment and Human Rights, which aims at close cooperation, exchange of knowledge, practices and experiences, and development of forms in which Ombudsmen respond to environmental challenges, in fulfilment of their mission.

The Ombudsperson, as a national human rights institution, has continued to contribute to the human rights and fundamental freedoms in the reports he is required to present to international and regional institutions.

During 2017, the Ombudsperson continued cooperation with non-governmental organizations, which are viewed as a serious partner in the joint fulfilment of the obligation to promote and educate on human rights, as well as in the encouragement of respect for human rights.

Within the cooperation with non-governmental organizations, the Ombudsperson in 2017 signed special agreements of understanding with the following organizations: Civil Rights Program, Advanced Together, KIPRED, ARTPOLIS, SDSU, Kosovo Moms Association, UNHCR, ILIRIA University, Ministry of Social Welfare, Demand for Justice (NCSC), KRCT, Terre des Hommes, and Disability Forum.

Supported by the OSCE Mission, the Ombudsperson together with a group of non-governmental organizations of various profiles represented by non-majority communities, people with disabilities, youth forums, women's community and marginalized groups, in November held a three-day workshop in which, through the identification of the most critical areas of human rights, major problems and systemic violations, an action plan was developed in cooperation as a joint response to discrimination and violations of human rights. The plan contains a number of priorities and activities for 2018 with a view to improving access to education, working conditions, services and unimpeded access of disabled people, respecting non-majority communities' rights and raising awareness and providing education on human rights.

During the reporting year, under projects implemented by the civil society in partnership with the Ombudsperson Institution, a number of activities have been carried out aiming at promoting human rights and fundamental freedoms and at the same time promoting the role and mandate of the OIK.

As part of the project “*Protection and promotion of human rights in Kosovo through active civil society*”, supported by the EU and implemented by Kosovo Institute for Policy Research and Development (KIPRED), Group for Legal and Political Studies (GLPS) and Artpolis, in the period October to December 2017, the forum theatre “Stigma – Ask for Your Right” was performed. The forum theatre was screened in seven (7) municipalities of Kosovo, namely: Correctional Centre in Lipjan, Peja, Mitrovica, Gjilan, Prizren, Gjakova and Prishtina. The performance was also part of the activities of the



project “Ombuds Watch – Promotion of Ombudsperson’s Role in Kosovo”, implemented by BIRN Kosovo and the ACDC (Overseas Culture Democracy Advocacy Centre) in partnership with the Ombudsperson Institution and supported by the Embassy of the Netherlands in Kosovo. At the event, awards were given for the three best journalistic stories on human rights issues. The activity aimed at encouraging the journalists' community to inform and raise public awareness of the human rights situation in the country, compliance with and reporting on human rights through their stories.

The Ombudsperson and non-governmental organizations of the Republic of Kosovo, under the motto “*Raise for Human Rights*”, united in this joint initiative, on the International Day of Human Rights, on 10 December 2017, in Prishtina, unanimously signed a Joint Declaration, the purpose of which is to protect the Rights and Fundamental Freedoms of all citizens on an equal and non-discriminatory basis.

On this occasion, in honor of marking the International Human Rights Day, a common march was organized, calling on the institutions of the Republic of Kosovo to establish effective measures for the exercise and protection of human rights and freedoms, defined by the Constitution of Kosovo and international instruments. At the same time, all state actors were invited to strengthen their efforts for the promotion of and education on human rights and respect for human rights and fundamental freedoms. The Government of the Republic of Kosovo was asked to prioritize human rights issues in Kosovo and to provide stronger institutional support to the protection of human rights and fundamental freedoms, through mechanisms for the protection of human rights and fundamental freedoms, as well as non-governmental organizations.

### **3. Access to the Ombudsperson Institution**

Every working day (Monday to Friday) from 8:00 to 16:00, the OIK receives in its offices citizens who allege to being subject to violations of their rights. They are received by OIK’s legal counsellors who deal with cases with care, confidentiality and professionalism.

In order to facilitate the access of Kosovo citizens to the OIK, in addition to the Central Office in Prishtina, the OIK has regional offices in Ferizaj, Gjakova, Gjilan, Mitrovica (south and north), Peja, Prizren and Gracanica.

OIK offices consist of professional staff serving citizens and responding to their claims and complaints, and defending the rights they consider to have been violated.

Another easier mode of access for citizens is the holding of Open Days by the Ombudsperson and his deputies. They are organised in Prishtina and in the regional offices. Regional offices inform citizens of the respective municipalities about open days through publication of dates throughout these municipalities, via local media and via the OIK’s official website.

Other forms of access are via mail, phone and e-mail, which are being used increasingly often and actually are used by citizens living abroad in filing complaints. In the OIK’s

Main Office in Prishtina, there is a telephone line, free of charge, for urgent matters, but also for other ordinary cases.

OIK officials make regular visits to all prisons and places where persons with limited freedom are kept in Kosovo. In order to enable direct communication with the prisoners, in cooperation with the authorities of the Kosovo Correctional Service and the responsible prisons in Kosovo, in 2004 the OIK placed mailboxes at visible spots in all prisons and detention centres in the Republic of Kosovo, which are only opened by OIK representatives. This practice has helped many inmates or detainees to establish first contact with the Ombudsperson. Such boxes are also placed in Mental Health Centres and institutions, facilitating patients' access to the OIK. These institutions and centres are regularly visited every month by OIK representatives.

## **4. Human rights situation in the Republic of Kosovo**

### **4.1 Legislation**

Similar to previous years, during 2017 the Ombudsperson monitored the process of drafting, reviewing, and adopting laws. This year, the Ombudsperson worked with the programs of two legislatures due to the early parliamentary election held on 11 June 2017.<sup>21</sup>

Summarizing the legislative programs for 2017 approved by the Government of the Republic of Kosovo on 30 December 2016<sup>22</sup> and 18 September 2017<sup>23</sup>, it is noted that 105 draft laws (including 61 new laws and 44 amended laws) as well as the Kosovo Civil Code are scheduled to be reviewed and adopted during 2017.

If we are to compare the legislative programs for the last three years (2015 - 2017), there is a declining trend in the number of proposed amended and supplemented draft laws. Unlike 2015, when 65% of the proposed draft laws were amended and supplemented, in 2016 they consisted 50% of the proposed draft laws, while in 2017 their share fell to 42%.

Albeit the fact that the number of draft laws with amendments and supplements is declining, the trend of such proposed draft laws remains high. This indicates that the adopted laws do not meet the desired quality standard and that they are not drafted in line with the developments in the areas they intended to regulate, which does not comply with the principle of legal certainty.

The Ombudsperson has carefully analysed the Rules of Procedure of the Assembly of Kosovo and found that it is necessary to make changes to the provision which regulates

---

<sup>21</sup> The local election (for municipal assemblies and mayors) was held on 22 October 2017, with a second round for mayor election on 19 November 2017.

<sup>22</sup> 125th Meeting of the Government of the Republic of Kosovo, Decision No. 01/125 dated 30 December 2016.

<sup>23</sup> 3rd Meeting of the Government of the Republic of Kosovo, Decision No. 02/03 dated 18 September 2017, supplemented by Decision No. 02/12 dated 3 November 2017.

unfinished work (86). According to this provision, at the end of the mandate of the Assembly, there is an obligation to resume any work from the beginning. Such an arrangement risks delaying the work of the Assembly and prevents the well-functioning of other institutions pending its decisions. Given this risk, the obligation for the Assembly to return all works to point zero at the beginning of the new legislature could only be justified if there are good reasons for such an obligation. In this respect, the OIK has prepared a Recommendation Report whereby it requested from the Assembly to provide for, in the subsequent Rules of Procedure of the Assembly of the Republic of Kosovo, the possibility that the Presidency of the Assembly at the beginning of each legislature have the right to decide, at the request of commissions and various institutions, to continue unfinished work from the previous legislature, instead of starting such work from point zero.

In the annual reports of previous years, the OIK warned about the obvious omissions in the process of drafting the proposed laws and draft laws of existing laws, and in order to consolidate the legislation, recommended the strengthening of the Directorate of Legal Standardization, Alignment and Harmonization of the Assembly of Kosovo. In this regard, some measures were taken last year for the establishment of a Legal Analysis Unit that would function within this Directorate and assist parliamentary committees with legal expertise during review and amendment of draft laws and would also contribute to strengthening professional capacities for legal analysis and approximation of Kosovo legislation with EU legislation for the implementation of the Stabilization and Association Agreement (SAA). However, despite promises that the Unit would be functionalized within the first quarter of 2017 with the employment of ten (10) experts, with special emphasis on European law, nothing has been done in this respect in 2017 and this Unit is not still functional.

The Ombudsman draws attention to the need for the Government to draft the Legal Approximation Plan for a specific period, according to which the Assembly of Kosovo would monitor the process of approximation of domestic legislation with the European law. Consequently, it is necessary that this plan be approved by the Assembly and include sections of legislation approved by the Government and be monitored by the Committee for European Integration. In order for this plan to be implemented more efficiently, it will be necessary to establish and operate an effective mechanism of cooperation between the Assembly and the Government in the area of approximation with European legislation. This way, the Assembly could implement this plan in a reasonable time and cover all the legislation in force in the Republic of Kosovo.

The process of drafting laws has been marked by lack of linguistic and terminological consistency, as well as lack of a unique legal terminology. This phenomenon has caused difficulties in the proper implementation of laws, but also in interpretation during their implementation. In this regard, it is necessary to standardize legal terminology as soon as

possible through the drafting of a legal terminology vocabulary, which would help lawmakers and MPs in the process of drafting and adopting laws.

Another important process is the codification of laws, namely the compilation of laws that regulate the same or similar field. This process would ensure that all legislation of an area or domain be summarized in a single document. This would facilitate access to laws, which constitutes a fundamental condition for their implementation, as well as assist law enforcers in the effective control of relevant areas of law. In the previous years, OIK recommended to the Assembly of Kosovo, through its opinions, to initiate this process. The drafting and adoption of the Kosovo Civil Code is foreseen in the Legislative Plan for 2017. In this regard, on 25 May 2017, the Ministry of Justice (MoJ) presented the initiation of work for its drafting and also established the relevant working group. The MoJ has decided that the Civil Code will use as reference the German model. This project is financially supported by the European Union (EU). In this regard, the Ombudsperson considers it necessary to issue the Civil Code and considers it very important for the Kosovo legal system. The issuance of the Civil Code will enable the compilation of civil law laws into a document, which will advance the legal system and order in the Republic of Kosovo in the civil field, facilitating the use of civil legislation in practice. The existence of the Civil Code will make it easier to identify and enforce civil laws.

Regarding the adoption of legislation, it is important to note that the process of approximation of domestic legislation with that of the EU is indispensable for raising the normative level and achieving the standards claimed in Kosovo. In this regard, the Ombudsperson considers that there should be greater cooperation between the Assembly and the Government in the process of drafting normative acts as well as in their monitoring, focusing on the process of approximation of legislation. In this way, the efficiency of the process of approximation of local legislation with that of the EU will be increased, serving as a tool for raising the standard of Kosovo legislation.

As a positive step of the Assembly of Kosovo in achieving international standards for parliamentary transparency is the functioning of the Electronic Regulatory System (SEPL), which was launched on 9 November 2017. This platform, which is published on the official website of the Assembly will significantly facilitate the access of all interested parties (lawyers, students, NGOs, media and other citizens) to information and documents pertaining to draft laws being reviewed at the Assembly, and during each phase of the law-making process, enabling them to follow up on the proposed amendments to the draft law and to address their remarks, suggestions, comments and feedback. The project was implemented in cooperation with the National Democratic Institute (NDI), with the support of the US Agency for International Development (USAID).

During 2017, the Assembly of the Republic of Kosovo approved only 21 laws. While there are 25 draft-laws in the procedure, 14 of which passed the first reading in the

Assembly, 3 draft laws were distributed to the MPs, while 2 other draft laws were not distributed to MPs.

None of the laws adopted in 2017 falls under the legislation of vital interest<sup>24</sup>, while some draft laws in this area, which were foreseen in the Legislative Program for this year, have not been approved.

Only the Draft Law on Amending and Supplementing the Law No. 02/L-31 on Freedom of Religion in Kosovo has passed the first reading in the Assembly of Kosovo, whereas the Draft Law on Ratification of the Agreement of the State Border Agreement between the Republic of Kosovo and the Republic of Montenegro has been distributed to the assembly members, while other draft laws have not been processed at all.<sup>25</sup>

Regarding the adoption process of laws during 2017, the Ombudsperson draws attention to the fact that the Assembly of Kosovo showed lower efficiency compared to the previous two years. During 2017, the Assembly adopted only 21 laws, unlike 2015 when the Assembly adopted 46 laws, and 2016 when the Assembly adopted 52 laws. The Ombudsperson estimates that this low laws adoption efficiency of by the Assembly is the result of political events and delays in the establishment of institutions after certification the results of national elections that took place this year. Therefore, the Ombudsperson considers that such delays in the future would negatively affect the functioning of the institutions of the Republic of Kosovo and the fulfilment of their constitutional and legal obligations.

In order to facilitate the use of laws in practice, the Ombudsperson considers as necessary to change the legislation drafting techniques, namely regulating the process after the adoption of laws for amending and supplementing the existing laws. In this regard, it will be necessary that the Law on Legal Acts, in a separate chapter, to regulate the procedure according to which, after the adoption of a law amending and supplementing the existing law, those amendments and supplements to be incorporated into the basic law and exist as a single law<sup>26</sup>. Such an adjustment would make more accessible and usable the legislation that is subject to amending and supplementing.

OIK received a series of draft laws and draft administrative instructions from the Government and ministries for commenting. The Regulation no. 09/2011 on Rules and Procedures of the Government of the Republic of Kosovo, stipulates the obligation of the proposing body to consult not only with relevant ministries but also with the OIK regarding the draft laws and sublegal acts and their compliance with “... *internationally*

---

<sup>24</sup>Constitution of the Republic of Kosovo, Article 81 and Amendments 2 and 3 of the Constitution of the Republic of Kosovo, entered into force on 7 September 2012.

<sup>25</sup>Draft Law on Amending and Supplementing the Law No. 03 / L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo and the Draft Law on the Education Inspectorate in the Republic of Kosovo.

<sup>26</sup> Draft law on Legal Acts, is in the process of reviewing in the Assembly, and the suggestion for regulating the technique of drafting normative acts can be easily implementable.

*accepted standards on human rights and fundamental freedoms ...*”.<sup>27</sup> Ombudsperson made comments and recommendation to the draft Law on Protection of Children and the Draft Law on execution of criminal sanctions.

The Ombudsperson assesses that the practice, on the part of state institutions of the Republic of Kosovo, to consult the OIK on draft laws, draft administrative instructions and other sub-legal acts is a positive one.

Based on the above mentioned, the Ombudsperson finds that the Assembly of Kosovo this year had a much lower efficiency compared to previous years, adopting a relatively small number of laws. Also, it is considered necessary to increase the capacities of the Assembly, namely the Committee on European Integration in monitoring the approximation of local legislation with that of the EU. Consequently, it will be necessary to make the changes mentioned in the Rules and Procedure of the Assembly (Article 86), as well as regulate the technique of drafting normative acts in order to incorporate the amending and supplementing the laws into the basic law, in order to facilitate the use of laws in practice. Within its responsibilities, the Ombudsperson has given recommendations, suggestions, assessments and has emphasized the need to undertake concrete actions by the responsible institutions in order to improve the standard of legislation and the more efficient functioning of the institutions which have the competence of drafting the legal acts.

Within the responsibilities of the Ombudsperson provided for by Law on Ombudsperson is also the responsibility: *“to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo”*.<sup>28</sup>

The Ombudsperson recommended the Assembly of the Republic of Kosovo to amend and supplement these laws and sublegal acts:

- Explain explicitly that Article 86 of the Rules and Procedure of the Assembly has not determined the issue of how a newly elected Assembly should deal with unsettled issues inherited from the previous legislature; and to supplement the Rules and Procedures of the Assembly of the Republic of Kosovo in order to determine that the Presidency of the Assembly at the beginning of each legislation will have the right to decide, at the request of various committees and institutions, to continue with the unhandled issues by the previous legislation, instead of resuming these things from the first step (see: Report with recommendations *ex officio* no. 582/2017).
- Amending and supplementing the Law no. 05/L-010 on Kosovo Property Comparison and Verification Agency (KPCVA) as follows:

---

<sup>27</sup> Rules and Procedures of the Government of the Republic of Kosovo, Article 7, paragraph 2.

<sup>28</sup> Article 18, paragraph 1, point 1.7.

- Article 21, paragraph 7 of the Law on KPCVA (“*The Agency shall administer the properties and implement the rental scheme in accordance with this article, at latest eighteen months (18) from the entry into force of the present Law*”), to be completely removed;
- Article 19, paragraph 7 of the Law on KPCVA (“*For any subsequent re-occupation (after two evictions) of the same property, the rules of the general enforcement procedure shall be applicable based on the same decision/judgment and eviction order as an enforcement document*”) to be completely removed; and
- Article 19, paragraph 6 of this Law on KPCVA, to be amended as follows: “*For any reoccupation after the date of the execution of an eviction order, upon notification by the claimant for illegal re-occupation of the property the Agency shall re-execute it once more by re-eviction of occupant from the property based on a newly issued warrant, following the procedure in paragraph 3-5 of this Article. For re-eviction the Agency shall inform the claimant of the day of re-eviction and invite him/her to be present. In case that claimant or his/her representative fails to participate in re-eviction, the Agency shall enforce eviction and issue repossession acknowledgment.*” (See: Report with recommendations *ex officio* no. 551/2017).

The ombudsperson has also recommended to:

- Government of the Republic of Kosovo that, based on the rules and procedures on legislative initiatives, to propose amending of the Law on the Special Chamber of the Supreme Court of Kosovo, respectively the Article 3.1 of the Law in order to provide a fair and effective Access to parties in proceedings with the Special Chamber (see: Report with recommendations *ex officio* no. 44/2017).
- Ministry of Education, Science and Technology (MEST) should issue a sub-legal act which defines by law the organization of the teaching process for persons deprived of liberty, including juveniles staying in the Correctional Centre (CC) in Lipjan, thereby addressing their needs. In this context, it is necessary to also amend paragraph 1 of Article 4 of Administrative Instruction No.16/2011, dated 30 December 2011, to find solutions to the requirements for changing the educational profiles for students in this CC even outside the timelines that are currently defined in this instruction. Also, it is necessary with sub-legal acts to clearly address the responsibilities that belong to the MEST and the municipalities, in this case the municipality of Lipjan, for the progress of lessons in the CC in Lipjan (see: Report with recommendations *ex officio* no. 575/2016).
- Ministry of Finance (MF) to amend the *Administrative Instruction no. 07/2011 on Orders Banning of Municipal Services for Enforcement of Property Tax Payment* including the point 1.3 of paragraph 1 of Article 2; deleting paragraph 2 of Article 2; and deleting the last sentence from paragraph 1 of Article 5 “*Municipality shall not carry out these services for as long as the property tax payment is not made*” (see:

Report with recommendations on citizens' complaints A. no. 333/2015, A. no. 347/2015, A. no. 729/2015 and A. no. 730/2015).

- Kosovo Judicial Council (KJC) should initiate the drafting of legal instrument, which would constitute an effective remedy within the meaning of Article 13 of ECHR, which provides facilitation in the form of prevention and compensation regarding the complaints in the delay of judicial proceedings (see: Report with recommendations on cases A. no. 597/2014 and A.no.438/2015)).

## **4.2 Judicial protection of rights**

The country's judiciary in this reporting year has had a positive increase in law enforcement compared to the previous year but has not yet managed to secure human rights protection according to international standards, in particular the European Convention on Human Rights and Fundamental Freedoms (ECHR) and Case-law of European Court of Human Rights (ECtHR).

Judiciary's strategic plan 2014-2019<sup>29</sup>, contains objectives which deal with the acceleration of the resolution of judicial cases, relevant management and accountability, strengthening of assessment and disciplinary mechanisms, inclusion of minority communities in the judicial system and the enhanced education and training of judges and courts personnel, which should be satisfied in order for judicial system to be as functional as possible and be at citizens' service.

The judiciary does not have sufficient financial support allocated under the annual budget for 2017. The final budget of the Kosovo Judicial Council was € 21,793,948.18. KJC's budget participation in Kosovo's general budget during 2017 was about 1.20%, therefore for an independent and efficient judiciary, its portion within a responsible budget allocation must be increased.

Similarly, the country's judiciary faces the insufficient number of judges, since in 2017 there were 404 appointed judges, and despite having a significant increase compared to the previous year, but a concern for the Ombudsperson remains the low number of professional collaborators, namely 40 (forty) working in the courts. Therefore, increasing the number of professional collaborators and other staff would help judges in the process of reviewing cases in due time and this would reflect on reducing the number of court cases that exceeded the limits of rationality.

The Ombudsperson considers the establishment of the Academy of Justice, in accordance with the Law no. 05/L-095 on the Academy of Justice, as a positive step in the justice system. Expectations are that there will be an increase in the quality and efficiency of the work of the judiciary through the organization of continuous professional training for judges and prosecutors as well as for judicial and prosecutorial administrative staff. According to the law, the basic training of the newly appointed judges and state

---

<sup>29</sup> Kosovo Judicial Council, Strategic Plan of Judiciary in Kosovo 2014-2019, pg. 14, 19, 22 and 26 [www.kgjk-ks.org](http://www.kgjk-ks.org)



prosecutors will last for twelve (12) months and consists of theoretical and practical part, with the support of trainers.

The country's judiciary in November this year achieved its functioning in the northern part of Kosovo and its integration into the overall judicial system, after more than two years since Prishtina and Belgrade signed in Brussels the agreement on the integration of the judiciary in the north of Kosovo<sup>30</sup>. The Ombudsperson considers it an important step for Kosovo's justice in terms of establishing a unitary justice system throughout the country and that will guarantee citizens equal access to justice institutions as well as realization of their constitutional and legal rights<sup>31</sup>.

Within the Kosovo Judicial Council operates the Unit for Review of Performance of Judges (URPJ), which according to the instructions of the Kosovo Judicial Council and its Court Administration Commission, works pursuant to Article 29 of the Law on the Kosovo Judicial Council. URPJ provides KJC with analysis, assessments, recommendations, advices and information related to activities developed and reviewed at courts which were used to promote effective high professional qualifications control of the employees. However, the Ombudsperson notes that no comprehensive assessment of the state of judiciary is made in order to make priorities and plans for gradual positive improvement of the state of judiciary.

On 27 October 2017, the President of Kosovo has decreed 40 judges and 13 prosecutors from the Serb community who will work in the country's judicial system and will enforce laws and the Constitution of Kosovo. However, a growing concern remains the one raised in the last year's Ombudsperson report on the right to fair and impartial judgment and the right for effective legal remedies, drawing the attention of relevant institutions to the need of undertaking adequate actions for the fulfilment of this right regarding statutory limitation over 1500 cases on criminal matter which have never been reviewed and over 2500 civil cases for which no actions have ever been taken, which seriously threatens the principle of legal security and access to justice in the northern part of the country<sup>32</sup>.

The domestic judiciary continues to be supported in the area of rule of law by the European Union Mission on the Rule of Law in Kosovo (EULEX), based on of the Law on Ratification of International Agreement between the Republic of Kosovo and European Union<sup>33</sup>.

---

<sup>30</sup> Law no.04/L-274 on the Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo

<sup>31</sup> The Kosovo Judicial Council "North is integrated into the Kosovo justice system 24/10/2017", <http://www.gjyqesori-rks.org/sq/kjc/event/index/113>

<sup>32</sup> Report with recommendations Ex officio No. 415/2016, concerning Lack of access to Court building in the Mitrovica North, namely denial of the right of access to justice, addressed to Kosovo Judicial Council, Kosovo Prosecutorial Council, Basic Court in Mitrovica and Basic Prosecution office in Mitrovica.

<sup>33</sup> Law on Competences, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, no. 03L 053, Article 5. paragraph 1.

International judges and prosecutors assist domestic judicial authorities in developing and strengthening the independence of the justice system. Judges work with domestic judges on mixed judicial panels in the areas of war crimes, genocide, terrorism, organised crime, corruption, inter-ethnic crimes, serious murders, economic crimes, but also for trying civil cases, in accordance with the Law<sup>34</sup>.

The Ombudsperson noted that when taking a decision, courts rarely refer to the ECtHR case-law, and even when this happens the references are generalised, and are not concrete in relation to the circumstances of the case at work. It is worth mentioning that according to Article 53 of Constitution of the Republic of Kosovo, human rights are interpreted consistent with the case-law of ECtHR.

Concerning the protection of rights and fundamental freedoms in the area of judiciary, the Ombudsperson has limited mandate determined by Law on Ombudsperson, according to which the Ombudsperson may provide general recommendations on the functioning of the judicial system, while not intervening in the cases and other legal procedures that are taking place before the courts, except in case dealing with allegations on administration of justice, namely on delays of judicial proceedings and non-execution of judicial decisions.<sup>35</sup>

On the basis of the number of complaints filed with OIK during this reporting year, it results that citizens continue to mistrust judicial system. They continue to face delays of procedures for deliberation of their cases for years, non-execution of plenipotentiary court decisions, ineffective decisions, prescription of judicial cases, as well as errors in their personal notes affecting the inability of the realisation of their rights. This has negative impact to the citizens' perception of justice and thus is created mistrust in the judiciary system on the lack of objectivity of judges during the deliberation of their cases.

### **Delay of judicial proceedings**

Like in previous years, Ombudsperson continues to receive complaints against courts which mainly deal with delay of the resolution of their cases. Complaints mainly deal with procedural delays regarding the civil nature disputes, such as property, obligational, labour and social disputes as well as penal disputes<sup>36</sup>. This comes as a result of a huge number of old and unresolved cases and the presentation of new cases.

---

<sup>34</sup>Law no. 04/L-274 on Ratification of International Agreement between the Republic of Kosovo and European Union on the European Union rule of Law mission in Kosovo

<sup>35</sup>Law no.05/L-019 on Ombudsperson, Article 16.8

<sup>36</sup>A.no.44/2017, Report with recommendations on the Special Chamber of the Supreme Court, A.278/2017 Report with recommendations BC Ferizaj, A.597/2014, Report with recommendations, BC Prishtinë, A.no.500/2015 Report with recommendations Court of Appeal, A.no.690/2017 Report with recommendations, BC Prishtinë, A.553/2017, Report with recommendations, C. of Appeal, A.no.236/2017 Report with recommendations, C. of Appeal, A.262/2014 Report with recommendations, C. of Appeal, A.no.549/2015 Report with recommendations, BC Prishtinë.

KJC, in the statistical report of courts for the first half of 2017, reported that the number of cases remaining unresolved is 358.138<sup>37</sup>. According to this report, courts have had a total of 527.780 judicial cases, while they resolved 169.605. During these six months, citizens filed 130.035 new judicial cases.

Also, in the statistical report of courts for the first half of 2017, reported that the number of cases remaining unresolved is 417,733. According to this report, courts have had a total of 664,465 judicial cases, while they resolved 246,700. During these six months, citizens filed 223.838 new judicial cases.

Despite the huge number of unresolved cases during these six months of 2017, a decrease of 59.595 cases is observed compared to the same reporting period of 2016. Notwithstanding this, KJC should be engaged to support the judiciary in improving the situation.

Ombudsperson observed that when it is about procedural delays, especially for cases which go from one instance to another during the review process or in situations when cases are returned for retrial, the tendency of courts is to calculate the period of the deliberation of the case from the day when the case was transferred to that court, while according to ECtHR case law, the calculation period for the resolution of a judicial case commences from the day when citizens have filed the suit with the competent court. Further, Ombudsperson observed that courts do not treat with emergency the disputes stemming from employment relationship<sup>38</sup>, as is required under the Law on Contested Procedure<sup>39</sup>.

The National Audit Office (NAO) in the Court's audit report in 2017 concluded that the process of civil cases management in the Basic Courts is ineffective and has delays in the deliberation of cases.

Courts continue to face with a considerable number of old cases that continue to be unresolved and the total number of civil cases has not been reduced but is constantly increasing. As a result of the large number of civil cases in basic courts, citizens are obliged to expect long periods of time to review and finalize their cases. At the same time, the fact that the trend of cases that remain unresolved from year to year is constantly increasing, is worrying, and if no measures are taken to improve this situation, then the judiciary may collapse<sup>40</sup>.

Lack of an internal legal mechanism contributes to the aggravating situation regarding the delay of procedures within courts through which the right to a trial within a reasonable

---

<sup>37</sup> Kosovo Judicial Council, the first six-month report 2017, Statistics on regular courts, [www.kgjk-ks.org](http://www.kgjk-ks.org), pg. 3.

<sup>38</sup> A. no. 553/2017 Report with recommendations, C. of Appeal, A.no.238/2017 Report with recommendations, BC Prizren, A.no.447/2017 Report with recommendations, C. of Appeal.

<sup>39</sup> Law no. 03/L-006 on Contested Procedure, Article 475.

<sup>40</sup> National Audit Office of Kosovo, Audit Report,- Efficiency of Civil Cases Management in Basic Courts, Document no: 24.18x.9-2015/16-08, published in November 2017, <http://www.zka-rks.org/publications/>

time was violated to citizens within the meaning of article 6 of ECHR, for which they might request compensation due to violation of this right.

### **Prescription of cases**

Ombudsperson observed that a number of citizens' cases are still prescribed in courts and prosecution offices, which seriously damages the trust of citizens to justice and violates human rights<sup>41</sup>. Courts do not provide statistical data for prescribed cases, which violates legal certainty.

Also, another concern regarding the situation of thousands of unsolved cases and the possibility of their prescription in Mitrovica region was presented by the head Prosecutor of the Basic Prosecution Office of Mitrovica at its conference with the public media<sup>42</sup>.

Prescription of cases may be a result of burdening courts with judicial cases and the inability of deliberation within the time period due to the insufficient number of judges. However, there are cases when prescription comes as a result of negligence or abuse. The Office of the Disciplinary Counsel (ODC) in all cases of prescription of judicial cases must investigate in detail the cause of prescription of cases, without any exception and must initiate relevant procedures against the responsible persons allowing for the prescription of judicial cases.

### **Non execution of court decisions**

During this year, Ombudsperson has received a considerable number of complaints concerning non-execution of court decisions.

In some specific situations, among others, after the investigation of complaints, it has been observed that an impediment in the execution of decisions was the economic and financial situation of the debtor<sup>43</sup>, despite the actions undertaken by the court. In a case investigated, it was observed the negligence of the administration body in execution of court decisions and only after the Ombudsperson's reaction, the case has been preceded.<sup>44</sup>

Execution of court decisions at domestic level still remains low, which is worrying for the Ombudsperson. The KJC's six months report of 2017,<sup>45</sup> concerning civil cases is an indicator that courts have dealt with 4068 cases, of which they executed 1576, while 2492 remained unexecuted.

---

<sup>41</sup> A.no.132/2017, against Basic Prosecution Office in Prishtinë.

<sup>42</sup> Statement of the Head Prosecutor of the Basic Prosecution Office in Mitrovica Mr. Shyqyri Sylja "Zëri" 3 December 2017

<sup>43</sup> A. no. 240/2017, against Basic Court in Prishtine, A.no.252/2017, against Basic Court in Gjilan., A.no.601/2017, against Basic Court in Prizeren,A.no.666/2017, against Basic Court in Prishtina.

<sup>44</sup> A. No. 611/2017, against the Ministry of Labour and Social Welfare, A.569/2017, against Municipality of Peja.

<sup>45</sup> Kosovo Judicial Council, the first six-month report 2016 , Statistics on regular courts, www.kgjk-ks.org, page 37

Ombudsperson expressed its concern that there are still a high number of plenipotentiary court decisions remaining unexecuted. In this respect, Ombudsperson draws the attention of relevant authorities that according to ECHR and ECtHR case-law, the execution of plenipotentiary decisions is part of the right for a fair and impartial trial obliging them to undertake indispensable measures for the realisation of this right.

### **Private enforcement agents**

It can be observed that private enforcement agents have improved the level of execution of courts decisions and citizens are provided with more efficient and effective possibility in the realisation of their rights. But in some cases, private enforcement agents have exceeded legal norms regarding the execution of court decisions<sup>46</sup>, issuing enforcement orders for the execution of decisions in commercial banks, upon which case they requested the freezing of complainants' bank accounts.

During the investigation, Ombudsperson observed that complainants have been users of social assistance, old age pensions and these incomes were frozen in the execution process, in contradiction with the law, which determines legal constraints for the amounts which cannot be an object of execution<sup>47</sup>. After the Ombudsperson's actions, the issue of the complainants was resolved, that their bank accounts were freed and prohibitions are done in compliance with the law.

In some cases in complaints against private enforcement agents, the parties complain about the delays of execution, but the investigation found that against the decisions in the execution procedure the opposing parties filed complaints in the courts and the cases were delayed for execution until the finalization of court proceedings<sup>48</sup>. Also, in some cases of complaints it was noted that some court decisions could not be executed by private enforcement agents because the debtors did not have the funds<sup>49</sup>.

However, in all investigated cases when concluded that enforcement agents breached the law no.04/L-139 on Enforcement Procedure, (Article 112), related to enforcement restrictions, the Ombudsperson recommended the enforcement agents to change the enforcement orders in compliance with the law, and which were enforced by them.

### **Legal representation of citizens**

The Ombudsperson has also received a considerable number of complaints concerning inadequate representation of parties by defence counsels in different judicial cases. This hampers the full realization of the right to protection of human rights in court proceedings. In some cases, the complainants have also submitted requests for

---

<sup>46</sup> Law no.04/L-139 on Enforcement Procedure, Article 112.

<sup>47</sup> A. no. 704/2017 Hoxha, against Private Enforcement Agent in Prishtina, A.139/2017 Voci, against Private Enforcement Agent in Peja.

<sup>48</sup> A. no. 678/2017 Rexhaj, against the Private Enforcement Agent in Prishtina, A. no.576/2017 Krasniqi, against the Private Enforcement Agent in Prishtina,

<sup>49</sup> A. no. 443/2017 Neziri against the Private Enforcement Agent in Prizren, A. no.349/2017 Veliu against the Private Enforcement Agent in Mitrovica

counselling on addressing their concerns in relation to their defence counsels, regarding allegations of undignified representation, deception and co-operation with the respondent<sup>50</sup>. In all these cases, complainants have been informed of their right to change lawyers, withdrawing the authorisation for representation and the possibility of filing complaints to the Kosovo Bar Association (KBA).

In a case investigated by the Ombudsperson regarding the lack of information from the defence counsel on the handling of the case in court proceedings, namely damage compensation, it was found that the complainant's case was finalized in court in 2012 and that the compensation was paid in the account of the defence counsel, but he has not notified the party about this. Only after the Ombudsperson's investigation of the case, the complainant has understood the truth and has been given all the administrative and judicial documents of the case<sup>51</sup>.

Because of the defence counsel's non-cooperation with the party, and his failure to inform the party of the court's decision, the latter has missed the legal time-limit for using other legal remedies. In this case, the Ombudsperson has opened a case to monitor the complaint procedure filed by the party with the Office of the Disciplinary Counsel in KBA and see how the process of party's complaint against the defence counsel<sup>52</sup> is being handled.

KBA does have a normative framework regarding the work standards and the Code of Ethics on the conduct of lawyers, but has not managed to establish a system which would efficiently supervise and monitor compliance of such standards.

Free legal aid is a constitutional category<sup>53</sup> and shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice. However, a challenge for the provision of the free legal aid in relation to the citizens' requirements is the lack of budgetary means, which does not allow the provision of legal assistance to citizens in the entire territory of the Republic of Kosovo in conformity with Law on Free Legal Aid.

In many cases citizens have requested the Ombudsperson to prepare different submissions, both in administrative and judicial matters, and for court representation, but due to the legal restrictions of the mandate, in all cases the parties were instructed to check with the Agency for Free Legal Aid for acquiring such services.

---

<sup>50</sup> Complaint Gjeta against the defence counsel, Kosovo Bar Association, Complaint Gjorllaku against defence counsel, Kosovo Bar Association, Complaint Greku against the Defence counsel, Kosovo Bar Association. Complaint Asllani, against defence counsel, Kosovo Bar Association. Complaint Jonuzaj and others against defence counsel, Kosovo Bar Association.

<sup>51</sup> A.no. 65/2017 Morina against defence counsel, Kosovo Bar Association.

<sup>52</sup> A. no. 892/2017 Kosumi against defence counsel, Kosovo Bar Association.

<sup>53</sup> Constitution of the Republic of Kosovo, Article 31, paragraph 6.

Delays of procedures in deliberation of judicial cases, lack of effective legal remedies, and low level of execution of decisions are the issues that require adequate attention and addressing by relevant authorities.

Therefore, the Ombudsperson, *inter alia*, reiterates the need for creating an internal legal mechanism, within the meaning of Article 13 of ECHR, which would guarantee citizens' the right to effective legal remedies in cases of violation of the right in the resolution of their cases within a reasonable time and non-execution of plenipotentiary court decisions, rights which are determined under Article 6 of ECHR and guaranteed by the Constitution of the Republic of Kosovo.

## **5. The role of the executive body in protection of human rights**

### **5.1 Government of the Republic of Kosovo**

According to the Law on State Administration, the state administration carries out the administration duties in the light of rights, responsibilities and duties of the Republic of Kosovo. The state administration exercises its function and performs on the basis of the constitution, law, other provisions and general acts. State administration duties incorporate the direct implementation of the law, the issuance of provisions for their application, the exercise of administrative oversight and the performance of other administrative and professional tasks. According to this law, the highest state administration authorities are the Government as a whole, the Prime Minister, the Deputy Prime Ministers and Ministers, while the Office of the Prime Minister and the Ministries are the highest state administration bodies through which the highest State Administration Authorities exercise their governmental and administrative powers<sup>54</sup>.

The concept of the "State of the Law" (Rechtsstaat) or the "Rule of Law" represents a prodigious value of the European and global civilization<sup>55</sup>. With regard to the state's administration, a particular importance of the rule of law lies in the lawfulness of administrative decisions. These values are also embodied in the Constitution of the Republic of Kosovo.<sup>56</sup>

A modern state administration system cannot be imagined to exist without the rule of law.<sup>57</sup>

Regarding this, the Ombudsperson wants to highlight certain decisions of the Government which have raised debates in the public opinion.

The Government Decision No. 13/06, dated 3<sup>rd</sup> of October 2017 on Debt Forgiveness of Water Packers is a decision in contradiction with the constitutional provisions as well as the Law No. 04/L-147 on Waters of Kosovo. Such a decision should not have been taken without the prior approval of the Assembly of Kosovo and in this case should be acted

---

<sup>54</sup> Law No. 03/L-189 on State Administration of the Republic of Kosovo

<sup>55</sup> Lord Lloyd of Hampsted, M.D.A. Freedman, Lloyd's Introduction to Jurisprudence, London, 1985

<sup>56</sup> Constitution of the Republic of Kosovo, Article 7 [Values]

<sup>57</sup> Upravno Pravo, Savremena Administracija

similarly to the forgiveness of public debts, for which the Assembly of Kosovo had adopted the Law no. 05/1-043 on the Public Debt forgiveness.

The Government Decision No. 13/06, *inter alia*, is based on Article 93, paragraph 4 of the Constitution of the Republic of Kosovo, according to which the Government has the competence to "*make decisions and issue legal acts or regulations necessary for the implementation of laws.*" While in the present case it is not clear which law the Government intended to implement when issuing this decision.

Moreover, the Decision No. 04/20 dated 20 December 2017 for determining the monthly salary of the Prime Minister, Ministers, Deputy Prime Ministers, Chief of Staff, Chief of Cabinet etc., also appears to be in contradiction with the Constitution and seems to not have been based on the law. Such a decision is in contradiction with the Constitution for many reasons. First, according to the Constitution, the government shall issue decisions required for the implementation of laws. The Draft Law on Salaries from the Budget of the Republic of Kosovo has not been processed so far to the Assembly by the Government. Secondly, the Ombudsperson considers that the doubling of salaries in certain categories, mentioned in the Government Decision is in contradiction with the constitutional values which are, *inter alia*, based on the rule of law, non-discrimination and social justice.<sup>58</sup> Kosovo is one of the poorest countries in Europe, with a relatively large number of people living with the bare minimum required for existence.

Another quite questionable decision is the decision of the Minister of Internal Affairs (MIA) to cancel the recruitment procedures in the competition for Inspector/Investigator in the Police Inspectorate of Kosovo (PIK). The Ombudsperson draws attention to cases of political interference in recruitment issues and procedures in the institutions of the Republic of Kosovo. In this respect, the Ombudsperson noticed that in the competition for Inspector / Investigator in the Police Inspectorate of Kosovo (PIK), the MIA Minister interfered in the recruitment procedures by issuing a decision on suspension of signing contracts with the candidates selected in accordance with the vacancy announcement, although he did not have legal competence in this matter. Furthermore, the Minister requested the cancellation of the vacancy announcement, which occurred on 29 December 2017. The Ombudsperson finds that in this case the minister has interfered in the competencies of the Chief Executive Officer of PIK by not respecting the Law no. 03/L-231 on the Police Inspectorate of Kosovo, which is a basic law defining the mission, organization, functioning, duties and responsibilities of PIK, as well as not respecting the Administrative Instruction no. 01/2017 on procedures related to employment and working conditions for PIK employees. The Ombudsperson expresses his concern that such interventions create legal insecurity of the norms that determine the competences of the entities holders of institutions and also creates uncertainty in the norms governing the

---

<sup>58</sup> Judgment of the Constitutional Court No. KO 119/10, dated 8 December 2011, Applicant Ombudsperson, The assessment of the constitutionality of Article 14, paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on Rights and Responsibilities of the Deputies, No.03 / L-111, of 4 June 2010, point 78



recruitment issues and procedures for employees in the institutions of the Republic of Kosovo.

## **5.2 The Special Chamber of the Supreme Court of Kosovo (SCSCK)**

In the previous years, the Ombudsperson has published numerous reports with recommendations regarding the delays of court procedures with the SCSCK, but it seems these recommendations have yielded no effect, as the situation has not changed. The Ombudsperson during the investigation of complaints addressed against SCSCK for delay of court proceedings and the communication with the President of SCSCK has identified a systematic problem. The Ombudsperson assesses that main problems which are causing delays are the provisions of the Law on Special Chamber, namely Article 3.1 of the law, which determines the number and composition of judges.

Therefore, the Ombudsperson has forwarded to the responsible authorities the *ex officio* report with recommendations regarding human rights violations caused by procedural delays in dealing with cases by the SCSCK, based on 49 separate complaints filed with the OIK. The complaints filed against the Privatization Agency of Kosovo (KPA), on matters related to the SCSC, which are of similar nature are to the complaints against the SCSC, have not been included in this number of complaints. The report has also taken into account the fact that the complainants' cases have passed in advance in the PAK procedure, which further affects the delays in solving these complaints.

The Report finds that the case load for the SCSCK is a result of the limited number of judges by law, the frequent replacement of judges, in particular of international judges and the lack of legal advisors and translators.

The Ombudsperson has requested measures to be taken by the relevant authorities of the Republic of Kosovo, namely amending the Law on the Special Chamber, respectively the legal provision that limits the number of judges to the SCSCK as an urgent measure to increase the efficiency of the SCSCK.

Also, the Ombudsperson recommended for the Kosovo Judicial Council (KJC) to provide assistance to SCSCK in the organizational and operational aspect, in accordance with the needs and requirements of the proper functioning of the SCSCK, as well as recommended SCSCK to draft a strategy for solving the accumulated cases by deciding not only on an equal distribution of cases to each judge, but also set norms and deadlines within which each judge should solve the assigned number of cases.

The Ombudsperson has received a response from the SCSCK and KJC, who agreed with the Ombudsperson's findings, and committed to undertake the measures recommended by the Ombudsperson, while no response was received from the Government of Kosovo but was informally informed of the initiative taken by the Ministry of Justice to amend the Law on the Special Chamber.

### **5.3 The Privatization Agency of Kosovo (PAK)**

The Ombudsperson continued to receive complaints against PAK, albeit in a smaller number compared to previous years, which are mainly related to the compensation of former employees of the Socially-Owned Enterprises in privatization/liquidation. Over the past years, was noted that in situations where the PAK, by means of a decision, recognizes the right to compensation of former employees of socially-owned enterprises in the privatization or liquidation process, these decisions do not apply quickly because they are subject to court proceedings with the SCSCK. This court proceeding may not be directly related to individual compensation decisions, but any complaint relating to the privatization or liquidation of a particular socially-owned enterprise, addressed to the SCSCK, suspends the enforcement of compensation decisions issued by PAK. Therefore, the process of funds distribution remains pending until the finalization of the processes under review with the SCSCK. It implies that this is a procedure established by the Law on the Privatization Agency of Kosovo, but for this procedure the former employees of socially-owned enterprises, who are entitled to compensation, are not adequately informed, therefore in the absence of information and uncertainty about the fact that when the decisions on compensation will be implemented, they often address the OIK with complaints about non-enforcement of PAK decisions. PAK, when issuing decisions to recognize the right to compensation, should notify the persons to whom this right was recognized, that the allocation of funds will be made after the entire process of privatization or liquidation of the socially-owned enterprise is concluded with final decisions issued by the SCSCK.

### **5.4 The issue of steel pipes factory (IMK) in Ferizaj**

The case of the steel pipe Factory in Ferizaj is a well-known case for the public, about which the factory employees had filed complaints with the Ombudsperson who has dealt with this case in the past and has kept the focus on the developments regarding compensation of former factory employees. The Ombudsperson met several times with the complainants and heard their concerns. Finally, the complainants submitted to the OIK the opinion of PAK Board on the issue of former employees of steel pipes Factory in Ferizaj, dated 21 June 2016. As far as it is understood from the PAK Board's opinion, payments to former employees of steel pipes Factory cannot be made due to the court proceedings to review complaints with the SCSCK related to steel pipes Factory. The Board of PAK instructed to submit a request to the Special Chamber asking for the complaints filed in the Liquidation Procedure of the steel pipes Factory to be reviewed with priority. The Ombudsperson, considering the fact that the Constitutional Court has already found that there has been a violation of the right to a fair and impartial trial due to the non-execution of the final judgment of the Municipal Court in Ferizaj, has addressed the SCSCK requesting information at what stage is the handling of complaints in the liquidation procedure of the SOE steel pipes Factory. The Ombudsperson on this occasion has requested from the SCSCK to give priority to complaints related to the

liquidation procedure of the Steel Pipes Factory, so that former employees of the factory are able to realize their rights.

The SCSCK responded to the Ombudsperson by notifying that there are 49 pending cases with the SCSCK to be proceeded that are related to claims - complaints of employees in the steel pipes factory in Ferizaj submitted against the Liquidation Authority's decisions, including the list of the cases being handled. The President of the SCSCK, in this case also attached a submission addressed to the case judges along with the recommendation of the Ombudsperson that the cases related to the steel pipe Factory should be handled with priority.

## **5.5 Kosovo Property Comparison and Verification Agency (KPCVA)**

Taking into account the transfer of some responsibilities from the Kosovo Property Agency to KPCVA, the Ombudsperson in the 2016 report requested maximum support for the KPCVA. During 2017, the Ombudsperson noticed that some provisions of the Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency are not in compliance with the *Principles of the United Nations Organization for housing and property restitution for the return of refugees and internally displaced persons* known as *Pinherios Principles* and that these provisions violate the property rights of displaced persons. The Ombudsperson has noticed that the Law on KPCVA foresees the abolition of two important competencies of this Agency. First, the Law stipulates that 18 months following the entry into force of the Law, the Agency will no longer continue to manage the properties under its management. Secondly, whenever KPCVA carries out two evictions of occupants of a similar property, the Law on KPCVA stipulates that the responsibility for any other eviction related to that property will be transferred to the owner himself, within the regular private enforcement system.

The law also stipulates that the Government of the Republic of Kosovo, on the proposal of the Agency, issues sub-legal acts for the implementation of this law within ninety (90) days from the entry into force of this law.

The government has failed to issue sub-legal acts within the time limit set out by the law, thus shortening the 18-month deadline for enforcing the law provisions related to the extinction of the property administration scheme by the agency for 8 months. The Law on KPCVA entered into force on 3 November 2016, while the Government issued a Decision no. 06/149 of 17 July 2017, approving the Administrative Instruction no. 07/2017 on the Procedures, Conditions and Criteria for the Completion of the Administration of Property under Administration and those involved in the rental scheme of the Kosovo Property Comparison and Verification Agency.

Therefore, the Ombudsperson has published the Report with Recommendations No. 551/2017, whereby has requested the amendment of the provisions of the Law on KPCVA, which according to the Ombudsperson are not in compliance with international standards and violate the property rights of displaced persons.

Currently, the Office of Prime Minister along with the relevant stakeholders is drafting the concept for amending the Law on KPCVA, thus starting the implementation of recommendations of the Ombudsperson.

## **5.6 Expropriations of immovable property**

The Ombudsperson has received complaints from residents of the villages of Shipitulla and Hade, Municipality of Obiliq, regarding the process of displacement of inhabitants, which according to them is being done for the interests of KEC interests, including allegations of violation of human rights and property rights.

During the investigation of such complaints, the Ombudsperson has noted that the inhabitants of these villages oppose the so-called Draft Matrix of Rights, which was prepared by an international company contracted by KEC for valuation of owners properties.

The Ombudsperson in this case would like to remind that according to the Constitution the right to property is a guaranteed right. However, the public authority of the Republic of Kosovo may expropriate properties if such expropriation is legally authorized and is necessary or appropriate for achieving or supporting the public purpose or public interest and is followed by providing immediate and adequate compensation to the person/s whose property is expropriated.<sup>59</sup>

According to this, the right to property is guaranteed but it may be restricted by law if this is necessary to achieve a public purpose or support the public interest. Whereas the Law No. 03/L-2015 on Amending and Supplementing the Law No.03/L-139 on Expropriation of Immovable Property and Law no. 03/L-139 on Expropriation of Immovable Property, *inter alia*, clearly defines the rules and conditions under which may be done the expropriation of ownership rights or other rights related to a person's immovable property.

Therefore, the Ombudsperson's stance regarding the residents' complaint to the displacement is that the property right can be exclusively limited with the Law on Expropriation of Immovable Property and that other efforts, such is the case with the displacement agreement, are not in compliance with the Constitution and the law.

OIK has been in contact with the residents of villages who have filed complaints and raised concerns before the Ombudsperson regarding the manner and amount of compensation, and told them that only the Law on Expropriation of Immovable Property guarantees adequate expropriation and that the Action Plan for Resettlement (APR) of the Ministry of Environment and Spatial Planning does not guarantee adequate expropriation in accordance with the Constitution and the law. However, the Ombudsperson during communication with the inhabitants managed to understand that a considerable number of property owners in these areas have entered negotiations with KEC for resettlement

---

<sup>59</sup> Constitution of the Republic of Kosovo, Article 46 [Property Protection]

under the APR, which constitutes a deviation from the Constitution and the law, when it comes to the limitation of property rights for the public interest.

The Ombudsperson is investigating a case suspected of violating expropriation procedures.<sup>60</sup> Based on the complainant's allegations, it is understood that the construction of the local road Botushë-Koshare, in length of 8.3 km, passes through the complainant's property and other owners, whereby they claim to have been unjustly deprived of freehold possession because the property was alienated in contradiction with the law and they were not compensated for their property.

In this regard, the Ombudsperson addressed a letter to the Minister of MESP asking for information about the case. The Ombudsperson did not receive any response from the MESP, even after re-sending a letter on this matter.

The Ombudsperson has not received any response, until the day of this report; however the ombudsperson will continue to investigate this case.

### **5.7 Conditioning vehicles registration to the payment of property tax**

The Ombudsperson has received a number of complaints containing allegations of property right violations due to the conditioning of vehicles registration with the payment of property tax by the municipalities. Furthermore, the complainants claimed that they were obliged by the municipality, in this case the Municipality of Prishtina, to pay their parents' property tax despite the fact that they are not users or owners of such properties.

During the investigation of complaints, was found the Administrative Instruction of the Ministry of Finance (MF) no.07/2011 on Orders Banning of Municipal Services for Enforcement of Property Tax Payment, which has imposed procedural conditioning on citizens in all municipalities for the payment of property tax obligations as a condition for obtaining a municipal order to register the vehicle. On the other hand, it was also found the Administrative Instruction No. 16/2016 of the Ministry of Internal Affairs (MIA) according to which every citizen is obliged to provide the Municipal Vehicle Registration Centre with evidence of payment of municipal tax so as to continue registering the vehicle.

The Ombudsperson, based on the ECtHR's opinion, considers that the power to impose taxes is one of the attributes of state sovereignty. In this case, the Ombudsperson considers that the imposition of taxes and the obligation to pay the property tax as such does not violate fundamental rights and freedoms.

However, the Ombudsperson considers that the conditioning of the municipalities established by the Administrative Instruction No. 07/2011 of the MoF, by which the citizens are obliged to pay the property tax in order to be issued with the proof of payment of the municipal tax that is necessary for registration of the vehicle, according to Administrative Instruction No.16/2016 of MIA, is not a legitimate method for collecting

---

<sup>60</sup> Case 413/2017 - Rama ./ MESP

property tax. The Ombudsperson takes into account that property tax collection is vital for the functioning of municipalities, but he considers that this should be done in accordance with the law. We consider that these two administrative instructions circumvent the procedures for the payment of property tax set out by the Law No.03/L-204 on Taxes on Immovable Property.

In this regard, the Ombudsperson has published the Report with Recommendations<sup>61</sup> requesting the above ministries to abrogate certain provisions of these two Administrative Instructions. Furthermore, it requested the Ministry of Local Government Administration (MLGA) to change its official stance expressed in the Explanatory Memorandum dated 20 June 2012 addressed to the Mayors of the Municipalities of the Republic of Kosovo and the Presidents of Municipal Assemblies and issue a new opinion containing the conclusion that the conditioning for provision of services to citizen by municipalities with the payment of property tax has no legal basis and is contradictory to human rights and as such cannot be applied.

Unfortunately, so far the recommendations of the Ombudsperson have remained unenforceable by the responsible authorities.

## **5.8 Energy Regulatory Office**

Another issue that characterized the work of the OIK in the reporting period is the issue of billing the electricity spent in the north. The Ombudsperson has initiated ex-officio investigations based on article published by daily press “Zëri”, of 7 April 2017, with the title: “*KEDS charges us with 8 million euros per year for the electricity consumed by Serbs in northern part of Kosovo*”. In a letter addressed to the Energy Regulatory Office (ERO) on 28 April 2017, inter alia, information was asked if the value of consumed energy in the northern part of Kosovo is 8 million euros per year and that this amount is disseminated on invoices of citizens Kosovo wide, as has been disclosed in “Zëri” newspaper’s article. On 18 May 2017, the Ombudsperson received a response from ERO with the confirmation that the electricity consumed in the north is charged to citizens of other parts of Kosovo, with the allegations that this is in compliance with the Article 48 [Approval of Tariffs], paragraph 3, point 3.3 of the Law No.05/L-084 on Energy Regulatory and Article 28 [Responsibilities and the Rights of the Distribution System Operator], paragraph 1, points from 1.21 to 1.25 of the Law no. 05/L-085 on Electricity. According to ERO, Article 48, paragraph 3, point 3.3 stipulates that ERO, when approving or setting tariffs, will ensure that licensees are permitted to recover all reasonable costs, including apart others costs of reasonable levels of energy losses in the transmission and distribution system. Further, ERO has pointed out that supplying all customers with the electricity is a legal obligation; therefore, during the approval of tariffs, ERO takes in consideration a reasonable level of losses, which are treated equally throughout the territory of Kosovo. RO stressed also that the Distribution System

---

<sup>61</sup> Report with recommendations for cases A.nr. 347/2015; A.nr. 729/2015; A.nr. 730/2015 and A.nr. 333/2015, issued on 20 March 2017..

Operator (DSO) has no access in the northern part of the country and that the losses occurred there by DSO are considered as "political losses" which are out of DSO control and that DSO cannot accomplish its functions due to the high cost of these losses, which would imperil regular supply with electricity across the whole country. Also, ERO has confirmed that there is a decision of 6 February 2012, no.V.399\_2012 which determines the reduction level of losses in distribution. According to ERO this Decision for reduction of losses determines the reduction level of all losses in electro-energetic system including losses occurred in the north of Kosovo.

After communicating with ERO, the Ombudsperson developed communications with the Ministry of Economic Development (MED) and the Ministry of Trade and Industry (MTI).

Upon completion of investigation, the Ombudsperson published a report with the findings that none of the laws regulating the electricity sector gives ERO the right to bill the electricity consumed in the north to citizens in other parts of the country. It was found that this is a practice of ERO, ungrounded in law, which constitutes multiple violations, because it is in contradiction with its own laws on electricity, and violates the right of citizens to avoid non-discrimination, the right to property and the consumer's right. It is therefore recommended that ERO should urgently suspend the illegal practices of billing the energy consumed in the north of the Republic of Kosovo to consumers in the rest of the country; that the Government of the Republic of Kosovo, in cooperation with ERO and KEDS, will find an alternative way to avoid losses in the north, but by treating all consumers equally under constitutional and legal norms against discrimination; and that ERO, in accordance with the law no. 05/L-084 on Energy Regulatory, shall issue a decision, by which would approve the tariff reduction to the extent so as to enable the compensation of consumers who have, unjustly, been charged with electricity bills and continue to do so for the energy consumed in the four municipalities in north. On 12 July 2017, the Ombudsperson received a response from ERO related to the Report with Recommendations, whereby ERO notified the Ombudsperson on the difficulties to implement the Ombudsperson's recommendations. Taking into account the fact that the Ombudsperson's recommendations were not taken into account by ERO and considering that this is an administrative decision issued by the ERO, the Ombudsperson on 15 August 2017 filed a lawsuit with the Basic Court of Prishtina - Department for Administrative Matters, requesting the cancellation of ERO Decision V\_399\_2012 of 6 February 2012 and compensation of consumers who are billed for the electricity consumed in the four northern municipalities. Along with the lawsuit was also required the postponement of the execution of the ERO Decision V\_399\_2012. The Basic Court in Prishtina on 11 September 2017 approved the request for postponement of the execution of the decision until the judgment is rendered regarding the claim. On 29 September 2017, ERO appealed the decision of the Basic Court in Prishtina before the Court of Appeals, which rejected the ERO's appeal as ungrounded and upheld the Decision of the Basic Court of Prishtina. On 30 November 2017, the Ombudsperson was informed by

ERO on the implementation of the Decision of the Basic Court in Prishtina. ERO has noted that this is a temporary solution and does not reflect the decision of the ERO Board.

However, the main issue is being handled by the Basic Court in Prishtina and until the drafting of this report no decision has been rendered on the issue.

## **5.9 Water Services Regulatory Authority**

At the beginning of the reporting year concerns were raised about the presumptive billing of water costs by water companies. With regard to this, the Ombudsperson has recommended that the water billing shall be made based on real consumption in the consumer's meter and real expenditures, as foreseen by the Law No. 04/L-121 on Consumer Protection, and requested from the Water Services Regulatory Authority (WSRA) to regularly monitor the Service Providers. From the response that the Ombudsperson received from WSRA, it is noticed that the issue of billing and the issue of monitoring of licensed operators is well regulated by WSRA with the Regulation on Minimum Standards of Water Services in Kosovo. Also, from a report that the Ombudsperson received from the WSRA, it is reported that WSRA conducts regular field inspections, and takes measures in cases of non-compliance with minimum standards for water services.

However, the situation remains problematic in the northern part of the country where the unlicensed enterprise "Vodovod Ibar" operates, which distributes water to the final customer. WSRA has informed that it has fined this company in the amount of EUR 20,000, which has not responded to WSRA, therefore the case was filed with the Basic Court in Prishtina and there is still no decision regarding the claim filed by WSRA against the enterprise "Vodovod Ibar". While the case of the water supply in the northern part of Mitrovica differs from the supply and billing of electricity used in that part, because according to the WSRA response, regional water supply RWC "Mitrovica" supplies the northern part of the city with water at a wholesale water price and that citizens of the rest of the city do not pay for the northern part, it is the Government of Kosovo, namely the Ministry of Economic Development (MED) which from time to time, based on budgetary possibilities, that subsidizes the RWC Mitrovica to cover the expenses and to enable the operation of the enterprise. From what was understood by the Ombudsperson's communication with WSRA and MED, is that a regular water tax collection by the licensed water distribution operator in the northern part of the country is lacking. It is also understood that the Government of the Republic of Kosovo through the Law on Budget has partially supported the RWC "Mitrovica" from 2009 until 2017 in the amount of EUR 5,291,078.00 on behalf of special social categories that are exempted from payments and because of the non-collection of water invoices in the northern municipalities.

Certainly, the issue of water supply is a vital and fundamental issue, nevertheless billing for the north, the government subsidy and the subsidy criteria should be clearly defined.



It is also necessary to resolve the issue of licensing water distribution companies in the northern part, because the state budget are in fact funds that of the taxpayers of the Republic of Kosovo.

In this regard, the Ombudsperson has held a meeting with WSRA management who agreed to organize a joint meeting with the Ministry of Economic Development and the Ministry of Finance, the Board of Directors and the RWC "Mitrovica" management to find an acceptable solution for billing water supply in northern part of Mitrovica.

### **5.10 Independent Oversight Board for Civil Service in Kosovo**

During the reporting period, the OI has faced the tendencies of the Independent Oversight Board for Civil Service in Kosovo (IOBCSK) to interfere with the independence of the OIK or the inability of IOBCSK to understand the independence of independent institutions, guaranteed by Chapter XII of the Constitution of the Republic of Kosovo.

During 2017, the OI has developed the reorganization of the internal structure, in accordance with the Regulation No.01/2016, on Internal Organization and Systematization of Jobs in the Ombudsperson Institution. The new staff recruitment and existing staff promotion of procedure has been developed in an open and transparent process and based on professional criteria.

The Ombudsperson would like to point out that the IOBSCK has failed to clearly understand the independence of the OI, as confirmed by the Judgment KO73/16 of the Constitutional Court of Kosovo, dated 8 December 2016 and has therefore rendered the decisions to annul all the procedures where IOBSCK was directly or indirectly involved. The Ombudsperson has filed a lawsuit on administrative conflict against two Decisions on annulling the recruitment procedures and is currently awaiting the rulings. However, the issue raised by the IOBSCK is related to the Ombudsperson's competence to issue internal regulations, which is noted in each IOBSCK decision.

Hereby, the Ombudsperson would like to remind the Assembly that the issuance of internal regulations by the Ombudsperson is a requirement of the Law no. 05/L-019 on Ombudsperson, adopted by this Assembly.

Moreover, based on the package of laws on human rights, the Law No. 05/L-019 on Ombudsperson, Law No. 05/L-020 on Gender Equality and the Law no. 05/L-21 on Protection from Discrimination, which have entered into force on July 2015, the competences of the OI as the single national human rights institution have been added for the purpose implementation. In order to fulfil its legal responsibilities, the basic law on the Ombudsperson, has granted OI the right to issue special regulations with regard to its restructuring, reform and functionalization. The text of the current Law on the Ombudsperson proves the legislator's intention to exempt the Ombudsperson from the civil service rules, at least with regard to the procedure of internal organization and

recruitment. The distinction between the current Law on the Ombudsperson and the previous Law (now repealed) makes this legislative goal clearer. Law no. 03/L-195 on the Ombudsperson (now repealed) has stipulated that: “Personnel of the Ombudsperson Institution is selected from among the citizens of the Republic of Kosovo in accordance with the Law provisions on Civil Servant in the Republic of Kosovo” (Article 30). While, the Law no. 05/L-019 on Ombudsperson (applicable), stipulates: “Personnel of Ombudsperson Institution shall be selected among the citizens of the Republic of Kosovo, in an open and transparent process, based on the professional criteria” (Article 32, par. 1).

This change suggests that the only obligation of the Ombudsperson in the development of the recruitment procedure is to follow “*an open and transparent process, based on the professional criteria*” but not act “*in accordance with the provisions of the Law on Civil Service in the Republic of Kosovo*”.

In order to fulfil its legal responsibilities, the basic law on the Ombudsperson, has granted OI the right to issue special regulations with regard to its restructuring, reform and functionalization. The difference between the current Law on the Ombudsperson and the previous law (now repealed) lies in the extension of the Ombudsperson's powers to issue special regulations. Law no. 03/L-195 on Ombudsperson (now repealed) stipulated that: “Within three (3) months after entry into force of this Law, the Ombudsperson Institution issues Work Regulation.” (Article 37). While, the Law no. 05/L-019 on the Ombudsperson (in force) stipulates that: “The Ombudsperson issues the Rules of Procedure, Regulation for internal organization and systematization of job positions, decision making processes and other organizational issues in accordance with the Law.” (Article 37.1)

Hereby, the Ombudsperson would like to clarify that under no circumstances does the OI avoid responsibility of accountability on issues that do not affect its independence, on the contrary, the OI is more than willing to have the IOBSCK oversee the OI recruitment processes, as long as this oversight is done in accordance with the internal regulations of the OI, which were approved by the Ombudsperson in accordance with the law and published in the Official Gazette of the Republic of Kosovo.

### **5.11 Responsibility for Living Environment**

During 2017, the OI has continued to receive complaints related to environmental problems and their impact on human rights. Despite the on-going environmental problems that citizens have faced in the past years, no action that would significantly improve the quality of the living environment in the country has been taken during 2017.

Additionally, 2017 has not shown any improvement in the air, water, and land situation, and no measures were taken to prevent discharges. The degradation of agricultural land and the destruction of forest areas have continued. The environmental decision-making processes have continued under some faded transparency, and access to environmental

information has not improved, and there is no improvement in the acceleration of court cases related to environmental issues such as criminal and minor offenses.

Although the noise has been violating the privacy of citizens for years, the new law failed to adopt. While the issue of waste management and landfill remains a challenge to itself. Despite the problems that citizens have faced for many years from disregarding the basic spatial planning norms, there has been no change.

Despite global orientations and initiatives to protect the environment, the environment and environmental protection in the country has not been placed in the government priorities, although the country is facing severe environmental conditions. The MESP's budget remains very low, and although legally established<sup>62</sup>, the ecological tax is still not used for environmental protection purposes, as foreseen by the Law on Road and Ecological Taxes for Vehicles<sup>63</sup>.

Despite all irregularities, during the reporting year no activity was observed with commitment by state bodies, particularly by MESP, to promote the citizens' right to a safe and healthy environment. The inter-institutional cooperation for effective resolution of environmental problems in various law-related issues has not improved. There has been a lack of coordination of the activities of the responsible institutions and bodies for environmental protection.

Although very important, the voice of NGOs, namely civil society, was not very strong in promoting such rights, despite serious environmental problems that Kosovo is facing. Moreover, no initiative has been noted for the networking of organizations of such nature.

The actions of the institutions and media in raising awareness and educating citizens about environmental protection still remain very dim.

State institutions have not yet started to undertake sustainable action to join the global initiative on Sustainable Development Goals<sup>64</sup>. Without having any consistent information, despite the Ombudsperson's interest, Kosovo needs to undertake measures, with accelerated steps to meet the environmental objectives such as: access to clean water and sanitation<sup>65</sup>, ensuring access to affordable, reliable, sustainable, modern electricity

---

<sup>62</sup> Law no. 04/L-117 on Road and Ecological Tax for Vehicles, Article , paragraph 2. This law also regulates establishment of ecological tax for vehicles registered in Kosovo and for foreign vehicles. Ecological tax aims at increasing the quality of environment protection.

<sup>63</sup> Received answer from the Ministry of Finances, in relation to the case Ex Officio no 218/2016, "In review of Article 2 of the Law no. 03/L-048 on Public Financial Management and Accountability, revenues from taxes are considered public Money and all public Money is deposited in the Fund of Kosovo. All the revenues including ecological tax are collected in the budget of Kosovo and are destined as per annual priorities, set for in the Law on annual budget.

<sup>64</sup> <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html>

<sup>65</sup> <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-6-clean-water-and-sanitation.html>

for everyone<sup>66</sup>, making inhabited cities and settlements inclusive, appropriate and sustainable<sup>67</sup>, taking urgent action to combat climate change and its impacts<sup>68</sup>, water protection, restoration, and sustainable promotion of the earth's ecosystem, sustainable forest management, fighting desertification, stopping land degradation and stopping biodiversity loss<sup>69</sup>.

On 15 September 2017, during the 4<sup>th</sup> International Conference on the Environment and Human Rights, titled *Participation of public in environment issues*, held in Ljubljana (Slovenia), the Ombudsperson from Kosovo and the Ombudspersons from Bosnia and Herzegovina, Croatia, Montenegro, Macedonia, Serbia and Slovenia, while recognizing the right to a healthy living environment as a fundamental human right (rights of the third generation) and that all states should try to approve systematic measures to exercise them, and pointing out that safe, healthy environment issues are closely related to the situation in neighbouring countries, both in the cross-border and global contexts, have signed a statement for closer environmental cooperation by creating a Network of Ombudsperson for Environment and Human Rights.

### ***Air***

There has been no improvement over the previous year with regard to the quality of the air. The air quality continues to be affected by the emissions released in the energy industry<sup>70</sup>, use of old means of transport, low-quality fuels, dust generated during the construction of roads and buildings, quarry and quarry operations, combustion of stubble fields and forests, lack of proper management of urban and industrial waste and waste dumps, burning of pyrotechnic materials etc. Endangered areas remain the areas of KEK, Ferronikeli, and Sharr Cem<sup>71</sup>. The right of citizens to safe and healthy environment has continued to be limited by exceeding the permissible norms with PM10, PM2.5<sup>72</sup>, maximum allowed value (MAV), and also exceedance of NO<sub>2</sub>, SO<sub>2</sub><sup>73</sup> etc.

According to measurements carried out by the air monitoring network stations, citizens have continued to face with unhealthy air quality. The monitoring stations differ, in Obiliq, with 90 days of MAV exceedance within the year, Gjilan with 75, Pristina-KHMI with 75, Pristina- Rilindja 66, Drenas with 61, Hani i Elezit with 45 in relation to 35 days of exceedances allowed by the Administrative Instruction 02/2011 on air quality

---

<sup>66</sup><http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-7-affordable-and-clean-energy.html>

<sup>67</sup><http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-11-sustainable-cities-and-communities.html>

<sup>68</sup> <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-13-climate-action.html>

<sup>69</sup> <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-15-life-on-land.html>

<sup>70</sup> Kosovo Environmental Protection Agency, State of the Environment Report 2015

<sup>71</sup> Ibid., page 40

<sup>72</sup> <http://www.who.int/mediacentre/factsheets/fs313/en/>

<sup>73</sup> <http://www.who.int/mediacentre/factsheets/fs313/en/>

<http://www.icopal-noxite.co.uk/nox-problem/nox-pollution.asp>

assessment.<sup>74</sup> Only in January the citizens of Pristina faced 15 days of exceedances.<sup>75</sup>

The severe air pollution condition in the municipality of Prishtina and the region has started in October-December 2016, has continued with alarming parameters in the first months of 2017<sup>76</sup>. Although in the November-December period, when the alarm threshold exceedance was expected, from the exceedance of the permissible values in the air, the competent bodies failed to meet their legal obligations set out in the Law No. 03/L-160 on Air Protection from Pollution<sup>77</sup>, which would guarantee citizens the right to live in a clean air environment and ensure their health protection.

In spite of the major problems with the overflow of air emissions, no concrete measures have been taken to improve the situation. The measures announced by MESP<sup>78</sup>, called “*Plan of activities for improving the air quality autumn-winter 2017-2018*”, which foresees the achievement of the three objectives: improving the air quality, increasing the level of legislation implementation and institutional responsibilities, as well as raising the level of education and awareness on the protection of air from pollution, the Ombudsperson considers it a delayed and disproportionate intervention plan<sup>79</sup> compared to the created state and the possible damage caused.

Similarly, the decision of MESP to replace coal with wood cannot be considered a rational or proportional measure, given the state of the forests and the impact of wood burning on the environment. Although the decision to ban the use of coal for heating is welcomed, the state has previously failed to take alternative measures that would allow the person to make the right choice.

Despite the on-going problems, no minimum effort was made to expand the network of cogeneration, which would have an impact on improving the air quality in Pristina and its district. No improvement has been noted, neither undertaking of any effective measure to reduce road transport, particularly in the Municipality of Prishtina. Meanwhile, the setting of energy efficiency and energy saving measures has remained solely at the will of the individual without any institutional control.

Although during the reporting year exceedances of allowed values were identified, no special and serious information campaign was conducted by MESP, central institutions, municipalities or authorized organizations,<sup>80</sup> which would contain information on pollution, impact on health and prevention measures. Official information provided in the

---

<sup>74</sup> Kosovo Environmental Protection Agency, Annual Report State of the Environment in Kosovo, page 8.

<sup>75</sup> Kosovo Environmental Protection Agency, Kosovo Hydro-Meteorological Institute, Air Quality Report for the period November –December 2016 and January 2017.

<sup>76</sup> 484 ppm: [http://www.gazetaexpress.com/lajme/alarmue-ndotja-e-ajrit-ne-prishtine-arrin-nivel-rekord-306596/?archive=1?utm\\_source=referral&utm\\_medium=web&utm\\_campaign=copyright](http://www.gazetaexpress.com/lajme/alarmue-ndotja-e-ajrit-ne-prishtine-arrin-nivel-rekord-306596/?archive=1?utm_source=referral&utm_medium=web&utm_campaign=copyright)

<sup>77</sup> Article 1 and Article 24.

<sup>78</sup> <http://www.mmph-rks.org/sq/Lajmet/MASAT-PER-PERMIRESIMIN-E-CILESISE-SE-AJRIT-PRIORITET-I-MMPH-SE-DHE-QEVERISE-SE-KOSOVES-2055>

<sup>79</sup> Law no. 03/L-025 on Environmental Protection, Article 35

<sup>80</sup> Law no. 03/L-025 on Environmental Protection, Article 54.

law<sup>81</sup> was missing. Citizens have continued to be informed through other unofficial sources.

The Ombudsperson notes that despite various information<sup>82</sup> on the increased number of people affected by respiratory, cardiovascular and malignant diseases, and skin diseases in the territory concerned<sup>83</sup>, the National Institute of Public Health<sup>84</sup> has not taken any action to provide statistics and carry out specific research that would present the actual number of categories in question, as would be indicators for undertaking concrete actions for education and prevention of the impact of pollution on the health of the population. The research conducted by the National Institute of Public Health, following the alarming pollution at the end of the year in 2016<sup>85</sup>, based only on the data of the University Clinical Centre of Kosovo (UCCCK) on the number of people with respiratory organ diseases, can be considered as a document with non-relevant data, given that the citizens with illnesses resulting from air pollution are also addressed to other public and private health institutions.

### ***Water***

No measures have been taken to improve and ensure sustainable development and use of water resources, which are indispensable for public health, environmental protection and socio-economic<sup>86</sup> development of the country. Damage and degradation of river beds as a form of degradation of water resources has continued nearly with the same rate. The protection, preservation and monitoring of water quality remains one of the biggest challenges for our society<sup>87</sup>.

Improvement of water infrastructure, rehabilitation of river beds, establishment of wastewater treatment plants and adaptation to climate change in the water sector remains unchanged. Collecting payments for water use and discharge remained a challenge. Capacity of river beds is exceeded by the uncontrolled digging, thus causing damage not

---

<sup>81</sup> Law no. 03/L-160 on Air Protection from Pollution, Article 25 Public Information 1. The Ministry ensures that the update information fill in regarding to concentration of polluters in air are available to the public as well as interested organizations.

<sup>82</sup> Building a better future for the Citizens of Fushe Kosova and Obiliq: Participation, Protection and Multiethnic Partnerships for Education, Better Healthcare and Sustainable Housing, The WHO Regional Office for Europe has carried out a mission in Kosovo, October 2012.

<sup>83</sup> [http://apps.who.int/iris/bitstream/10665/204585/1/9789241565196\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/204585/1/9789241565196_eng.pdf?ua=1) "In 2012, this present study estimates, 12.6 million deaths globally, representing 23% (95% CI: 13–34%) of all deaths, were attributable to the environment".

<sup>84</sup> Law no. 02/L-78 on Public Health, Article 4, "National Institute for Public Health of Kosovo (NIPHK) is a public institution which exercises referral activities in the area of public health as follows:..."

l) Analyzing and evaluating the areolation;"

t) Gathering, processing and analyzing of the records from the System of health information (SHI) and proposing the measures for advancement and managing of SHI;

<sup>85</sup> Information received from the representative of the NIPHK, on the roundtable with the topic "Air Quality in Kosovo, Challenges and Actions", Prishtina 10 November 2017

<sup>86</sup> Law no. 04/L-147 on Waters of Kosovo

<sup>87</sup> Kosovo Environmental Protection Agency, Annual Report on the State of the Environment Kosovo, page 15.

only to the ecosystem of rivers but also causing floods. The most degraded rivers which continue to be utilised are Drini i Bardhë, Lumëbardhi i Pejës, Ereniku, Desivojci, Krivareka and Ibri.

Although a human right, 0.7% of population have no access to waterworks service<sup>88</sup>. Only 53% of population discharge sewage waters through the sewage connected to the public system, 16% discharge sewage waters through the sewage which is not managed by public companies, while 27 % of population use other forms of discharge (channels, septic holes, etc.), while 4% have no sewage system<sup>89</sup>.

Polluted waters are not treated. Those waters continue to be discharged directly into the rivers. The plant for treating urban waters in Llaushë of Skënderaj continues to be the only plant for polluted waters, which is functioning with obstacles.

The industry remains among the generators of a considerable part of potentially contaminated wastewater in the country. They release complex organic components of high acid composition and heavy metals, which may have harmful effects on the human health and environment. The major industrial dischargers in Kosovo include the Kosovo Energy Corporation (KEK), Ferronikel, Sharrcem, Silcapore, and the mines of Trepça, Kishnica, Artana, etc.<sup>90</sup>

On 29 May 2017, the Ombudsperson visited the hydraulic discharge points from Power Plants Kosova A and Kosova B in the river Sitnica, in the village Dardhishta, Obiliq municipality. From the samples taken in the industrial waters discharged, was noticed that the exceeding of allowed values of water discharges were alarming. The pH-value 12.78, in the hydraulic discharge point of power plant Kosova A, and the pH-value 12.98, in the hydraulic discharge point of the power plant Kosova B, is an indicator of extreme exceedance from the acceptable standards of industrial discharge, which damages the waters natural values and causes long-term consequences to the humans and the ecosystem in general. The Ombudsperson urged the responsible authorities to act urgently, in compliance with respective laws for the protection of environment and in accordance with acceptable water, soil and air quality standards. Despite the alarming exceedance, by the time of reporting, the Ombudsperson did not receive any response from the MESP in relation to the issue and the measures undertaken.

### ***Soil***

The right of citizens to a safe and healthy environment, property right, and enjoyment of home continued to be violated by the air pollution, and degradation of land areas from the arbitrary interventions. No improvement of planning of the land utilisation was observed in accordance with concepts of sustainable development. The bad waste management, illegal waste landfills, sewerage discharge from landfills, untreated industrial wastewater

---

<sup>88</sup> [http://www.ammk-rks.net/repository/docs/Raporti\\_i\\_ujrave\\_i\\_2015\\_shqip\\_\(2\).pdf](http://www.ammk-rks.net/repository/docs/Raporti_i_ujrave_i_2015_shqip_(2).pdf), fq.38

<sup>89</sup> [http://www.ammk-rks.net/repository/docs/Raporti\\_i\\_ujrave\\_i\\_2015\\_shqip\\_\(2\).pdf](http://www.ammk-rks.net/repository/docs/Raporti_i_ujrave_i_2015_shqip_(2).pdf), page 87

<sup>90</sup> MEST, KEPA, Report on the State of the Water in the Republic of Kosovo, page 89.

discharge, excavations, roads and exploitation of rivers, soil erosion, soil compression, pollution from economic and industrial activities (chemical pollution) remain problematic<sup>91</sup> during this reporting year as well. Although to a lesser extent, the agricultural land fragmentation and the change of destination from agricultural land to construction land has continued. While an issues in itself is land sliding and damages caused by land sliding from mine activities.. The lack of a soil monitoring system in Kosovo<sup>92</sup>, monitoring of hotspots, soil quality parameters, soil fertility, and food quality parameters remains evident.

Uncontrolled deforestation continued risking their stable management as well as land erosion. The measures taken by MESP to replace coal for fire wood is concerning.

### ***Waste***

There is still no adequate waste management according to standards, while the bad management of landfills and their impact in the environment has continued. Compacting, covering and the leakage of wastewater and its penetration in private properties has not improved. The largest amount of waste is stored in the sanitary landfill in Mirash<sup>93</sup>. Similarly, in the whole territory of the country illegal landfills have been identified, the highest number of which is in Drenas (137), Peja (123) and Lipjan (105). The presence of irregularities in landfill management has caused an increased presence of stray dogs, rodents and birds as carriers of disease in the ecological system, and half of it is always filled with water and stinks<sup>94</sup>. No action has been taken to create adequate infrastructure for the disposal or the treatment of hazardous waste, which is often mixed with household waste. While nothing has been undertaken to treat and recycle waste. Little has been done in terms of eliminating and rehabilitating hotspots.<sup>95</sup> The state has failed to control the noise and protect the citizens from the noise during this year. The new Law on Noise Protection was not adopted in 2017 either. The competent authorities have failed in controlling the noise and protecting citizens from noisy interference in their privacy and the enjoyment of home, based on the current law. Furthermore, the competent authorities' unwillingness to be equipped with noise measuring apparatus, and unwillingness to cooperate in finding alternative solutions was noted. The failure to install noise protection panels near highways is yet another issue in itself.

No improvement was noted in the promotion of high-quality living standards and sustainable housing development systems in spatial planning, which would create preconditions for a balanced social and economic development, equal treatment, free movement and adequate access to public services for all citizens throughout Kosovo. The

---

<sup>91</sup> Kosovo Environment Protection Agency, Annual Report State on the Environment in Kosovo, page 20.

<sup>92</sup> Kosovo Environment Protection Agency, Annual Report State on the Environment in Kosovo, page 21.

<sup>93</sup> Ibid, page 29.

<sup>94</sup> Information received in the MEST's response, on the request of the Ombudsperson, dated 3 October 2016

<sup>95</sup> Kosovo Environment Protection Agency, Annual Report State on the Environment in Kosovo, page 47, according to the data, 28 hotspots were identified in Kosovo.



entire territory of Kosovo has not yet been covered by development plans<sup>96</sup>, and neither has the legal basis been completed with sub-legal acts.

The incomplete legal basis has limited the right of privacy, whereas the right to enjoy home continues has been limited because of the failure to meet the minimum requirements for residents' life and public health safety foreseen under the construction legislation, and the by-laws that complement it. Since 2012, it has not been possible to compile the Unified Construction Code of the Republic of Kosovo<sup>97</sup>, which would guarantee the establishment of minimum requirements for the protection of public health, security and general well-being through the necessary resistance of structure of emergency spaces, balance and stability, sanitation, construction waste management, adequate lighting and ventilation, energy efficiency and energy saving measures, and life and property safety from fire and other hazards attributed to the construction environment, as well as to provide safety for fire-fighters and others responsible, in case of emergencies..

Competent bodies, central and local level inspectorates have failed to control the issue of adequate lighting and ventilation, access to architectural parameters, accessibility of persons with disabilities, energy efficiency issues, emergency stairs, etc. Moreover, very few objects are accompanied by green spaces, garages, and parking lots, as the accompanying areas of the buildings. Moreover, the state has failed to meet the positive obligation for technical control of residential facilities.

No improvement was recorded regarding the situation of pavements, they continued to have insufficient width compared to the number of citizens and often are followed-up with their norms far from those foreseen, with the lack of accessible elements, ramps which would create continuous connection between different levels of the pavement, with unobstructed public surfaces, and access to main roads of circulation.

Pavements are followed-up with holes, damaged manholes, blocking of pavements with vehicles, from hotel services with exposed goods, construction material without any protective measures or without any warning signs.

Failure to take measures for improvement of schools and kindergartens infrastructure, which would guarantee the right to life, health and safety of children, is concerning. Lack of adequate fences, even the green fence as an auxiliary part of pedestrian paths/pavements next to kindergartens, playgrounds and schools as well as lack of underpasses and overpasses, in highways and regional roads remain a worrying issue requiring the undertaking of immediate measures and coordination among municipalities, Ministry of Infrastructure (MI) and Kosovo Police. Non-inclusion of citizens in decision-making contributes to such situation, whereby if their interests and ideas were to be

---

<sup>96</sup>[http://www.mmph-rks.org/repository/docs/Indikatoreret\\_per\\_planifikim\\_hapesinor\\_06173\\_577095.pdf](http://www.mmph-rks.org/repository/docs/Indikatoreret_per_planifikim_hapesinor_06173_577095.pdf), page 14.

<sup>97</sup> Law no. 04/L – 110 on Construction, Article 6 Unified Construction Code of the Republic of Kosovo.

included prior to the commencement of the construction of roads would serve to a more effective and rational solution.

Uncontrolled traffic of heavy motor vehicles/work machines engaged in construction of roads and their entrance from construction sites to public roads, without removing mud and waste from the working machines, adds to the chain of irregularities affecting the environment. The dissemination of mud into a public road in addition to directly polluting the environment, also threatens the traffic participants' public safety considering the effects of mud or road debris and the reduction of tire friction situation, whereby by causing a progressive loss of contact between the tire/s and the pavement, the brake time is increased.

Following the intervention and the request of the Ombudsperson, the Municipality of Prishtina, based on the recommendations of the Kosovo Police, made effective solutions to the issue of safe movement/crossing for pupils, students and other citizens, in the locations near schools and the Faculty of Agriculture, in the Pristina - Fushe Kosove road, next to the "Adem Jashari" barracks<sup>98</sup>.

Although, with regard to the issue of public participation in environmental decision-making, the Constitution, the environmental laws and laws governing the spatial planning area have clearly foreseen the procedural principle, however the adherence of procedures by institutions is somewhat fragile. Central and local public institutions, responsible for organizing public hearing process do try to respect the process and procedures, but not so transparently, and a little tacitly. The first step, information on the matter, time and location of the hearing is done through means that are not very accessible to the public, low circulation newspapers, or sometimes even through the website of the body itself. Public hearing processes are followed by a small number of citizens, both because of the lack of information and the lack of citizens' interest to participate as they do not trust public institutions. Citizens' remarks often fall on deaf ears.<sup>99</sup>

Furthermore, the access to environmental information has remained almost the same. Although access to environmental information is guaranteed by environmental legislation, document holding institutions are more often oriented toward implementing the Law on Access to Public Documents, which has listed environmental documents on the list of restricted information. The Ministry, central institutions, municipalities, authorized organizations and others have failed in fulfilling their duties regularly and in a timely, full and objective manner to inform the public about the state of the environment as well as about warning or the extension of pollution measures that could pose a risk to the environment, health and life.

The Ombudsperson observes that the implementation of punitive provisions by the Environmental Inspectorates is not in accordance with the spirit of environmental laws, which through punitive provisions provide the right to impose fines on environmental

---

<sup>98</sup> Ex officio, 577/2015.

<sup>99</sup> Part of the Ombudsperson's presentation at the 4th International Conference "Environment and Human Rights", 15 September 2017, Slovenia.

polluters. Choosing the practice of initiating offense proceedings in basic courts can be deemed as a deliberate deviation by inspectorates for a consistent and effective enforcement of laws.<sup>100</sup>

According to the information received from the central and local inspectorates, and the Kosovo Police, in the minor and criminal offense cases related to the environment that are initiated before courts, are delayed or prescribed. There are no accurate court statistics that would serve as a realistic indicator of the number of cases prescribed and reviewed and the average time to decide on the case.

### **5.12 The rights of access to public documents**

Although the right of access to public documents is a right guaranteed by Universal Declaration on Human Rights (UDHR)<sup>101</sup>, European Convention on Human Rights (ECHR)<sup>102</sup>, Constitution of the Republic of Kosovo<sup>103</sup> and the Law on Access to Public Documents (LAPD), the respect of this right and the implementation of the law continues to be challenging either due to the law's uncertainties or due to negligence of the officials in handling requests for access to public documents, and also due to lack of the will of institutions for implementing the law.

Although Ombudsperson observed awareness-raising of the citizens on this right, it remains for state institutions to work more on promoting and acting in accordance with the Constitution and Law insofar this right is concerned and also toward the improvement of transparency and accountability.

Article 4, paragraph 1 of LAPD guarantees that “*Any applicant of document shall have the right of access to documents of the public institutions*”, but at the same time foresees conditions and responsibilities of applicants of documents, requesting that the applicant “*should comply with principles, conditions and restriction s established under the Law*”. However, the legislator has not defined clearly, although the reasons of restriction are foreseen in the law, which are principles and terms to which the applicant of documents should comply with.

One of the issues identified is also the legal gap, not clearly determining as of who is the competent officer to decide on the applications for access to public document. Although

---

<sup>100</sup> Law no. 03/L-025 on Environmental Protection, Article 92, Punishment provisions;

Law no. 03/L-160 on Air Protection from Pollution, Article 38, Punitive provisions;

Law no. 02/L-102 on Noise Protection, Article 25, Penalty provisions;

Law no. 04/L-060 on Waste, Article 70, Penalty Provisions; etj.

<sup>101</sup> UDHR, Article 19: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

<sup>102</sup> The freedom to obtain and provide information is also stipulated by Article 10, paragraph 1, of the ECHR: ” Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”.

<sup>103</sup>The Constitution of the Republic of Kosovo, Article 41, paragraph 1, provides for the right of access to public documents: “Every person enjoys the right of access to public documents”.

Article 5, paragraph 3 of the LAPD, specifies that *“Unit or officer for communication with citizens, after the receipt and the initial review of an application for access to official documents, shall evaluate that which is the relevant unit within the public institution that should have the requested document. After the receipt of the document from the relevant unit within the public institution, this document, pursuant to the applicable law, shall be sent to the requesting applicant”*.

Likewise, the LAPD does not specify who can be considered a “third party” in the procedure of realising the right of access to public documents, which causes uncertainties in the implementation of Article 6, paragraph 4 of the LAPD, according to which *“The applicant of a document shall have the right to remain anonymous against the third parties”*.

LAPD regulates the situation when the public institution does not possess, or does not supervise the information, however has knowledge about the relevant body, its sector or other institution, establishing liability that the application is forwarded to the relevant body or respective sector, even when they are located under the same respective institution.

Although responses of the institution on the receipt of applications are in most cases fast and within legal time, the time to decide on allowing or rejecting the application, despite the importance of giving timely information often exceeds the time foreseen by law.

In the responses of institutions to the applications for access to public documents, in which the application is approved for access, the reference to Article 4 of the paragraph 4 of the LAPD has not been observed, which stipulates that *“Public documents received from the applicant cannot be used for denigration, propagandistic and commercial purposes”*, as sometimes information users exceed their boundaries of freedom of expression. Therefore, by referring to this Article in the responses of institutions would help raise the awareness of users on the right for access to public documents, which along with this right, in specific cases there are also restrictions.

The Law, in the Article 12, paragraph 2, stipulates that: *“Access to information contained in a document may be refused if disclosure of the information undermines or may undermine any of the interests listed in paragraph 1. ... unless there is an overriding public interest in disclosure”*. Nevertheless, it is noticed that responsible officers in the public institutions, are not ready to meet their constitutional obligation, limit access to public documents to the extent necessary for an open and democratic society, in order to meet the purpose for which restriction is permitted, as well as to pay attention to the essence of the limited right, the importance of the purpose of restriction, the nature and scope of the restriction, the relationship between the limitation and purpose intended to be achieved.

A quite predominant problem is related to the lack of classification or timely classification of documents. As a constitutional right, the right to access public

documents, however, is not an absolute right. It should be protected proportionally and balanced with other rights.

During the investigation and review of the cases, regarding the restriction of the right of access to public documents, the Ombudsperson noted that state institutions, holders, drafters or recipients of information in the majority of the cases did not classify documents on time or did not classify them at all, as stipulated by the Law no. 03/L-178 Law on Classification of Information and Security Clearances and the Law no. 03/L-172 the Protection of Personal Data. The Ombudsperson reminds the authorities that the classification of documents should be done when the information is produced, because the process for provision of access or rejection of application for access would be facilitated.

Despite these problems, the attempts for amending and supplementing LAPD, to overcome the present challenges have failed, however the Draft Law for amending and supplementing the LAPD is part of the legislative program for 2018.

During 2017, the OI has investigated 24 complaints in connection to the restriction of the right for access to public documents.

On 20 December 2017, the Ombudsperson published the Report with Recommendations concerning the restriction of the right on access to public documents. The aim of this report was to warn the Municipality of Ferizaj for the complaint of the NGO “Initiative for Progress – INPO”, concerning the restriction of the right for access to public documents. Concerning the case in question, the Ombudsperson having in mind that *“Only the law has the power to determine the rights and obligations for legal and natural persons”*, as well as based on the facts provided, has confirmed that failure of the Municipality of Ferizaj to respond to the Claim of the NGO “Initiative for Progress – INPO”, constitutes a full violation of the provisions of the Law no. 03/L-215 on Access to Public Documents. Having analysed the case background and the legislation in force, the Ombudsperson recommended to the Municipality of Ferizaj to undertake steps towards capacity building of public officers, in connection to the implementation of the Law on Access to Public Documents.

## **6. Rights of the child**

### **6.1 The status of the rights of the child**

The protection and respect of children's rights in Kosovo continues to be not adequately addressed. Despite the fact that many steps have been taken in establishing policies and legal framework for the protection of children's rights, however, the realization of children's rights in practice, their protection and respect remain a challenge for Kosovo's institutions. The implementation of legislation and the provision of financial resources in empowering the child protection system in Kosovo remains a problem. In particular, it is worrying not to ensure the sustainability of day care centres for the treatment, rehabilitation and reintegration of children with disabilities and their lack of involvement

in the education system, including the lack of support assistants and teachers. Likewise, the issues related to street children, living under severe social conditions and who do not go to school and are often subject to various forms of violence, abuse and exploitation have not been addressed yet. No issues have been addressed regarding the establishment and provision of relevant services for children victims of narcotic drug abuse and their families, among other things. It is also concerning that the number of users of narcotic substances is increasing, whereas the number of users of a younger age (16.06 years)<sup>104</sup> has increased. To adequately address the issue, state institutions should provide preventive programs and offer relevant services for the protection and assistance of narcotic substances users in their rehabilitation and reintegration.

Much remains to be done to address these problems faced by children. Kosovar institutions have an obligation to coordinate and increase work and actions, in order to ensure that children's rights are respected, protected and enforced.

## **6.2 Legal framework and the rights of the child**

The legal framework of the Republic of Kosovo in the area of the children's rights, complies to a great extent with the international standards, more precisely with the Convention on the Rights of the Child (CRC)<sup>105</sup>. The relevant legislation is distributed across several laws, sub-legal acts and different policies, given that Kosovo does not have a special law on the rights of the child yet. This fragmentation of laws that regulate issues affecting the life and well-being of children is seen as a legal shortcoming since the absence of a comprehensive and full law, leaves children in a sensitive situation and legal insecurity. In order to address this problem, in 2013 it was commenced with the drafting of the Draft Law on Child Protection. The Draft Law has gone through detailed consultations with local, international and civil society institutions. Last year, the OI jointly with KOMF, UNICEF, as well as with the European Union Office in Kosovo (Group) submitted suggestions/recommendations to the Parliamentary Commission on Human Rights, Gender Equality, Missing Persons and Petitions. The recommendations aimed at increasing law enforcement having in mind the better interest of the child. The recommendations encouraged that the Draft Law should create powerful mechanisms for the protection of children, increase the accountability of relevant institutions, and include punitive measures in case of failure to implement the law. The OI, jointly with the key stakeholders mentioned above continued their work and endeavours for the inclusion of the recommendations in the Draft Law. Even during this year, the Draft Law failed to be

---

<sup>104</sup> The information was provided by the NGO Labyrinth for 2017, and includes data on the services rendered according to which 1205 persons were registered as users, 85 of them died as a result of interconnection with drugs, 4 of them were of age 20. According to the data, the average age of starting the use of drugs for 2007 was 21.4 years, whereas this year it has dropped significantly and is 16.06 years old. There were cases when the age of first drug use was 12 years.

<sup>105</sup> Convention on the Rights of the Child (CRC), is the most important instrument of international law in the field of children's rights, which is implemented directly by Kosovo institutions under Article 22 of the Constitution of the Republic of Kosovo.

adopted in the Assembly. Changes and established political situation in the country led to the delay in procedures and the return of the Draft Law for review to the relevant government bodies, with which the group co-operated with the aim of incorporating the recommendations. The Kosovo Assembly should address this Draft Law with added priority and seriousness, by taking the necessary actions to review the Draft Law without further delay.

### **6.3 The right of children to education**

Cases which were received by OIK including those initiated ex-officio, and which refer to the right to education for which OIK initiated investigations have dealt with lack of elementary conditions for learning in some schools, difficulties and obstacles for inclusion of children with disabilities in education, the obligation for students who are subject to state Matura exams to make the necessary payment for continuing education, school dropout and use of violence against children, as well as the exercise of the activity of thirty nurseries without license in Prizren<sup>106</sup>.

Four of the received cases concerned the lack of basic learning conditions, leading to difficulties in realizing the learning process. In two of these four investigated cases, after submitting written recommendations to the municipal authorities in Pristina and after the mediation of the OI with the municipal education authorities in Fushe Kosove, the improvement of the conditions for teaching and attendance of the teaching process for children in relevant schools was made<sup>107</sup>.

Also, two cases that the OI received last year were successfully completed, at the beginning of this year. These cases dealt with the obligation of school dropout, if children were not provided the transport for school attendance, respectively if the transport costs would not be covered. After the OI's mediation to the relevant municipal authorities, cases were solved on the children's benefit.

Based on the information provided by the "BLIC" portal, with the article titled "*Students are obliged to pay the breakdowns themselves in Pristina schools*", the Ombudsperson has started *ex officio* investigations. According to the article, secondary schools in the capital city, even in the entire territory of Kosovo, apart from the problems with the space and the large number of pupils, also face the fact that students are forced to provide money in school administrations, in order to mend the breakdowns in the school premises. At this reporting stage, the Ombudsperson has requested from the Municipality of Prishtina information on the actions that have been undertaken or are expected to be undertaken within the framework of their legal competencies and responsibilities for the case in question. Similarly, the IO has requested on the basis of which legal regulation, students are required to pay for eventual breakdowns in schools. MEST, municipalities, educational institutions and all other bodies involved in the provision of pre-university

---

<sup>106</sup> OI, cases: ex.of., 855/2017,412/2017, 735/2017, 688/2017, A.no.53/2017.

<sup>107</sup> OI, cases:ex.of.A.no. 700/2016, A.no. 53/2017.

education, as regulated by law, must, amongst other things, plan and draft appropriate policies for the construction and renovation of facilities financed by the Kosovo budget and donors, their proper management and maintenance of school space, in compliance with relevant legislation in force<sup>108</sup>.

MEST, municipalities, educational institutions and all other bodies should plan and draft appropriate policies for the construction and renovation of facilities funded by the Kosovo budget and donors, their proper management and maintenance of school space, in accordance with the relevant legislation in force.

#### **6.4 Children with disabilities**

Children with disabilities in Kosovo continue to face numerous difficulties in all spheres of life. This year, following the mediation of the OI to the municipal authorities of Gjakova, it was achieved that a child with disability would be paid transport expenses from the municipality and he would continue to attend the respective school in Prizren. Another complaint was received by the mother of a child with disabilities. The complaint was directed against MEST, for failing to provide the personal assistant, for learning at school, for her child so that the girl could receive the necessary assistance<sup>109</sup>. From the information provided by parents, high school teachers<sup>110</sup> but also NGO representatives working with children with disabilities, it turns out that in the majority of cases, families with better economic status hire and pay the professionals/assistants themselves, to help their children learn, even though this affects their economic status. However, not all families have this possibility; therefore many children remain without the necessary teaching support, which reduces the opportunities for adequate learning. Of course, such a thing impacts and hampers learning for other students and teachers, as well. This is worrying and requires addressing and prioritizing from state institutions. Children with disabilities face inadequate school infrastructure, lack of supportive teachers and many times of individual educational plans, as well. This denies girls and boys with disabilities the full enjoyment of the right to quality, inclusive education as stipulated by law.

Difficulties are also being encountered in the field of health, as regards the realization of the right to quality and free health services. Not always, health institutions provide free medicines and other facilities that will enable them to improve their health, free movement and a life with dignity for children. Inclusion and provision of social services in the community for children with disabilities also remains insufficient. At the beginning of this year, the OI has ex officio continued investigations, in connection with the inability of children with disabilities to receive social and family services at some of the day-care centres, due to their closure for lack of funds<sup>111</sup>. Given the seriousness and

---

<sup>108</sup> Law no. 04/L-032, on Pre-University Education in the Republic of Kosovo, Law no. 03/L-068 on Education in the Municipalities in the Republic of Kosovo.

<sup>109</sup> OI, case A.no.888/2017.

<sup>110</sup> Information provided during meetings with children, teachers and some parents during November this year as part of the campaign “Meet the Ombudsperson Institution”

<sup>111</sup> OI, case ex officio no.43/2017



severity of this issue, the Ombudsperson, among others, addressed the MLSW, with a letter of recommendation, from which he requested the undertaking of necessary measures, in order to provide the day-care centres with the needed support. This support should also include financial support, in order for the day-care centres to continue operating and children with disabilities are offered social assistance and respective services. The OI has not received any paper-related answers. Next year, the OI will continue to undertake the necessary measures directed to the MLSW to address the problem, in accordance with the law. State authorities should undertake appropriate actions including material support, adequate budget allocation in order to improve the situation of children with disabilities, ensuring the sustainability of day-care centres for the treatment, rehabilitation, and reintegration of children with disabilities and their inclusiveness in the educational process.

It is necessary to allocate an adequate budget, in order to ensure the sustainability of day-care centres for the treatment, rehabilitation, and reintegration of children with disabilities and their inclusion in the education process, as well as to ensure quality health services for children with disabilities through regular insurance of medicines, consumables and equipment necessary for these children.

## **6.5 Violence and the security situation in schools**

During this reporting period, the OI has investigated 4 cases, out of which one was opened *ex officio*<sup>112</sup>. The case investigated *ex officio* had to do with suspicion of sexual harassment by the teacher against a student. Following the investigations, the OI found that relevant institutions have taken the necessary actions and judicial proceedings before the justice authorities have been initiated. In another case related to allegations of the exercise of violence by a teacher, the OI undertook appropriate actions in relation to the relevant municipal authorities and the child's parent was instructed regarding further actions he could take in accordance with the law. The other case was related to a student's allegations against a teacher for denigrating and humiliating treatment against students and the Municipal Education Directorate, as well as the Education Inspectorate, for having failed to respond to their complaint. The OI is in the process of meeting with their representatives, to investigate and be informed of the actions/omissions undertaken by these institutions. Similarly, with regard to allegations for use of violence, against children without parental care, by employees of an organization providing children services, the OI is awaiting the response from the leaders of the organization, whom the OI has asked to investigate the case and to be informed about the outcome of investigations.

In 2016, the OI in collaboration with Save the Children published a study that shows that 75.6 percent of children aged 12-16 years have seen a person being attacked or hit during 2015. Meanwhile, 32.9 percent felt harassed in the last 12 months, and 9.3 percent of

---

<sup>112</sup> OI, cases: *ex officio* no.397/2017.

boys and 6.2 percent of girls rarely or never feel safe on their way to school<sup>113</sup>. The use of violence against children, as well as an increased occurrence of cases of violence exercised by educators and teachers who are called to apply pedagogical norms and prudent behaviour with children, has incited the Ombudsperson last year, to deal with the impact of violence in the health and social life of children in the form of an opinion. This opinion addressed the responsible institutions in order to draw attention to the negative impact of violence against children, as well as the importance of its prevention, by identifying, referring and dealing with it timely<sup>114</sup>. Findings from the abovementioned study and the recommendations from the opinion have served as information in the informational campaign “Meet the Ombudsperson Institution”<sup>115</sup>. The campaign was held in November and representatives of the OI met with children and school teachers, in order to raise awareness about the necessity of preventing corporal punishment in schools. Relevant institutions should undertake appropriate actions to raise awareness in preventing violence in schools.

There should be awareness rising in preventing violence in schools through awareness-raising policies and campaigns.

## **6.6 Rights of the child in proceedings before administrative and judicial bodies**

Even during this reporting period, the OI investigated a number of complaints against the courts, submitted by parents of children. These complaints dealt with delays in court proceedings. These complaints related to delays in court proceedings to decide on the child's custody and education, as well as the monitoring of court hearings regarding the ruling out of applications on protection orders for domestic violence<sup>116</sup>. Regarding non-realization of contacts or the inability to perform regular contacts with children, the OI has also received complaints against social work centres, Kosovo Police and the Agency for Free Legal Aid<sup>117</sup>. In these cases, the IO addressed the institutions concerned, for undertaking the respective actions as well as mediated with them, so that children can realize their rights, also guaranteed by the CRC. Courts, respectively all institutions providing family services, should take all necessary actions to ensure that the necessary child-related cases or those affecting children's rights are settled without delay within the legally set deadlines, so that the health of children, their well-being or even their life is not harmed or endangered. They should also undertake all actions that best children's interest is paramount in their child-related work, including respecting the right of children to be heard.

---

<sup>113</sup> Save the Children, Zëri ynë 2016 at:

[https://resourcecentre.savethechildren.net/node/10218/pdf/young\\_voices\\_report\\_alb.pdf](https://resourcecentre.savethechildren.net/node/10218/pdf/young_voices_report_alb.pdf).

<sup>114</sup> OI, case:A.no.668/2016

<sup>115</sup> Regarding the campaign, see the section on DMDF activities

<sup>116</sup> OI, case A.no.28/2017, A.no.244/2017

<sup>117</sup> OI, cases: A.no. 570/2017, A.no. 187/2017, A.no.366/2017, A.no. 545/2017

## 6.7 Social and health protection

During this reporting period, the OI has started and investigated 14 new cases in the area of social and health protection, including those *ex officio*, which refer to children's rights. Cases concerned, *inter alia*: non-payment of social assistance; a serious economic and social situation; lack of financial support for health care; the inability of children with disabilities to receive social and family services at some of the day-care centres because of their closure; non-compensation of health material etc. A number of them have been settled for the benefit of the complainants including 4 cases received in 2016. Such is the case of two families with children in a poor economic situation, which, following OI's mediation with the municipal authorities of Peja and Prizren, benefited social assistance. Another case dealt with a family, with four children, who lived in a home in difficult conditions and at risk for health and life. With the mediation of the Ombudsperson and with the commitment of the municipal authorities of Dragash, who had found a donor, a suitable home for the family was built. Regarding this, the state should establish sustainable financial policies to provide financial and social support, urgent and permanent, for citizens with social needs, especially in cases of child welfare.

It is necessary to ensure sustainable and adequate funding for social services in Kosovo by amending Law no. 03/L-049 on Local Government Finance and the establishment of a Specific Grant for Social Services.

## 6.8 Juvenile justice

Children who are subject to the justice system, namely juveniles who have violated the law, should have access to appropriate education services. The education of minors, who are sentenced and placed in correctional institutions, is one of the main obligations of the competent institutions of the Republic of Kosovo deriving from the Constitution, applicable laws and international legal instruments. As such, this obligation of the institutions, to realize one of the fundamental human rights, such as providing access to education for young people, can neither be avoided for juveniles placed in correctional centres. Based on the information provided by the daily newspaper "Koha Ditore", in the article titled: "*Commencement of the educational learning in the Correctional Centre in Lipjan fails again*", dated 29 September 2016, the OI commenced the *ex officio* investigations<sup>118</sup>. After the investigation, the Ombudsperson found that the teaching process at the Correctional Centre in Lipjan started with delays, because some of the juveniles who had been released were denied the right to attend school outside the centre. The Ombudsperson also found that they were not given the possibility of undergoing the state Matura exam, since they did not receive the certificates and diplomas after being released from the Correctional Centre in Lipjan. Regarding the case, on 5<sup>th</sup> of September 2017, the Ombudsperson sent a report with recommendations to MEST and the

---

<sup>118</sup> Ex office 575/2016.

Municipality of Lipjan<sup>119</sup>. MEST and other responsible institutions should take all necessary actions in due time, in accordance with the legal and constitutional obligations, so that these practices are not repeated in the future, to guarantee the right to education for juveniles at the Correctional Centre in Lipjan and in other institutions where persons deprived of their liberty are held.

The main document that regulates this area, the Juvenile Justice Code has been in the process of legal changes, so that the harmonization with international standards is as complete as possible. The OI representative was part of the consultative meetings during the drafting. The Juvenile Justice Code is significantly advanced compared to the existing Code, addressing to a large extent the shortcomings of the legislation on children's rights in Kosovo and the difficulties encountered in implementation in practice. The draft-Code is in the Assembly proceedings and should be followed, without delay, in the spirit of international best practices and standards, after thorough and serious review.

During this reporting year, the OI received 61 complaints filed mainly by children's parents. Out of this number, 36 were accepted for investigation, while others were declared inadmissible. The complaints were declared inadmissible because the issues they dealt with were outside the jurisdiction of the OI, there were no violations of human rights, or the complainants were able to use or have been using legal remedies. Given the nature of the handling of legal complaints and authorizations, the OI, in cooperation with Terre des Hommes is performing the evaluation of the complaint mechanism in the OI, especially in the drafting of special procedures for the receipt and handling of complaints by children.

## **7. Equality before the law**

### **7.1 Overview of the package of laws on human rights - prevention of and protection from discrimination**

Non-discrimination is a human right, and the most important component of all human rights. Discrimination is prohibited by the Constitution of Kosovo, and considering the importance of fighting discrimination and achieving equality, Kosovo has built a legal framework for prevention and fighting discrimination, respecting international standards and relying on experience of the comparative law.

In normative terms, the Law on the Protection from Discrimination (LPD) represents the foundation for the legislation on protection against discrimination in Kosovo. A part of the legal heritage of the European Union has been included into Kosovo's applicable legislation as some of the directives of the Council of Ministers of the European Union represent the foundations for the drafting of a significant part of the legislation<sup>120</sup>.

The victims of discrimination, under the LPD, have been granted adequate protection and a comprehensive framework has been established for preventing and combating

---

<sup>119</sup> Report with recommendations ex officio 575/2016.

<sup>120</sup> See the Law on the Protection from Discrimination Article -1, paragraph 2

discrimination. This law explains the grounds for discrimination and scope of application, types of discrimination, defines the responsibilities of institutions and the structure and powers of administrative authorities dealing with discrimination and defines the appropriate measures to raise public awareness.

This law also explains the types of unequal treatment that constitutes discrimination, as well as the role and implementation of affirmative measures. The most important innovation in this law is the role of administrative bodies with competence in the field of protection from discrimination. The LPD strengthens the position of the Ombudsperson Institution of Kosovo and extends its competences in terms of violation of the right based on discrimination.

In general, the Ombudsperson deals with cases related to discrimination in accordance with the powers provided for in the Law on Ombudsperson<sup>121</sup> and the Law on the Protection from Discrimination.<sup>122</sup>

In addition to receiving and investigating complaints and protection of persons in specific discrimination cases, the Ombudsperson is also authorized to: investigate and act on an *ex-officio* basis when there is reasonable suspicion that discrimination has been committed by public sector entities; to directly address a request to the investigative and prosecuting authorities for initiating investigations on minor and criminal offenses and request the initiation of applicable disciplinary procedures; The Ombudsperson may be present in the capacity of “*amicus curiae*” in court proceedings concerning equality and protection from discrimination, which in relation to the ordinary powers of the Ombudsperson is an important innovation

According to the LPD, the Ombudsperson has a broad promotional and preventive role in the fight against discrimination. In this view, the Ombudsperson is the competent institution for monitoring implementation of the LPD and initiate amendments to the provisions for implementation and promotion of protection from discrimination, inform the public on cases of discrimination and take measures to promote equality, provide advice and provide guidance to the public and private sector on best practice for promoting equality and provide recommendations on measures to prevent and eliminate discrimination on any grounds, cooperate with social partners, non-governmental organizations and relevant other countries mechanisms that deal with the protection and the promotion of human rights, as well as religious institutions and communities registered in Kosovo, and can develop a code of good practice in the fight against discrimination, which can be used as a reference point in cases of discrimination etc.<sup>123</sup>

According to LPD, Article 23, paragraph 4, any person who conceals facts or information in the field of discrimination required by the administrative body or the competent court

---

<sup>121</sup> See the Law on Ombudsperson, Article 16, specifying the powers of the Ombudsperson.

<sup>122</sup> See the Law on the Protection from Discrimination, Article 9, which specifies the Ombudsperson's powers in protection from discrimination.

<sup>123</sup> Ibid.

is likely to be subject to higher fines in the minor offense proceedings.

In addition, the Ombudsperson also has a special role in the field of providing legal aid in the context of discrimination, both to natural or legal persons, who have filed a complaint for discrimination, by providing them with necessary information about their rights and obligations, as well as the possibilities of judicial protection and other protections. In this way, the law directs individuals to the Ombudsperson as the first instance in seeking protection from discrimination. The submission of a complaint before the Ombudsperson is not a condition for filing lawsuits and shall not constitute an obstacle for injured parties to address the court or criminal prosecution bodies.<sup>124</sup>

LPD also specifies the role of another institutional body, namely the Office of Good Governance within the Office of the Prime Minister, in promotion and implementation of the LPD and as a body that monitors the implementation of the recommendations given by the Ombudsperson..<sup>125</sup>

In these overlapping provisions and mandates, it is still unclear which administrative body should the citizens exactly address for help and what administrative procedures they should follow. However, two central level bodies have been clearly appointed to cover all complaints of discriminatory nature: the Ombudsperson as a non-judicial institution and the competent courts.

In addition to the LPD, the special Law on Gender Equality guarantees, protects and promotes gender equality as a fundamental value for development of a democratic society and defines general and specific measures for protecting and guaranteeing equal rights of women and men and establishes the responsible institutions and their competences. This law explicitly defines the prohibition of indirect discrimination or direct gender based discrimination, while the gender-based violence is defined as a special form of discrimination. In addition to other institutional mechanisms, this Law has also given an important role to the Ombudsperson who is authorized to deal with cases involving gender discrimination.<sup>126</sup>

This package of laws on human rights establishes an integral system of protection from discrimination in our rule of law, however the mere fact of having established a legal system for protection against discrimination does not imply that the purpose has been accomplished and should therefore not mark the end of endeavours to achieve equal rights.

A period of almost three years has passed from the commencement of implementation of the Law on Protection against Discrimination, but it is already evident that the anti-discriminatory judicial practice is not nearly as "rich" as our social reality with examples of discrimination. We are witness of the fact that social reality in Kosovo is marked by

---

<sup>124</sup> See the Law on the Protection from Discrimination, Article 12

<sup>125</sup> See Article 10, the Law on the Protection from Discrimination

<sup>126</sup> See Article 13, the Law on Gender Equality.

coexistence, cooperation, and tolerance, but also by ethnic and other stereotypes and prejudices, as well as the high level of social distance in relation to ethnic, religious and other minorities as well as vulnerable gender groups, which significantly limit the achievement of equality standards in our everyday life. Therefore, in order to achieve full protection against discrimination, all parts of the society, which have been given concrete tasks by the law, must be fully included. It is clear that courts and the ombudsperson have one of the most important roles in terms of accomplishing such tasks, and not only because of the fact that relevant procedures will efficiently provide legal protection against discrimination, but also because the legislative power will propose, in due time, the amendment and supplement of eventual inadequate legal solutions.

From January 1, 2017, to December 19, 2017, the Ombudsperson has received 177 complaints based on discrimination allegations, out of which 115 complaints are being investigated, while 62 were rejected as inadmissible. Out of the cases investigated, 84 cases were completed and closed.

In addition to the complaints filed by the citizens, the Ombudsperson has initiated 9 *ex-officio* investigations.

Regarding the cases investigated, 4 reports with recommendations were published and 2 *amicus curiae* were addressed to the judicial system.

## **7.2 Persons with disabilities**

Similar to previous years, the Ombudsperson continues to monitor the situation of persons with disabilities. In addition to the individual complaints received by the complainants, the Ombudsperson continues to receive and investigate complaints from regular meetings with representatives of non-governmental organizations that protect the interests of persons with disabilities. The Ombudsperson, during the reporting period, on the basis of the legal mandate has conducted meetings with institutions that are directly responsible for alleged breaches of the complainants in their complaints.

Persons with disabilities as part of our society continue to face the same problems in all spheres of life as reported in previous years. Their problems start from free access to public areas, public institutions facilities, collective housing facilities, including those built for social cases, public schools, health, education, employment, the social economic situation.

There is a wide legal infrastructure in Kosovo that guarantees the rights of persons with disabilities<sup>127</sup>. From the analysis of laws, it turns out that the legislator has left most of

---

<sup>127</sup> Law No. 05/L-067 on the Status and the Rights of Persons with Paraplegia and Tetraplegia, Law No. 04/L-092 for Blind Persons, Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of Persons with Disabilities, Amended and Supplemented by Law No. 05/L -078, Law No. 05/L-025 on Mental Health, Law No. 03/L-022 on Material Support for Families of Children with Permanent Disability, Law No. 04/L-131 on Pension Schemes financed by the State (relevant provisions for persons with disabilities), Law No. 02/L-17 on Social and Family Services, Amended and Supplemented by Law No.04/L-081, Law No. 02/L-52 on Preschool Education, Law No. 03/L-068 on education in the

the matters emerging from these laws to be regulated in detail by bylaws. Lack of issuance of bylaws makes these laws not fully implemented, thus persons with disabilities do not have the guaranteed legal support for realizing their rights.

Law no. 04/L-092 for Blind Persons, which is implemented from January 1, 2013, regulates the legal status of blind persons in the Republic of Kosovo, while its scope regulates the rights and benefits and defines the criteria for categorizing blind persons. Only the provisions on compensation for blind persons and their accompanying persons are covered by this law, and so far there have been no bylaws regulating health insurance and health care, education, rehabilitation, travel, electricity, telephony etc., therefore such provisions of the law governing the benefits provided by law for blind persons have remained unfulfilled so far. The Ombudsperson considers that it is the responsibility of the responsible bodies to issue, as soon as possible, relevant bylaws that would enable the full implementation of this law.

Based on the complaints that the Ombudsperson has received from persons with disabilities, there is no policy for systematization of persons with disabilities in the employment sector, where there is a possibility for carrying out the work according to their qualifications and skills.

Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of Persons with Disabilities, Amended and Supplemented by Law no. 05/L -078, among the laws governing the rights of persons with disabilities, is considered as the least implemented law in the field of persons with disabilities. Article 12 of this law, which stipulates that state administration bodies, private and public sector employers and non-governmental organizations are obliged to employ 1 person with disabilities in every fifty (50) persons, with appropriate conditions, still remains unimplemented.

Also, the Assembly of the Republic of Kosovo on 5 August 2016 has approved the Law No. 05/L-078 on amending and supplementing the Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of Persons with Disabilities, but to the day there has been no improvement in implementation and no improvement in the employment of persons with disabilities.

The Ombudsperson addressed the Ministry of Labour and Social Welfare (MLSW) several times in order to learn about ministry plans related to policies or employment strategies for persons with disabilities. The Ombudsperson was particularly interested in getting informed about the MLSW plan in the implementation of laws on vocational training and employment of persons with disabilities as well as for MLSW actions or

---

municipalities of the Republic of Kosovo, Law No.04/L-032 on Pre-University Education in the Republic of Kosovo, Law No. 04/L-037 on Higher Education in the Republic of Kosovo, Law No. 05/L-018 on State Matura Exam (relevant provisions for persons with disabilities), Law No. 04/L-125 on Health, Law No. 04/L-249 on Health Insurance (relevant provisions for persons with disabilities), Law No. 04/L – 110 on Construction / Administrative Instruction No. 33/2007 for Construction Buildings Technical Terms of Accessibility to Disabled Persons.



plans in the implementation of Law no. 03/L-212 on Labour and, Law no. 03/L-019, as amended by Law no. 05/L-078 on amending and supplementing the Law no. 03/L-019, which foresees a series of measures and solutions for this category. During the reporting year, the Ombudsperson did not receive an answer. The Ombudsperson recommends MLSW to comply with the constitutional and legal obligation for cooperation.

The Law No. 03/L-022 on Material Support for Families of Children with Permanent Disability regulates the right to material support for families who take care of children with permanent disability and the way of the realization of such material support. This law foresees that children under the age of 18 shall receive a material support in the amount of EUR 100 a month. The pensions of persons with disabilities after the age of 18 years old are regulated by Law No. 04/L-131 on Pension Schemes financed by the State. According to this law, respectively Article 9, this pension is defined as a permanent disability pension, as a regular monthly pension, based on the decision of the relevant body of the Ministry, for persons who meet the criteria set forth in this Law. This law, apart from the pension, does not regulate any other right for persons with disabilities. It is worrying that the monthly amount of the pension is EUR75, and is the same for all without taking into consideration on needs and type or degree of disability. This concern has been raised by the Ombudsperson in the previous annual reports.<sup>128</sup> The Ombudsperson further recommends the review of the legal basis for the compensation of persons with disabilities, and that compensation shall be assessed based on the level of disability, given the fact that there is still no objective degree of disability and that the amount of financial support remains the same, 75 euros for everyone.

Persons with disabilities still have doubts regarding the correctness of the medicinal commission's work, as they claim that the medical commission does not evaluate the applicants based on diagnosis by professional doctors, but rather based on their appearance upon presenting before the medical commission.

As noted in the Ombudsperson's previous annual reports, according to the legal remedy provided in the decisions of the Ministry of Labour and Social Welfare with regard to termination of pensions for persons with disabilities after the review, the complainants have the right to file a lawsuit in the Basic Court of Prishtina, Department for Administrative Affairs.

This further hinders the possibility of persons with disabilities to be beneficiaries of disability pensions because the court does not decide on the merits of the case, but only in procedural cases, and with a court decision, the case is returned for reconsideration at the Medical Commission at the Ministry of Labour and Social Welfare. This results in persons with disabilities having to wait for years in order to have their rights to disability pension recognized. In this regard, the Ombudsperson has also reported in the previous annual report and has published a report with recommendations, in which he found that

---

<sup>128</sup> See the 16th Annual Report of the Ombudsperson, Disability

the on-going procedures that persons with disabilities are required to follow in order to realize the right to claiming a pension, without a decision on merits and without proper judicial review, is a breach of the human rights of persons with disabilities.<sup>129</sup> The Ombudsperson has not received an answer to his recommendations; therefore he notes that the cooperation of responsible institutions with the Ombudsperson constitutes a constitutional and legal violation.

The Ombudsperson, during this reporting year, has considered the commencement of implementation of the Law on the Status and the Rights of Persons with Paraplegia and Tetraplegia as a positive step. The purpose of this law is to regulate the status and rights of persons who due to illness or injury have permanently lost the ability to move lower extremities or persons who due to illness or injury have permanently lost the ability to move upper and lower extremities..

The first bylaws foreseen for the implementation of this law were issued during this year. On January 30, 2017, an administrative instruction that regulates the form and composition of the official identification card, as well as the manner of keeping the register for persons with paraplegia and tetraplegia was issued, and on May 26, 2017, another bylaw on the composition, functioning, responsibilities of the evaluation committee and the definition of procedures for recognizing the status and rights of persons with paraplegia and tetraplegia was approved. MLSW, at the end of December 2017, has begun to issue the decisions to beneficiaries under this law.

Education of persons with disabilities is a fundamental human right guaranteed by the Constitution of the Republic of Kosovo as well as international conventions. The issue of inclusive education for children with disabilities, despite the legislation in force, continues to be a challenge. The physical access of children with disabilities to public school facilities continues to be the same.<sup>130</sup>

The lack of assistants engaged by state institutions in schools continues to be a problem with regard to discrimination among children with disabilities. Only children with better social and economic conditions are able to have an assistant during the teaching process because the assistant is engaged and paid by the child's parents. In this case, children with disabilities, whose parents are unable to pay for an assistant, still face discrimination. This is because state institutions do not hire assistants, and according to the Constitution each child enjoys the right to free basic education, including children with disabilities. The lack assistant in schools and the inability of parents to hire and pay assistants implies that the treatment of children with disabilities in the learning process is not equal.<sup>131</sup> The lack of non-teaching professional staff also contradicts the Law on Pre-University Education which guarantees inclusion, and effective services, which are designed to

---

<sup>129</sup> Ex-Officio Report no. 425/2015, [http://www.ombudspersonkosovo.org/repository/docs/425-2015\\_Raport\\_ne\\_lidhje\\_me\\_mungesen\\_e\\_mjeteve\\_efektive\\_juridike\\_982052.pdf](http://www.ombudspersonkosovo.org/repository/docs/425-2015_Raport_ne_lidhje_me_mungesen_e_mjeteve_efektive_juridike_982052.pdf)

<sup>130</sup> See the 16th Annual Report of the Ombudsperson, Disability

<sup>131</sup> Case A.888/2017

provide all children with equal rights to education in accordance with their specific skills and needs, as well as to advance their educational and social development.

The Ombudsperson is investigating a complaint filed by a parent of a child with disabilities who complains about the lack of teaching assistants of children with disabilities in public schools. This complaint also includes lack of transportation and parents' challenges to take children with disabilities to school.

Moreover, the Ombudsperson considers that the lack of institutional will to support children with disabilities in the inclusive education process becomes even clearer when considering the fact that the Law on Kosovo Budget for 2018 has not approved any additional budget proposals for the inclusive education of children with special educational needs in pre-university education.

Therefore, in order for the children with disabilities to be treated equally in the learning process and in the function of implementing the legislation guaranteeing inclusive education, the Ombudsperson recommends the Ministry of Education, Science and Technology to address with priority the issue of engaging the non-teaching staff in schools for the children with disabilities.

Furthermore, children in elementary and secondary schools learn from the literature prepared by the Ministry of Education. Advancing learning is done through quality teaching, applying competency-based curricula, and utilizing high-quality teaching resources. However, textbooks distributed to pupils for learning purposes contain discriminatory and offensive language for people with disabilities. The use of discriminatory and offensive language in textbooks has been raised as a concern at the Ombudsperson, by the Down Syndrome Kosova Association. The terminology used in the 10<sup>th</sup> and 11<sup>th</sup> grade biology books, where Down syndrome is termed as “Mongolian idiocy” and persons with Down Syndrome in these texts are characterized as “living for only 10-15 years”, which does not coincide with reality and is scientifically ungrounded.

In this regard, the Ombudsperson has publicly stated that the use of terms and concepts in the school literature that is not in line with the dynamics of advancement of human rights and freedoms is not only a concern for the Ombudsperson but also an urgent need for corrections. Also, the Ombudsperson through the statement has emphasized that the school literature needs to be carefully reviewed and reworded in accordance with the constitutional and legal guarantees for equal treatment and without discrimination in the Republic of Kosovo<sup>132</sup>.

People with disabilities continue to face health problems. Medicines and hygiene materials for this category of our society are not included in the essential list; therefore, families have to provide them for their children. This situation exacerbates the socio-economic conditions of families that have members with disabilities.

---

<sup>132</sup> <http://www.ombudspersonkosovo.org/sq/lajme/Avokati-i-Popullit-shpreh-shqetesimin-lidhur-me-perdorimin-e-terminologjise-dhe-koncepteve-diskriminuese-ne-literaturen-shkollore-1544>

The Ombudsperson recommends the Ministry of Health to update the lists containing the essential medicines, supplement them with medicaments and other materials required, including the hygienic ones, which are vital for people with disabilities.

Finally, the Ombudsperson sees the non-enforcement of laws as a concern. The Ombudsperson considers the failure to apply the Laws as a failure of the state in law-making. The Ombudsperson recommends the responsible bodies to be more vigilant in controlling the implementation of laws, and priority should be given to issuing relevant sub-legal acts, which would enable the full implementation of the laws. The Ombudsperson finds that the responsible institutions in Kosovo have failed to act on the implementation of laws that guarantee rights to persons with disabilities, therefore, recommends that sub-legal acts shall be issued and sanctions should be imposed against violators of laws, which guarantee the rights and privileges of persons with disabilities.

### **7.3 Discrimination at work**

The principle of equality in opportunities and actions constitutes an integral part of the right to work. Work and work-related discrimination occurs very often, since is covered by the interest of capital and the gain of economic benefits.

Given the concept of equality and equal treatment, the state has a duty to ensure that every employee has the same rights and same conditions in exercising his/her rights of employment. These principles are defined by the Constitution<sup>133</sup> and the legislation applicable in Kosovo.<sup>134</sup>

The legal provisions expressly prohibit the violation of the principle of equal treatment in employment and occupation in relation to recruitment, vocational training, promotion, employment conditions or other matters related to labour, which is regulated by the applicable laws, at any activity and all levels of professional hierarchy. Provisions of the Law on the Protection from Discrimination are directly applicable when it comes to the employment relationship between the employee and the employer.

The legal provisions also specifically prohibit gender-based discrimination and refer to the access to employment, self-employment and career choice.

When talking about the principle of equal treatment in labour rights, it is of utmost importance to cooperate with the trade unions and the system institutions dealing with these matters, so that existing mechanisms for protecting employees from all forms of discrimination in the workplace are best utilized by undertaking joint activities

During the reporting period, the Ombudsperson has monitored the implementation of

---

<sup>133</sup> See Constitution of the Republic of Kosovo, Article 24, Equality before the Law and Article 49, Right to Work and Exercise Profession

<sup>134</sup> Law No. 03/L-212 on Labour, Law No. 03/L-149 on Civil Service of the Republic of Kosovo, Law No. 2004/3 on the Protection from Discrimination, Law No. 05/L-020 on Gender Equality.

labour rights, received information from relevant institutions,<sup>135</sup> and has collected information from the field through complaints about labour discrimination and initiated ex-officio investigations.

Discrimination at work, , are mainly occurring in the private sector and the main problem in the field of employment relationships is the illegal work, namely employment without an employment contract, which then includes overtime work in contradiction to that provided by law, irregular payment of salaries, inability to use annual leave, inadequate protection at work etc.

The lack of the employment contract prevents the exercise of labour rights, which then constitutes a violation of the principle of equal opportunities for establishment of employment relationship and enjoyment of equal rights in the field of employment. This affects the security and the rights of the employees, while employers who do so are actually gaining unfair advantage compared to those who legally do business, and the state incurs a loss of social security income due to unpaid contributions.

Due to the high unemployment rate in Kosovo, the private sector employees are willing to consciously make different compromises in order to gain and maintain a job, which is often the only source of existence, hoping that one day they will get the contract and will be hired for an indefinite period.

Discrimination of employees in the private sector is mostly expressed in construction, trade, hotel and industry sectors, where employees often work without an employment contract, without daily, weekly and annual leave, and are not entitled to medical leaves, while workplace injuries are hardly compensated. They are often forced to work longer than expected working hours, as well as on Sundays and holidays, and such work is not evidenced, hence working hours cannot be proven and work done cannot be paid adequately. The establishment of such labour system certainly leads to the deterioration of human health and even the loss of the ability to work; hence the people who are now working illegally will fall under the area of poverty and complete social insecurity at an old age.<sup>136</sup>

The system of health protection and safety at work represents a very important element of dignified work. Although the labour legislation<sup>137</sup> foresees the standards of health protection and safety at a workplace, which is an integral part of the organization of the work process and leads all activities in the country and defines the responsibilities and obligations of the employer in that direction, the situation regarding the protection of employees' rights and the assurance of their elemental/basic dignity at work cannot be considered satisfactory. We are witness to an ever-growing number of accidents at

---

<sup>135</sup> The information gathered regarding the breach of the right to work from the meetings held during the reporting period with the inspector of the Inspectorate of Kosovo and the chairman of the independent Union of Trade Unions of Kosovo.

<sup>136</sup> Ibidem

<sup>137</sup> Law on Labour and Law no. 203/19 on Protection of workers health and working environment

workplaces. This problem is mostly noted in the construction sector, where due to inadequate protection of employees and failure to meet safety standards is the highest number of serious injuries at work and injuries resulting in loss of life.

The relevant legislation is inclusive and that its provisions provide adequate mechanisms for the equal protection of employees in the public and private sector.

However, the Labour Inspectorate as a mechanism and executive body of the Ministry of Labour and Social Affairs is responsible for overseeing the implementation of legal and sub-legal provisions in the field of labour, including employment relationships, safety at work, health care of employees and environmental protection.<sup>138</sup> There are 50 inspectors in its service, who control the implementation of legislation in the field of labour and function in 30 municipalities in Kosovo through seven regional offices. Given the complexity of the work, the territory covered, the public sector and the large number of private businesses registered in Kosovo, the Ombudsperson believes that the Labour Inspectorate does not have sufficient resources and capacities to qualitatively and usefully fulfil their obligations and inspect such a large number of businesses. In this regard, arises the need for the Government to amend and supplement the regulation in the area of labour inspection and increase the level of sanctions so that the inspecting supervision can operate more efficiently and effectively and monitor employers and have a measurable impact on the issues in the field of labour and act in a preventive way against problems of discrimination in the field of employment and related to employment. The results of inspections so far have failed to prove efficient in terms of discouraging and preventing further violation of laws and discrimination in the field of labour.<sup>139</sup>

As to the Collective Contract, the Ombudsperson notes that the contract regulates the rights and obligations of employers and employees, including provisions on working hours, night shift, annual leave, maternity leave, safety at workplace and the health benefits of employees. The contract also contains all protective mechanisms from the law on labour and relates to all employees whether in the public or private sector, so the Government should as soon as possible create conditions for its full implementation.

Due to the high unemployment rate, cases of discrimination in the workplace are reported very rarely because employees are afraid of the employers' revenge. Very often, the employees have solved their work issues internally and informally with their employers.

During the reporting period, the Ombudsperson initiated ex officio investigations concerning discrimination in the private sector workplace. Investigations in these cases

---

<sup>138</sup> Law No. 03/L-017 on Labour Inspectorate

<sup>139</sup> IO representatives held a meeting on 05.06.2017 with the Inspector General of the Labour Inspectorate with whom they discussed the problems related to the discrimination at the workplace and the obligations of the Inspectorate in the exercise of its functions. The data received at the meeting with the Inspector General of the Labour Inspectorate indicate that there are over 50,000 businesses registered in Kosovo, but they have noted that there are also unregistered businesses.

are under development and reports with recommendations of the Ombudsperson are expected in the next period.

During the reporting period, the Ombudsperson has also addressed cases related to discrimination in public sector workplaces, whereby in accordance with its competences and based on the suspicion that there is discrimination by the public sector<sup>140</sup>, the Ombudsperson has initiated ex-officio investigations.

In this regard, during this reporting period, the Ombudsperson has initiated ex-officio investigation, case no. 127/2017,<sup>141</sup> regarding the recruitment process of educational staff by the Municipal Directorate of Education in Ferizaj. This case is related to the case that the Ombudsperson has reviewed and published in the *ex officio* Report with Recommendations No. 499/2016, regarding the criteria published for vacancies announced by the Municipal Education Directorates in the 19 municipalities of the Republic of Kosovo and breaches of legal procedures during the recruitment process of staff.

To this end, while using its legal powers,<sup>142</sup> the Ombudsperson in the capacity of the friend of the court (*amicus curiae*) presented a legal opinion to the Basic Court in Prishtina in order to inform the court of his findings and conclusions regarding the case under consideration.

This legal opinion refers to the clarification of the legal procedure regarding the recruitment process of personnel according to competitions advertised by Municipal Education Departments in the Republic of Kosovo (MEDs), whereby the Ombudsperson, following his investigation, determined the criteria that are discriminatory and violate the rights to equal treatment in case of employment and in a certain way favour candidates and create inequalities among candidates. In this regard, the Ombudsperson emphasized that such actions of public authorities in specific municipalities violate equality before the law and contradict the legal provisions.

---

<sup>140</sup> Law on the Ombudsperson, Article 16, paragraph 4 provides; “The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (*ex officio*), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights.”

Paragraph 9 of Article 16 which authorizes: “The Ombudsperson may appear in the capacity of the friend of the court (*amicus curiae*) in judicial processes dealing with human rights, equality and protection from discrimination.”

The Law on the Protection from Discrimination, Article 9, paragraph 2.3 “The Ombudsperson shall have an authority to investigate or act on any claim filed or with self-initiative (*ex-officio*) when there is reason to suspect that there has been discrimination by public entities.”

<sup>141</sup> See the legal opinion of the Ombudsperson addressed as *amicus curiae* of the Basic Court in Prishtina, in Ex officio case no. 127/2017, regarding the lawsuit of the Municipality of Ferizaj against the Ministry of Labour and Social Welfare, published on 23 May 2017.

<sup>142</sup> The Law on the Protection from Discrimination, Article 9, paragraph 2.13 “Ombudsperson may be presented in the quality of a friend of the court (*amicus curiae*) in proceedings related to issues of equality and protection from discrimination;”

Regarding this matter, the Ombudsperson's opinion is that it is an indisputable fact that most of the MEDs in the Republic of Kosovo, based on competitions advertised for teachers positions, are implementing the Law on Labour, the selection of candidates in several municipalities was made in accordance with some special legal provisions, while in some in accordance with the provisions of the Law on Labour, or pursuant to Administrative Instruction no. 14/2011 for the regulation of procedures for the establishment of labour relations in the public sector, therefore public institutions that implement the laws should apply them equally to all and provide the same protection for everyone. Undoubtedly, such an example contributes to the citizens' lack of trust in justice institutions. The implementation of various provisions by some municipalities leads to situations that are contrary to the rule of law and equality before the law.

Regarding the matter in question, the Ombudsperson stated that it is necessary that selection of the teaching staff for all educational subjects is done in accordance with Administrative Instruction no. 05/2015 for Normative on Teachers of Vocational Education, and the Administrative Instruction no. 06/2015 for Normative of Professional Staff of the General Education. The abovementioned provisions provide for solutions to certain issues arising in employment cases in educational institutions and establish sufficient legal basis, which is required under Article 2.2 of the Law on Labour. Recruitment of teaching staff in educational institutions should be done in accordance with the guidelines, procedures, and standards published by the Ministry of Education, Science and Technology.

During the reporting period, the Ombudsperson also reviewed the complainants' complaint and sent a report to the municipality of Prishtina and the Ministry of Public Administration regarding unequal treatment in determination of salary coefficient for the officials of Municipal Directorate of Education in Prishtinë.<sup>143</sup> The applicants, namely officials of the Municipal Education Directorate in Prishtina, lodged a complaint to the Ombudsperson expressing their dissatisfaction with the unequal treatment, requesting the correction of the salary coefficient according to qualifications, professional qualifications, work experience, duties and responsibilities in their work. They also complained that the coefficient of their income is smaller and differs compared to the salary coefficient for the same positions in the Municipal Education Directorates of other municipalities.

After conducting the investigation related to the allegations of the complainants and comparing the MEDs payroll lists in Kosovo municipalities the Ombudsperson, noticed that huge discrepancies exists of job titles, that there are also differences in coefficient of salaries for MED officials, and that these two elements vary from municipality to municipality without any reasonable justification. Based on the facts of this case, it is clear that public authorities have failed to apply the provisions of the Law on Civil Service and the Law on Salaries of Civil Servants, which stipulates: "*Public*

---

<sup>143</sup> See the Ombudsperson's report A. no. 12/2017, published on 10.02.2017.



*administration institutions in the Republic of Kosovo are obligated to pay equal salary for the work with the same value”, Article 3, paragraph 2). Pursuant to Article 26 of the Law on Civil Service and the Law on Salaries of Civil Servants, it is foreseen that: “The control over the enforcement of this Law and sub-legal acts issued for the implementation of this Law shall be executed by the Ministry responsible for public administration and Ministry responsible for Finance”.*

Therefore, in the present case, the Ministry of Public Administration - the Department of Civil Service Administration failed to monitor the implementation of the salaries policy and manage the payroll and salaries system.

The Ombudsperson ascertains that there is an unequal treatment between civil servants employed in the MEDs in Kosovo, which on one side creates inequality between MEDs employees in Kosovo, and on the other side in the municipality of Pristina, creates differences even among MED civil servants and civil servants in schools, since under the Constitution, all are equal before the law and no one can be discriminated, public authorities must ensure that all employees have fair and equal opportunity, therefore, such actions of public authorities violate equality before the law and are opposite with legal provisions.

Regarding this matter, the Ombudsperson consider as indispensable the fact that the relevant Ministries and Municipalities, in accordance with the relevant legislation, establish a better coordination with the aim to eliminate differences stated above without further delay and that workplaces should be standardized, in order to provide better and more efficient services, to achieve a more efficient budget management and to avoid unequal treatment of civil servants.

During the reporting period, the Ombudsperson has *ex-officio* examined<sup>144</sup> the case concerning discrimination in the public sector regarding the discriminatory criteria in the open position vacancies at the University of Prishtina that were announced in 2016 and 2017. The investigation, in this case, has been completed and publication of reports with recommendations of the Ombudsperson is expected in the forthcoming period.

In 2017, the Ombudsperson reviewed a complaint lodged on behalf of the Trade Union of former Kosovo Police Officers for non-recognition of work experience for former police officers pursuant to the Law on Internal Affairs of 1978.

Former police officers feel discriminated considering that the work experience of education and health care institution employees from 1989-1999 has been recognized under Article 8 of the Law on Pension Schemes Financed by the State, whereas the same has not been recognized to former police officer forcibly dismissed from their work.

After examining the facts of the case in the context of relevant legislation and international human rights standards, the Ombudsperson concluded that in accordance

---

<sup>144</sup> Ex officio no. 853/2016

with the Law of 1978 on Internal Affairs and the Law no. 011-24/83 on Pension and Disability Insurance (Official Gazette of SAPK No. 26/83), former police officers had legitimate expectations of having their work experience recognized so that they could benefit from pension schemes. This right cannot be undone by adopting a new law because it would be in violation of the fundamental human rights guaranteed by the Constitution, the European Convention on Human Rights and the principle of non-retroactivity of the law. Laws are made to act in the future, after their entry into force.

The non-retroactivity of laws is a general principle and exists since the Roman law: *Leges et constitutiones futuris certum est dare formam negotiis, non ad facta praeterit revocari, nisi nominatim etiam de praetorito tempore adhuc pendentibus negotiis cautum sit*. Constitutions and laws define future legal action and cannot be extended to actions that have occurred before, unless expressly stipulated that such an act regulates past periods, and solely in regard to legal actions that have not yet been concluded. The Ombudsperson notices that, the work experience for that period should be calculated in accordance with the provisions of Article 117 of the Law on Internal Affairs 1978 and for each work period of 1 year, namely 12 months, members of the Police should be recognized as having 16 months of work experience. Otherwise, there will be serious breach of the interests of police officers, since they are prevented from exercising their right to a pension, regulated by the 1978 Law on Internal Affairs when they (the police officers) were in employment relationship. Considering the sensitivity of the case, the Ombudsperson states that the competent authorities should find a solution through which they will be able to recognize the beneficiary work experience for the period they have worked or analyse other options such as the amendment of the law, which would specify the categories that could be included in "others" (as in paragraph 6 of Article 8) in the Law on State Pension Funds.

Based on the above, the Ombudsperson concluded that former Kosovo Police officers, forcibly dismissed from work during 1989-90, were treated in a discriminatory manner by state authorities because their legal status has remained unclear and they do not enjoy the right to a pension of beneficiary work experience, previously regulated by the Law on Internal Affairs 1978 and also work experience has not been recognised by the Law 04/L-131 on Pension Schemes financed by the State either. In order to protect them from discrimination in relation to the aforementioned issue, the Ombudsperson has sent appropriate recommendations to the Ministry of Labour and Social Welfare and is waiting for an answer.

Discrimination at work and related to work is one of the most extreme forms of violation of human dignity and restriction of human rights and freedoms, and the state and national institutions are required to consistently fulfil their obligations of protecting the citizens.

#### **7.4 Rights related to HIV/AIDS in Kosovo**

Kosovo's response to HIV/AIDS should be based on the grounds of fundamental human rights for all citizens of Kosovo, including freedom from discrimination on grounds of

race, sex, and gender; the right to health; the right to participate and the right to information. The protection of these human rights is particularly important in the context of HIV/AIDS, which disproportionately affects the marginalized groups of population, such as people living with HIV who often face stigma, discrimination, social exclusion and denial of their rights. In this context, a human rights approach highlights the state's legal obligations to realize the rights of its citizens - including the right to health - and the importance of active empowerment and inclusion of HIV/AIDS infected or affected communities and individuals.

In Kosovo, there is unequal legal protection and human rights violation for people with HIV and vulnerable groups. According to reports from the Global Fund for HIV Prevention Program in Kosovo, non-implementation of the law on protection from discrimination affects the daily lives of those living with HIV and vulnerable groups, creating barriers to access health care services, prevention and treatment of HIV, as well as opportunities for employment and education. According to these reports, persons from vulnerable groups and those living with HIV, despite experiencing abuses of their rights, they don't try to seek protection of their rights through legal ways due to lack of knowledge of their rights, the fear of disclosing their status as HIV positive. Consequently, there is no confirmed data on cases of reporting discrimination or violations of the rights of persons living with HIV and vulnerable groups..

Nevertheless, the HIV/AIDS-related stigma and discrimination is evident in all spheres of life, particularly in access to health services. According to non-governmental organizations working with vulnerable groups and people with HIV, some of the most commonly reported cases relate to: refusal by health officials to provide healthcare to people with HIV because of the fear of infection; public health institutions not having adequate therapies and staff to treat children who live with HIV, and thus obliging them to seek treatment abroad.. These groups face difficulties in access to HIV/AIDS prevention services and other health services; non-inclusion of persons living with HIV in social schemes or other social facilities as well as stigma and discrimination.

## **7.5 Pensions**

With regard to violation of dignity and pensioners' right for retirement, the Ombudsperson in the reporting period for 2016 completed the investigation in the ex officio case<sup>145</sup> and submitted a report with recommendations to the Ministry of Labour and Social Welfare.

The purpose of this report was to draw the attention of the Assembly of the Republic of Kosovo and the Ministry of Labour and Social Welfare (MLSW) to the necessity of protecting the human dignity of pensioners as a result of the reporting procedure every six months, deriving from the Law on Pension Schemes financed by the State (Law No.

---

<sup>145</sup> Report Ex officio with Recommendations no. 382/2016 of 25.11.2017, addressed to the Ministry of Labour and Social Welfare.

04/L-131) and Administrative Instruction (MLSW No. 05/2015). However, the Ombudsman's recommendations have remains unimplemented.

***Inability to meet the 15-year criterion for the implementation of the contribution-paying pension***

There is no positive development of contribution-paying pension for citizens who have failed to meet one of the criteria for recognition of the contribution-paying pension, namely work experience, which is at least 15 years.

The Trade Union Federation of Public Administration in Kosovo (SPAK) has continued to file complaints with the OI on this issue.

The Ombudsperson's opinion is that the issue of this category should be addressed by the Government of Kosovo and this requires dialogue between the parties to reach acceptable solutions in favour of these citizens. This is due to the fact that these citizens were dismissed from work on a discriminatory and unwilling basis and that by not addressing this problem, these citizens continue to be discriminated. However, the Ombudsperson is in the phase of concluding a research and analysis on this issue and is soon expected to publish his views and recommendations to the Government.

***Grudic Case***

The Ombudsperson, on 15 February 2016, published the Opinion addressed the Committee of Ministers of the Council of Europe, through the Association of Pensioners and Work Invalids, for the non-execution of the ECHR Judgment no. 31925/08 (2012) in the case Grudic v. Serbia,. The opinion expresses the concern about the non-fulfilment of obligations by the Republic of Serbia towards Kosovo pensioners, pursuant to the judgment of the ECHR in 2012 for the case Grudic v. Serbia. The judgment of the ECHR in Grudic v. Serbia is a principle judgment which obliged Serbia to equally compensate, pursuant to the abovementioned judgment, the contribution-paying pensions, work invalid pensions and family pensions for citizens of Kosovo, who enjoyed these pensions until 1999, when they were arbitrarily interrupted by Serbia.

During 2017, the Ombudsperson has followed developments in the Committee of Ministers of the Council of Europe. The 2016 annual report of the Council of Ministers, published in March 2017, clearly indicates the delivery of the Opinion as a new development which, according to the Council of Ministers, specifically emphasized the need for re-evaluation of Kosovo citizens' applications for the resumption of pension payments.<sup>146</sup>

In addition, the Ombudsperson of the Republic of Kosovo, through the Ombudsperson of the Republic of Albania, who then through the Ministry of Foreign Affairs, the Mission

---

<sup>146</sup><https://rm.coe.int/prems-021117-gbr-2001-10e-rapport-annuel-2016-web-16x24/168072800b><https://rm.coe.int/prems-021117-gbr-2001-10e-rapport-annuel-2016-web-16x24/168072800b> (see page 249)

of the Republic of Albania in the Council of Europe, had contacted the Department of Execution of Judgments of ECtHR, requesting information regarding the execution of the judgment in the case *Grudic v. Serbia*. The Secretariat's response and stance to these issues, *inter alia*, notifies that the Secretariat has decided to wait for the ECtHR's decision in the *Skenderi v. Serbia* case, whereby was expected that the ECtHR would decide on some other complainants, among them a complainant living in Kosovo, and that this will be used as a reference by the Committee of Ministers, which will oversee the execution of this judgment by Serbia. Consequently, the handling of requests for resumption of pensions by citizens of the Republic of Kosovo will depend on the decision of the ECHR. On 27 July 2017, the ECtHR published the decision for the case of *Skënderi v. Serbia*<sup>147</sup> declaring the claims as inadmissible on the grounds of non-exhaustion of domestic remedies within Serbia, respectively, due to the failure to refer the case to the Constitutional Court of Serbia. Therefore, the ECHR's standing on the main argument of the Ombudsperson's Opinion remains questionable, even after the decision in the *Skënderi* case. The paragraph 79 of this Judgment mentions that the Constitutional Court of Serbia has issued three decisions which stipulate that the Pension Fund of the Republic of Serbia is responsible to provide the necessary documentation for the evaluation of the application and not of the applicant. This is very important because in the Ombudsperson's Opinion it was noted that Serbia has rejected a large number of Kosovo's citizens' applications due to the lack of documentation.

Unfortunately, on December 7, 2017, the Council of Ministers closed the *Grudic* case, because they were satisfied that the Serbian authorities have taken the necessary steps for the execution of this decision. This case was closed based on a Report issued by Serbia itself.<sup>148</sup> This report does not respond directly to the Ombudsperson's Opinion. However, the Report claims that the ECtHR, by rejecting the complaint of the second applicant in the *Skënderi* case, has approved the non-payment of pensions for the citizens of Kosovo.<sup>149</sup> This standing is completely wrong because the ECHR decision in the *Skënderi* case did not affect the substance of this debate.

In the legal aspect, the practice to be followed by the case of *Skënderi* is that the claims of Kosovo citizens must first be examined by the Serbian Pension Fund, then by the Serbian courts, the Constitutional Court of Serbia and in the case of a negative response from the Constitutional Court of Serbia, then cases can be sent to ECtHR.

The Ombudsperson considers that the state authorities of the Republic of Kosovo have failed to support the pensioners of Kosovo, which could have been done by sending opinions and letters, as the Ombudsperson has been acting 2004, which is also mentioned

---

<sup>147</sup>[http://www.zastupnik.gov.rs/uploads/cr/odluke/komentari/odluka-u-predmetu-skenderi-i-4-drugih-protiv-srbije-od-27.-jula-2017.-godine/SKENDERI\\_o\\_15090\\_08\\_eng.pdf](http://www.zastupnik.gov.rs/uploads/cr/odluke/komentari/odluka-u-predmetu-skenderi-i-4-drugih-protiv-srbije-od-27.-jula-2017.-godine/SKENDERI_o_15090_08_eng.pdf)

<sup>148</sup>See [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=090000168076d502](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168076d502) and [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680758af2](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680758af2)

<sup>149</sup> See the Report, par. 17 ("The authorities . . . assume from the Court's case-law developed in *Skenderi* and *Others* that these rejections are in compliance with the Convention requirements and the Court's indications").

in ECHR decision in the case *Grudic v. Serbia*, whereas the Republic of Serbia in the other hand has not stayed idly by all this time. The Kosovo authorities have failed to lobby so that they could at least participate in the capacity of observers in the Committee of Ministers' meetings, given that the Committee of Ministers of the Council of Europe is a political body where decisions are often political, as was the case with the implementation of the decision in the *Grudic v. Serbia* case.

## **7.6 Social housing**

The right to housing is a very important issue for social stability, health and quality social welfare development. In most developed countries, housing is a social right of citizens. The right to housing has broad effects, such as social, cultural, financial, etc. Therefore, social housing projects are very important for the well-being of homeless people.

Legislation in Kosovo is a clear indicator with regard to the obligation of governing institutions for realizing the right to adequate housing. Starting from the Constitution of the Republic of Kosovo, international standards that are applicable in Kosovo, municipalities and MESP are the main institutions for development and implementation of special housing programs.

The government of Kosovo had taken the decision to change the housing policies because it was considered that the applicable law on housing does not provide an adequate solution to the problem. Furthermore, the lack of budget, lack of proper administrative structure has made for limited outcomes in this issue.

Social housing remains a challenge for the local self-government bodies as well as for citizens in need. Social housing requirements continue to be large in number, while opportunities to provide social housing are small. During this reporting period, the OI has received several cases related to this issue.

The municipality of Prishtina in 2017 has given 50 social units to citizens. According to the data, out of 331 families who had applied for social housing, 287 had completed the conditions but with the exception of 50 housing beneficiaries, other families are left without housing.

Progress in this direction is also noted in the Municipality of Graçanica, which is at the end of the implementation of the social housing project of about 16 such apartments.

Given the analysis of the social housing situation presented by the Government itself, the change of social housing policies shall be taken with great seriousness and we shall work towards the realization of this right for the citizens of the Republic of Kosovo.

## **7.7 Minority communities**

Minority communities certainly significantly color the image of one society, no matter how small in number they are, because even the smallest minority community in one society changes the character of that society and conditions certain norms and code of conduct in the society itself. The societies that perceive minority communities as

necessity clearly express their unwillingness to change their character, and that openness and tolerance are not values in such society. Society, in which tolerance is not a value, but weakness, is a society that in differences sees danger and condemns such differences. It is very important that we understand that, when it comes to differences and relations within the society and within the state, the relations that majority builds towards minority influences the society we are building and what kind of state we are getting and creating. It should be understood that differences, or diversity in an ethnic sense, are wealth. Diversity helps us to understand that together, both the majority and minority communities can become the majority that will perceive the value in differences and which will develop a positive attitude towards diversity.

Although, in the last few years a satisfactory legal framework for the protection of the minority rights has been created in Kosovo, it continues to face difficulties such as exercise of certain rights guaranteed to minority communities and inconsistent application of certain laws and bylaws by state institutions or their officials.

The Ombudsperson remains consistent in pointing out the state authorities the serious problems faced by minority communities in the past period in the hope that these problems will be dealt with more expeditiously and with due diligence by the competent institutions of the Republic of Kosovo.

In generally, as in the previous reporting period, positive observations are that can be single out are: improved freedom of movement, improved trust in the Kosovo Police in places of return, access to the court and media, greater activity in promoting the rights of minority communities by the Community Advisory Council, and reduced interethnic incidents.

The executive summary contains the overview of the most common problems, which will be elaborated below, that minority communities point to.

*The Serbian community* expresses its concerns regarding the resolving the issue of displaced persons inside and outside Kosovo. The great problem still remains the property usurpation, destruction and disposal, the regulation of the right to citizenship, the educational infrastructure, and the length of proceedings before the courts, in particular when it comes to cases relating to property usurpation at all court instances, as well as the prosecution's handling of the similar cases.

*The Montenegrin community* continues to express its disapproval and concern over the non-recognition of this community within the Constitution of the Republic of Kosovo, as was stated in the previous reporting period.<sup>150</sup> In addition to this, this community also highlights the problem of the return of displaced persons, the property usurpation and the regulation of personal documentation.

When it comes to *Albanian community in the North of Kosovo*, there are positive

---

<sup>150</sup>OI Annual report for 2016, part 2.3. Minority communities

developments in relation to the previous reporting period. Due to encouraging developments related to integration of the North of the country into Kosovo state system, the inclusion and representation of the Albanian community at the municipal level in the North of Kosovo, as well as their political participation, has been improved. Although there are positive examples, there is still a work that needs to be done on improving access to health system, obtaining information in Albanian language, better access to public services, etc., which are still not at a satisfactory level.

*Members of the Roma, Ashkali and Egyptian communities* are still the most vulnerable and most marginalized communities in Kosovo. Sending children to collect secondary raw materials, to beg or to otherwise contribute the basic livelihood of their families instead of sending them to secondary school is a direct consequence of difficult existential problems. Access to primary and secondary health care is not a problem, as much as the lack of money for the purchase of medicines and adequate treatment, and besides, there is a very low percentage of mandatory vaccination of children among the members of these three communities. Discrimination, civil registration, personal documentation, inadequate housing, a small number of children attending school represent only a series of problems that Roma, Ashkali and Egyptian communities face on a daily basis.

*The Bosniak community* expresses its concerns regarding the inconsistent application of the Law on the use of languages, the poor translation and the quality of textbooks for primary and secondary education, unemployment, and the inability of members of the Bosniak community to, due to lectures in Albanian language, exams and entrance exams also in Albanian language, continue their university education at the state university in Prishtina.

*The Turkish community*, as well as the Bosniak community, highlights the problem of the use of Turkish language and alphabet, poor translation and quality of textbooks in public schools.

*The Gorani community* expresses its concerns regarding the access to educational institutions and infrastructure, recognition of citizenship for persons residing outside of Kosovo, frequent livestock theft, language use, unemployment, inadequate representation in local self-government bodies and the Municipal Assembly of Dragash/Dragaš.

## **7.8 Return and security**

In accordance with its mandate, the Ombudsperson Institution also monitored the return dynamics and the situation regarding the return and security of members of minority communities during this reporting period. The majority of displaced persons and refugees, who left Kosovo in mid-1999 and March 2004, were members of the Kosovo Serb community, Roma, Bosniaks, Montenegrins and other minority communities, including a number of Albanians from the North of Kosovo.



Based on the United Nations High Commissioner for Refugees (UNHCR) data, in the past 17 years and after stabilizing the situation in Kosovo<sup>151</sup> a total of 27,714 persons returned to Kosovo (which is about 12% of the total number of displaced persons in countries in the region registered by the UNHCR), of which 26,478 were members of minority communities. During 2017, 417 persons returned, which is slightly more than in 2016 when 356 persons returned.<sup>152</sup> Upon his visit to Kosovo in early 2017, the High Commissioner for Human Rights of the Council of Europe called for action to close the collective centres as soon as possible and to find a durable solution for the users of these centres; despite this call for action this issue remains unresolved. In fact, only the collective centre in Obiliq/Obilić municipality was closed and the housing issue for the remaining 4 persons from this centre was permanently solved. According to the data of OI collected on site and UNHCR reports, 464 persons<sup>153</sup> are located in collective centres throughout Kosovo (Mitrovica North and South, Leposavic, Zubin Potok, Zvečan/Zvečan, Shtërpcë/Štrpce and Graçanicë/Gračanica). The question why local authorities together with the Ministry of Communities and Returns (MCR) have not yet found durable solutions for these people and closed collective centres in these municipalities is still open. Still the largest number of persons is located in collective centres in the municipality of Shtërpcë/Štrpce (247 persons), who more than 18 years wait for durable solution of their situation. In connection with this, at the end of December 2017 OI received positive information from the MCR, that this Ministry started construction of residential buildings in cooperation with the Danish Refugee Council (DRC) for persons located in collective centres in the municipality of Shtërpcë/Štrpce, and that resettlement is expected in the first half of 2018. The adoption of the Kosovo Government Regulation on the Return and Displaced Persons<sup>154</sup>, which will provide displaced persons access to institutions in order to reduce bureaucracy and facilitate the exercise of their rights, can also be evaluated as positive. The Regulation defines the responsibility of the competent authorities and decisions, procedures and criteria for assisting displaced persons and returnees.

When it comes to the safety of minority communities, the total number of incidents decreases year after year. Most incidents continue to occur in western Kosovo, in place of return in the municipalities of Pejë/Peć, Klinë/Klina, Istog/Istok and Deçan/Deçane. From January to the end of November 2017, there were 61 cases in which the injured parties were returnees and their property. One of the serious ones was certainly an attack with explosive device on returnee house, which on that day received the house keys in the

---

<sup>151</sup>According to UNHCR statistics from December 2017, from 2000 to the end of November 2017, 11,806 Serbs, 7,427 Ashkali and Egyptians, 1,865 Bosniaks, 3 Croats, 1,459 Gorani, 17 Montenegrins, 3,882 Roma and 19 Turks returned.

<sup>152</sup>According to statistics from the UNHCR, from January to the end of November 2017, 142 Serbs, 105 Ashkali / Egyptians, 2 Bosniaks, 1 Gorani, 161 Roma and 6 Turks returned.

<sup>153</sup>Displaced persons in collective centers in Kosovo: Mitrovica North 23, Mitrovica South 13, Leposavic 90, Zubin Potok 39, Zvečan/Zvečan 31, Shtërpcë/Štrpce 247 and Graçanicë/Gračanica 21.

<sup>154</sup>Regulation was approved at the session of the Government of the Republic of Kosovo on January 4, 2018.

village of Dragolec/Dragoljevac, municipality of Istog/Istok.<sup>155</sup> This incident was publicly condemned by the president of Kosovo and the Minister for Communities and Returns. When it comes to the types of incidents, there were hate graffiti, re-usurpation of property, cattle theft, as well as theft in facilities of the Serbian Orthodox Church (SOC).<sup>156</sup>

All incidents affecting members of minority communities, most often against members of the Serbian community, equally affect displaced persons and their decisions to return. It is positive that institutions publicly condemn and respond to incidents, however, the active participation of all parties in further work on the creation of a positive climate for return and lasting reconciliation among communities is still needed. In this regard, the Ombudsperson welcomes the initiative of the President of Kosovo to establish the Truth and Reconciliation Commission. After several months of consultations, on December 13, 2017, the Preparatory Team was established as a technical body that will have the role of preparation for the establishment and operation of this Commission. The Preparatory Team of the Truth and Reconciliation Commission will consist of 9 members - two from the Office of the President of Kosovo, one representative from the Government and the Assembly of Kosovo and 5 members from the civil society. It should be noted that the first Ombudsperson in Kosovo, Mr. Marek Antoni Novicki, was selected as the advisor of the above-mentioned Preparatory Team.

In this report, as well as in every annual report, OI addressed the work and activities of the Ministry for Communities and Return (MCR). The OI notes that the MCR in 2017 assisted the returnees and built 24 houses for returnees and provided assistance to 62 families.<sup>157</sup> Also, assistance to socially disadvantaged families from minority communities was provided, as well as assistance aimed at the reintegration and stabilization of communities throughout Kosovo. Although the MCR has done a lot in 2017, returnees who arbitrarily returned to the village of Lubizhdë/Ljubizhda, the municipality of Istog/istok, are still waiting for the construction and renovation of their houses. The Minister of the MCR has publicly stated on several occasions that the houses will be built by the end of 2017, but by the end of the reporting period this has not yet been done.<sup>158</sup>

With regard to the mandate of the MCR, the Ombudsperson considers that work of MCR in terms of developing an adequate plan and program of sustainability of returns and creating economic independence of returnees from the state aid system after a certain period through their economic empowerment can still be improved. In this regard, the MCR can present and approve the continuation of the project "Return and Reintegration

---

<sup>155</sup>Source MCR, the information was also confirmed by the OSCE at a meeting held between the representatives of the OSCE and the OI in Gračanice/Gračanica on December 19, 2017.

<sup>156</sup>Ibid

<sup>157</sup>Information obtained from the Permanent Secretary of the MCR by e-mail dated 22 December 2017.

<sup>158</sup> At the end of March 2017, 13 displaced Kosovo Serb families returned to the village of Lubizhdë/Ljubizhda, the municipality of Istog/Istok, on their own initiative. Until their houses are built, they are all settled in one building.

of Displaced Persons". The OI also welcomes the acceptance of the Ombudsperson's recommendation, from the last year's report, on the adoption of the Law on Displaced Persons and Refugees that should be adopted by the end of 2018.

The topic to be given special attention is the Inter-institutional initiative for Displaced Persons from Kosovo, known as the "Skopje process".<sup>159</sup> Taking into account that a better inter-institutional cooperation between all countries in the region where displaced persons from Kosovo reside the MCR has established working groups for the implementation of plans or planned measures, which specifically relate to: property rights, personal documents, security, dialogue and integration.<sup>160</sup> However, the information related to the final documents of the "Skopje Process" is still missing on the official website of the MCR, and apart from the news item there is no more information. Also, there are no concrete conclusions on this initiative, which should be corrected in the forthcoming period in order of better information sharing with displaced persons and public in Kosovo, and also in order to improve and make this process more transparent.

With regard to Roma, Ashkali and Egyptian communities, the OI has not received any individual or collective complaint from these communities with regard to security (complaints from neighbourhoods inhabited by Roma, Ashkali and Egyptian community). The OI has maintained regular contacts with Kosovo Police officers and considers that Kosovo Police's commitment in this regard should be present in the future as well. Citizenship and civil registration

Legal recognition of each person is a basic human right. Registration of citizens is a process in which a person is identified and recognized as an integral part of the society in which he / she lives. Unregistered persons cannot obtain official documents and that prevents them from exercising their rights. Members of minority communities in Kosovo are still perceived as having difficulties in registering, and therefore, in most cases, there are no personal documents, and particular problem is the illegal practice of issuing personal documents through paying property taxes, which is applied in most municipalities.

The IO reported in its previous annual report on complaints received by minority communities regarding the issue of their civil status and the obtaining of personal documents. In this reporting period, the OI received a large number of complaints related to the issue of citizenship and civil registration, and the largest number of complaints was

---

<sup>159</sup>During 2014, the OSCE Mission in Kosovo and UNHCR launched a regional process dedicated to finding durable solutions for displaced persons from Kosovo. The initiative includes: the right to return to the place of origin, as well as the right to integration in the place of displacement. The aim of the process is to meet regularly the relevant institutions of Kosovo, Serbia, Macedonia and Montenegro in order to find and implement solutions for displaced persons from Kosovo. During 2015 and 2016, an action framework has been agreed where priority measures and areas are defined: property rights, personal documents, security, dialogue and reintegration and planned solutions.

<sup>160</sup>Formation of working groups and their operability, as well as greater activities within the "Skopje process" by the institutions in Kosovo was confirmed at the meeting of the OI with the OSCE held in Graçanicë/Gračanica on 19.12.2017.

received in Prishtina, the regional office of the OI in the northern part of Mitrovicë/Mitrovica and in the regional office in Graçanicë/Gračanica.<sup>161</sup> The citizenship of the Republic of Kosovo is regulated by the Law on Citizenship,<sup>162</sup> as well as the Administrative Instruction of the MIA of Kosovo on the criteria representing evidence of citizenship of the former SFRY on 01.01.1998, AI no. 05/2014, which was in force until mid-July 2017 when a new AI No.07 / 2017<sup>163</sup> of MIA were adopted. The aim of the new Administrative Instruction of the MI is to facilitate the civil registration and registration of citizens in the registry books of certain categories of persons, which include primarily displaced persons, citizens in the North of Kosovo and the Roma, Ashkali and Egyptian communities. However, due to the inconsistency in the application and individual interpretation of the AI by some civil status offices and registration procedures, this AI only caused more complicated situation.

From the complaints that the OI registered as admissible, most complaints relate to work of civil status and registration offices in Mitrovicë/Mitrovica South, Prizren, Ferizaj/Uroševac, Zubin Potok (in the village of Çabër/Cabra), Gjilan/Gnjilane and Pejë/Peć. All persons who on January 1, 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in the Republic of Kosovo shall be citizens of the Republic of Kosovo. All of these citizens under the Law on Citizenship of Kosovo and AI No.05 / 2017 of the MIA of Kosovo do not have to register birth or apply for citizenship as foreigners, but only to submit a request to the civil status office at the place of birth. Also, the same procedure applies to all citizens who were not born in Kosovo, but had a place of residence in Kosovo 5 years before the specified date and who can prove that residence. This is clearly stated in the Law on Citizenship and AI 05/2017. However, civil servants in the civil status and registration offices in the aforementioned municipalities asked the appellants to submit together with the request all the documentation referred to in both the Law and the AI, although the Law stipulates that only one document should be submitted as a proof of birth in Kosovo, and also one proof

---

<sup>161</sup> The number of cases registered in connection with the recognition of citizenship and entry into the register of citizens of R.Kosovo before the OI is 25, and the number of citizens covered by these cases is 65 persons, of which there is one group complaint involving 39 members of the Roma, Ashkali and Egyptian communities.

<sup>162</sup> Law on Citizenship R.Kosovo no.04/L-215 (Article 32, paragraphs 1,3 and 4).

<sup>163</sup> AI No.05 / 2017 on the criteria representing evidence of citizenship of the former SFRY on 01.01.1998, in particular Articles 3, 4, 5 and 6, as well as annex AU containing the list of documents and instructions. In addition to the conditions for granting citizenship to persons who stayed in Kosovo until January 1, 1998 which were already prescribed by the previous AI 05/2014, the new AI facilitated the recognition of citizenship and the procedure itself, because now the civil status and registration offices are authorized to decide on registration in registry book of citizenship on the site to citizens who submit to them and fulfill the prescribed conditions. Also, one of the positive news is that registration in the registry book of citizenship is enabled also on the basis of a notarized statement by two witnesses, which will greatly facilitate the enrollment of particularly displaced persons and refugees as well as members of the Roma, Ashkali and Egyptian communities, because a large number of them previously did not regulate its civil status, nor the status of its children, which makes a large number of members of these communities in the category of legally invisible persons

of residence or, if necessary, two documents proving residence in the period of 5 years before January 1, 1998.

In addition, when new AI entered into force and when competences regarding the consideration of the requests of persons who lived in Kosovo prior to 1999,<sup>164</sup> were delegated to these offices, officers of the Civil Status and Registration Office, refused to accept the complainants applications for recognition of citizenship and instructed them to submit applications to MIA, the Department on Citizenship, Asylum and Migration in Prishtina under the regular procedure for foreigners.<sup>165</sup> Also, a large number of complaints relate to the refusal of officers to provide written response with which they reject the application, or the refusal of receipt of the documentation with the reasoning that they are not obliged to provide reasoning in writing<sup>166</sup> which is in contradiction with the Law on Administrative Procedure<sup>167</sup> and with the AI 05/2017.

Specific situation and problem occurs during the registration of citizens in the civil status registry in four northern municipalities (North Mitrovicë/Mitrovica, Zubin Potok, Zvečan/Zvečan and Leposaviq/Leposavić)<sup>168</sup> from which OI received a number of complaints related to this issue.

It is a disturbing fact that, despite the great interest of citizens from northern Kosovo for obtaining personal documents of the Republic of Kosovo, the number of citizens who possess the same is still very small. According to the information collected on-site by the OI the reason for this situation is lack of information and complexity of the procedure made by competent officials, although the mentioned procedures and the entire process were simplified by the mentioned AI No.05/2017. According to OI findings, it is concluded that the confusion and complication of the whole situation arises from the misinterpretation of the new AI, as well as the Annex-table to AI which contains documents that can be taken into account when proving a residence in Kosovo before 01.01.1998. In addition to all of the above, citizens reported to the OI that during registering children in the municipality in South Mitrovicë/Mitrovica, some officials do not recognize the maternity hospital discharge note in North Mitrovica because this hospital operates in accordance with the system of the Republic of Serbia. Such problems have not been recorded in regions with majority of Serbian community members, such as Gjilan/Gnjilane, Graçanicë/Gračanica, Shtërpçë/Štrpce, where hospitals and maternity hospitals operate in accordance with the system of the Republic of Serbia, and children

---

<sup>164</sup>ibid

<sup>165</sup>This case was registered by OI in 2016. Ž.no.683/2016 M.P. and M.P. against the Civil Status and Registration Office in the Municipality of Ferizaj/ Uroševac, the case has not yet been resolved.

<sup>166</sup>AI no.05/2017 on criteria containing evidence of citizenship of the former SFRY on 01.01.1998. in particular Article 9, paragraphs 1, 2 and 3

<sup>167</sup>Law on Administrative Procedure no.2005/02-L28

<sup>168</sup>Namely, all citizens of four northern municipalities who were born before May 2012 can apply for extracts from the civil status register in the municipality of South Mitrovicë/Mitrovica for North Mitrovicë/Mitrovica, the village of Çabër/Cabra for the municipality of Zubin Potok, in the village of Lipë/Lipa for the municipality of Zvečan/Zvečan and the village of Bisticë/Bistrica for Leposaviq/Leposavić municipality.

are registered, without any difficulties, with the discharge notes of these maternity hospitals

Legal regulation and the improvement of the same with new AI on regulation of the civil status of minority communities members and displaced persons, from the aspect of facilitating the access to personal documentation, was evaluated as positive and affirmative by the Ombudsman. However, omissions of certain competent offices and different interpretations of the law and by-laws related to this area by the officials of presents a concern. In this regard, the Ombudsman considers that it is necessary for the Civil Registration Agency (CRA), together with the MIA, to additionally educate officers of the Civil Status and Registration Office in all municipalities, especially in Ferizaj/Uroševac, Prizren, Mitrovicë/Mitrovica South, Gjilan/Gnjilane, the village Çabër/Cabra and Pejë/Peć, in order to consistently apply legal regulation related to the issue of citizenship and the issuance of personal documents to persons who have not yet regulated their civil status within the system of the Republic of Kosovo.

With regard to the Roma, Ashkali and Egyptian communities, during the reporting year was noted some progress regarding civil registration in some municipalities of Kosovo. The ombudsperson has received a number of complaints regarding civil registration of such communities in the municipality of Gracanica and Obiliq. The OI has informed the claimants of the legal procedures required for civil registration and has contacted the municipality and some NGOs that are active in the field of supporting the civil registration of communities.

### **Property rights**

The illegal private property usurpation is still a concern and requires a resolute response by the authorities that should guarantee full protection of property rights as the fundamental human right of all communities in Kosovo.

It is still necessary that the Kosovo Police, the Prosecution and the competent courts enforce the Criminal Code of Kosovo (CCK) consistently and without exception, to improve their cooperation in the enforcement of court decisions on the ejection of the usurper, also the Prosecution must qualify and file appropriate charges against the usurper and to impose appropriate punishments against the perpetrators and to request the owners to be compensated by the usurpers for all the time during which their property was not at their disposal. In addition, it is necessary that competent judicial authorities, who act both in criminal cases and in contested procedure related to property usurpation, initiate and complete the proceedings of such cases in a timely manner. Timely processing of cases by judicial authorities has to become a priority and a positive practice, since so far pending time (initiation of first instance court proceedings) for most

of the cases involving property usurpation lasted for three years, while owners wait 6 to 10 years<sup>169</sup> for final decision to be issued and usurpers to be evicted.

A particularly worrying practice in criminal cases related to immovable property usurpation and re-usurpation is that the detention for usurper was never imposed, and most severe punishment was a fine in amount of 600 EUR.<sup>170</sup> The prosecution rarely requests the court to eject the usurper, therefore the court through the judgment instructs the indemnified party (the owner of the immovable property) to contested procedure if it wants to protect and exercise its right to free disposal and possession of the property. In this way, nothing is solved, but the solution to the problem is prolonged for several more years, because the usurper, despite the conviction, continues to use the immovable property. Police rarely react upon criminal convictions if the conviction does not explicitly state that the ejectment of the usurper is required, even though the owner has a judgment in his favor, as well as all documentation proving the ownership right. On this occasion, the Ombudsman emphasizes that the owner of the immovable property cannot exercise his right to immovable property only based on judgment, this exercise would only be possible when the owner can freely dispose of his property and when the property restitution becomes reality, without fear that the same situation will be repeated because the Constitution, Laws, Judicial Bodies and the Police as guarantee Rule of Law and Free disposal of Private Property.

In the previous annual report, the issue of property tax collection for a person whose property have been usurped or has been usurped by third parties, and returned to owner. Initiative of the OSCE Mission in Kosovo and their support in resolving this issue has resulted in approving the draft Law on Amendments to the Law on Immovable Property Tax, which regulates this issue, by the Government of Kosovo on May 4, 2017, but unfortunately the entire process is not rounded up by adopting of this Law by the Assembly of the Republic of Kosovo. Amending the Law on Immovable Property Tax did not enter into the procedure of adopting in the Assembly until the publication of this report, and it is unclear when it will be included on the agenda.<sup>171</sup>

## **7.9 Education of communities**

Regarding the education of minority communities, polarization is still present in form of two educational systems, a system functioning according to the curriculum of the Ministry of Education, Science and Technology of the Republic of Kosovo (MEST) and the one functioning according to the educational curriculum of the Ministry of Education,

---

<sup>169</sup>These assessments were made on the basis of cases registered in the OI, which relate to the length of proceedings of the Basic Courts and the Appellate Court in cases related to the usurpation of property both in criminal cases and in litigation, as well as in the inadequate response of the police to re-usurpation property. Examples of these are some cases in OI such as: C. no.262 / 14, C. no.81 / 15, C. no.450 / 15, C. no.684 / 16, C. no.609 / 17, C. no.357 / 17, C. no.357 / 17, C. no.93 / 17, and many others (the total number of cases that are being conducted before the OI is 50)

<sup>170</sup>Criminal Code of the R.Kosovo no.04/L-082, Article 332

<sup>171</sup>The OI received this information at the meeting with the OSCE held in Regional Office on Graçanicë/Gračanica 19.12.2017.

Science and technological development of the Republic of Serbia. Therefore, the situation in the field of education did not change in relation to the previous OI annual report.<sup>172</sup> State schools and universities do not envisage teaching in minority languages, except in some regions where the number of Bosniak and Turkish communities is represented, only high schools in Prizren and Pejë/Peć.

Although MEST in 2016 issued Administrative Instruction 09/2016 on application of affirmative measures and reserved number of places for enrolment of students from minority communities in public higher education institutions, it is only partially applied. Members of minority communities who are studying at the state University in Pristina, made special remarks on non-existence of tests for exams for enrolment in faculties in minority languages, although this is provided by the aforementioned Administrative Instruction 09/2016.<sup>173</sup> In addition, public announcements on accommodation in student dormitories did not initially include information that 12% of student accommodation is reserved for students of minority communities. Regarding the issue of education, a positive assessment refers to the award of accreditation for University to hold teachings in Bosnian and Turkish language in Prizren, which until then was a problem because conditions for award of accreditation for Universities / Faculties where teaching is only in Albanian and Universities / Faculties where teaching is in one of the minority language were equalized, which did not reflect the reality, since according to the percentage of enrolled students from minority communities, there are more regions where study in minority languages could be allowed, in this particular case in Bosnian and Turkish.<sup>174</sup> The Ombudsman will also address a problem that exists for years, which refers to the poor quality of textbooks in Bosnian and Turkish languages. The textbooks are poorly translated and there is no adequate proofreading in these two languages, and a large number of textbooks lacks for higher classes (from 9th grade onwards), so teachers are forced to order from Bosnia and Herzegovina or use textbooks for certain subjects they were used 20 years ago or even more.<sup>175</sup> Members of the Turkish community continue to point the lack of textbooks. Textbooks in Turkish language for lower grades are still poor and from pedagogical aspect inadequate. There is a shortage of textbooks for higher secondary education and they are obtained from Turkey, when necessary.

Members of the Gorani community, who mostly inhabit the municipality of Dragash/Dragaš, continue to express their concern that children from this community attend school in very poor and inadequate conditions. A number of children from the Gorani community attend a Bosnian-language school according to the curriculum of the MEST, while the other part attends school in Serbian language according to the curriculum of the Republic of Serbia. In a larger number of Dragash/Dragaš municipality,

---

<sup>172</sup>Annual report OI for 2016, part 2.3. Minority communities, 2.5 Education, page 69.

<sup>173</sup> AI 09/2016 on Application of affirmative measures and protected number of places for enrollment of students from minority communities in public higher education institutions, Article 3, Paragraphs 2 and 3.

<sup>174</sup>The information was obtained at a meeting between the OI and the OSCE in Prishtina 21.12.2017.

<sup>175</sup>Information collected by IO during on site visits and visits to Bosnian-language schools in the municipality of Prizren (school "Meto Bajraktari" in the village of Rečane, November 29, 2017



classes are held in the same school facilities in both curriculums, in two shifts only, depending on which system they operate. Only occasionally there is a problem due to noncompliance of school calendars, but such problems are solved by cooperation between school directors. The problem with the use of the building remains only in Krushevë/Kruševo village, as OI reported in the previous reporting period,<sup>176</sup> in which the school director still does not allow the children who learn in Serbian language to attend classes and use the school building. In Rapqë/Rapča village there are two primary school buildings, one was renovated by the Dragash/Dragaš municipality, in which children learn in Bosnian language, and another one is in a very bad condition (the roof leaks and has not been used for a long time) in which children attend classes in Serbian language. On this occasion, the Ombudsman appeals the Dragash/Dragaš municipality, the Education Directorate, as well as representatives of the Gorani community, to show good will for these two problems and find an adequate solution for the students.

The OI, during this reporting period, also monitored the verification process of diplomas obtained at the University of North Mitrovica/Mitrovicë/Severna Mitrovica, which functions according to the education system of the Republic of Serbia<sup>177</sup> which was successfully continued in 2017. The issue that is not regulated by this process, for which an adequate solution should be found, is the issue of verification of diplomas of high-profile schools of applied studies that were also acquired at the University of North Mitrovica. Also, there is an obstacle to the verification of diplomas obtained in 1999 and 2000 at this University, since the agreement regulating the issue of verification did not cover the stated period, which puts in disadvantage all those who obtained diplomas during that period.

### **7.10 Rom, Ashkali and Egyptian Community**

During the year, the Ombudsperson Institution continued paying special attention to the situation of the Roma, Ashkali and Egyptian Communities, whereby during 2017 information were collected on the topics mentioned below.

During this year, the OI continued cooperation with representatives of active Roma, Ashkali and Egyptian NGOs, such as: “Voice of Roma, Ashkali and Egyptians” (VoRAE), Roma and Ashkali Documentation Centre, “Përparimi i Komuniteteve - Avancimi i Komuniteteve”, Roma Organizations Network – Organizations network uniting Roma, Ashkali and Egyptians in Kosovo, etc. During the reporting period, OI, with the support of NGO VoRAE and NGO “Përparimi Rinor i Ashkalive të Mitrovicës (PRAM)”, held meetings with citizens belonging to Roma, Ashkali and Egyptian communities in the Municipalities of Graçanica, Obiliq, Mitrovica and Podujeva in relation to the human rights and freedoms and filing the complaints to OI, as well as Law

---

<sup>176</sup>Annual report OI for 2016, part 2.3. Minority communities, 2.5 Education, page 69.

<sup>177</sup>During 2015, the Office for Community Issues at the Office Prime Minister in Kosovo raised the issue of verifying diplomas obtained at the University of North Mitrovica which successfully implement a link for 2 years for those who have obtained diplomas since 2001.

on Protection from Discrimination.

During the meetings with the members of the aforementioned communities in the respective municipalities, we have identified specific problems and challenges faced by these citizens, which are related to the termination of social assistance, lack of adequate cooperation with representatives of Municipal Offices for Communities and Returns (MOCRs) in several municipalities, including the municipality of Graçanica and Podujeva, civil registration issues in several municipalities, very high unemployment rate in civil service and judiciary institutions, disconnections from the electricity grid, duration of proceedings before courts in relation to cases of ownership disputes, usurpation of property and prevention of possession, environmental pollution in the village of Plementin, Municipality of Obiliq (close to the buildings dedicated for social housing), begging in streets of children belonging to aforementioned communities, inadequate healthcare (non-vaccination of children, frequent infectious diseases, etc.), but the phenomenon of school drop-outs, especially female children is very frequent.

The OI has acted in compliance with complaints related to the most of issues which Roma, Ashkali and Egyptian communities face. A large number of complaints filed in OI have been submitted through civil society representatives, including NGOs, activists and representatives of these communities in Kosovo. Based on this cooperation, on 15 March 2017, the Ombudsperson signed an agreement for cooperation with NGO “Advancing Together”, which is referred to the cooperation when implementing projects aimed at informing and promoting the rights of minority communities.

The establishment of a policy regarding the return process, including the Roma community, is one of the issues entrusted to MCR. In addition, only a very small number<sup>178</sup> of returned persons – mainly returned from Serbia and Montenegro- received humanitarian packages. Also, the cooperation of MCR with representatives of Roma, Ashkali and Egyptian communities is inadequate and not sufficient and as a result, returnees who are members of these communities, due to the insufficient support upon return, and not having received what the state, namely MCR, had to provide them as returnees, they were forced to go back to Serbia or Montenegro. The help these families receive are mainly food packages, which fulfil their needs only for a certain time period.

Similar to other minority communities, the members of these three communities face the problem of usurpation and intrusion in their properties. Judicial bodies in Kosovo have not solved yet a large number of indictments filed by the members of Roma, Ashkali and Egyptian communities; however, due to the large number of cases before courts, it is impossible to process cases within the reasonable time. Most of the concerned occupied properties are located in the largest cities of Kosovo, and it is very difficult to free such properties from usurpers, even after final court decisions. It should be mentioned also that

---

<sup>178</sup>OI obtained the abovementioned information in the field and from NGOs "Përparimi i Komuniteteve" from Suhareka, "Përparimi Rinor i Ashkalive" from South Mitrovica and "Rrezet e Arta te Ashkalinjëve" from Fushe Kosova.

OI follows and monitors several specific cases of such nature during the court procedures in Kosovo and closely cooperates with the Free Legal Aid Agency, as well as with NGO "Clard", which provides free legal aid for complainants in cases of usurpation of private property.

During the previous years, the members of Roma, Ashkali and Egyptian communities have marked important progress in obtaining personal documents, but in 2017 that process stagnated since these people faced the same or similar problems as the displaced persons upon filing requests. With regard to the above, must be mentioned that the stagnation mainly occurred due to the lack of birth evidence, lack of any documentation or as a result of traditional marriages which cannot be proved upon registration in the register of Kosovo citizens. In the previous period, the OI received numerous complaints from citizens of this minority communities regarding the inability to register into Kosovo's birth and citizens register, partly due to the inability of providing any evidence for regulation of personal civil status, and partly due to the lack of funds to pay the tariffs required for regulating the civil status, or for obtaining personal documents.<sup>179</sup> The Ombudsperson considers it is urgently needed to act in relation to the issue of legal invisibility, so that these communities are provided with opportunities to equally, and without exclusion, realize their citizen rights. Also, the Ombudsperson believes that it is necessary to continue with the positive practice of exempting Roma, Ashkali and Egyptian communities from the payment of tariffs for registration in the cases of delayed registration as it was so far.

With regards to education of Roma, Ashkali and Egyptian communities, MEST activities related to the improvement of education for members of these communities have continued during 2017 as well. MEST has, in cooperation with local and international NGO, awarded 500 scholarships for high-school pupils in order to encourage them in continuing their education. In this case, the adoption of the Administrative Instruction (MEST) No. 12/2017 on Establishment and Functioning of Learning Centres, upon the initiative by the NGO, which the OI also joined, should be dully mentioned. The abovementioned Administrative Instruction (AI) establishes the criteria and procedures for establishment of education centres, which provide additional education support, as well as other education activities for pupils belonging to these communities. Considering that the implementation of this AI is being delayed, OI has requests MEST to carry out licensing procedures within reasonable time-limits, and municipalities to foresee the funding of planned centres within their budgets.

The OI has obtained information<sup>180</sup> from several municipalities on the drop-out from compulsory education by children belonging to these communities, particularly female children. In the Municipality of Fushe Kosovë, the OI has actively participated in the

---

<sup>179</sup> With regards to this problem, the OI registered a group complaint whereby including 39 persons from Graçanica, members of Roma and Ashkali community.

<sup>180</sup> Municipality of Peja and Fushe Kosova.

intermediation between parents and representatives of primary schools for the return of female children to regular education. In the next period, the OI will engage in monitoring the situation and work to prevent it. In compliance with this, the Ombudsperson considers that it is a great responsibility of MEST to focus more its attention on the implementation of AI in relation to the establishment of teams to prevent the drop out of compulsory education and not as it was so far where no importance was paid to them and therefore they were non-functional.

When it comes to the extracurricular activities in relation to the learning of Roma language and culture, such activities are still being implemented in the Municipality of Prizren, whereas this is not the case in other municipalities due to the lack of financial resources. In Obiliq it has been planned to include the Roma languages in educational activities and the curriculum of the primary school attended by Roma children; unfortunately, this has not been realized. Other schools in Kosovo lack foreseen financial sources that would be used to pay the personal income for teachers of Roma language; therefore, this subject has not been included in the curriculum belonging to Roma community.

The most frequent complaints filed before the OI by the members of Roma, Ashkali and Egyptian communities are related to the issue of social benefits. The strict criteria established by the applicable law in relation to the social scheme are still a major problem for the beneficiaries of social assistance. Pursuant to the abovementioned law, the financial social assistance is granted to children meeting certain criteria and up to 5 years old, but when a child reaches the age of 6, the assistance is automatically terminated. This situation than reflects and results with the possible family expansion by social assistance beneficiaries, which affects negatively in family planning, and the country's social order, which due to this rule becomes meaningless.

Additionally, a great problem for these communities is the high unemployment rate, as well as inconsequent implementation of the Law on Civil Service, specifically the part related to representation of minority communities in state institutions, whereby it is stated, *inter alia*, that at least 10% of minority communities should be represented in the civil service at central level. The OI has repeatedly pointed out in its reports that the Government of the Republic of Kosovo, including the Ministry of Public Administration (MPA), should develop policies that would ensure the full implementation of the abovementioned legal obligation. Based on MPA's data, the representation percentage of Roma, Ashkali and Egyptian communities in civil service at central and local level is extremely low compared to other minority communities, which have a larger representation percentage.

During 2017, the OI received complaints related to the difficult living conditions and accommodation of Roma, Ashkali and Egyptian communities in several

municipalities,<sup>181</sup> such as Gračanica, Istog and Podujeva. With regards to the housing in general, there is a significant deterioration of housing situation, as well as an increase in the number of complaints before the OI in relation to this problem. Also, the OI initiated two cases ex-officio in relation to inadequate housing. In the end of 2016, the OI opened a case in relation to inadequate living and housing conditions for the Roma family with 14 members living in difficult conditions in Gračanica. Following the intervention by the OI, the Municipality of Gračanica helped this family by providing them with basic food and hygienic packages, but the municipality stated that due to the lack of budgetary funds they could not provide housing for this family. The situation is the same with the Ashkali families in Podujeva, where the Municipality of Podujeva also stated that it cannot provide shelter for this family due to the lack of budgetary funds allocated to this purpose.

One of the most serious cases of inadequate housing is related to several families – serious social cases – among the Egyptian and Albanian communities, which live in the building of former prison in Gjurakoc, Municipality of Istog. The OI has repeatedly sent letters with recommendations to the Municipality of Istog in relation to the difficult situation of these families, but the Ombudsperson has received no response from this municipality so far.

The OSCE Mission in Kosovo, in cooperation with the Office of Good Governance, Human Rights, Equal Opportunities and Non-Discrimination of the Government of Republic of Kosovo, on 15<sup>th</sup> of November 2016, has presented the final draft of a comprehensive strategy for integration of Roma, Ashkali and Egyptians 2017 -2021. This strategy includes four main fields: education, employment, health, social issues and housing, aiming to improve the social-economic condition of these communities. Based on information which the OI has obtained from the representatives of the Office of Good Governance, which operates within the Office of Prime Minister in Kosovo, the evaluation of implementation of the Strategy for 2017 is being prepared and they are currently working on this matter. A concern in relation to the Strategy is the initiative of several representatives of Egyptian community to exclude this community from the Strategy as they were not satisfied with the implementation of previous Strategy for integration of Roma, Ashkali and Egyptians, in particular with the aspect of social-economic situation and failure to solve the housing situation, which has been mentioned in the previous OI annual report.<sup>182</sup>

In this regard, the Ombudsperson reiterates its concern regarding the exclusion of the Egyptian community from the Strategy, because such a decision will bring this community to an enviable situation compared to Roma and Ashkali, and will further aggravate their already difficult position in the society. The Ombudsperson has

---

<sup>181</sup> OI registered 5 serious cases which need shelter in the Municipality of Gračanica, Podujeva, Klina and Istog.

<sup>182</sup> See OI Annual Report for 2016, Strategy for Integration of Roma, Ashkali and Egyptian Communities. Page 71 and 72

repeatedly requested the integration of all strategies related to human rights in Kosovo into a single document that would contain specific information, purposes, real time limits, budget predictions, etc., but no such document has been drafted so far. On the contrary, instead of a comprehensive document, there are 13 different strategies related to the human rights, which are not useful, but rather are complicated and have an adverse impact on the achievement of objectives they were drafted to accomplish.

### **Repatriation process of Roma, Ashkali and Egyptian community**

Based on information available to the OI, the issue of repatriation in general, and in particular when it comes to the Roma, Ashkali and Egyptian communities in Kosovo, continues, as in previous years, to be an issue that causes concerns. Due to poor socio-economic conditions, a large number of citizens from these communities decide to migrate to European Union countries. Despite all the efforts of the competent institutions in Kosovo in favor of repatriated persons, these people continue to face many challenges and problems. Programs or projects that relate to repatriated persons do not have sustainability and last for a very short time, so the question arises as to how to integrate such persons within the society. A positive step in improving the institutional approach of repatriated persons has been made in the decentralization process of repatriation from central to local level, however, if it is referred to the help of an emergency nature required by repatriated persons, there are delays. Another problem repatriated persons are facing with is the usurpation of private immovable property by third parties, and when cases in connection with this issue are brought before the competent judicial authorities, the court proceedings last too long and the judgments are not rendered within a reasonable time.

Currently, in Kosovo is in force Regulation No.13/2017 on Reintegration of Repatriated Persons (for persons repatriated from EU countries), which defines institutional responsibilities, criteria and procedures for reintegration programs. The said Regulation provides shorter deadlines for submitting applications by repatriated persons for benefiting of emergency schemes of Emergency Program and Sustainable Integration System in relation to Regulation No. 04/2016 that was previously in place. By the Regulation No. 13/2017, deadlines for submitting applications for obtaining benefits from a sustainable reintegration scheme have been drastically reduced<sup>183</sup> while other criteria remain the same. Other benefits for repatriated persons include temporary housing for up to 7 days, lease of housing 6 + 6 months, after which the municipality, under the Law on Local Self-Government and the Law on Financing Special Programs, is obliged to provide a sustainable housing to the repatriated person, however, this latter is rarely implemented in practice. The following benefit is social assistance provided to persons for a period of three months (according to the previous Regulation that period lasted 6 +6

---

<sup>183</sup> Regulation No. 13/2017 on Reintegration of Repatriated Persons and the Management of Reintegration Programs, Article 4, which provides that the deadline for submitting a request is 3 months, while by the previous Regulation No. 04/2016 that deadline was 6 months.

months), while the persons concerned do not enter in the social scheme system in accordance with the law in force. Other benefits provided for these persons are: a winter assistance package, a one-time financial assistance in the amount of 200 EUR, then providing medical assistance in terms of preventive checks, furnishing residential space with basic furniture, subsidies related to employment, which should be provided by the Ministry of Labour and Social Welfare through public calls, professional training, assistance in obtaining documents and civil registration, etc..

However, based on the allegations of the complainant and the situation on the ground, the OI estimates that the majority of repatriated persons are not the beneficiaries of those benefits and generally receive only a certain portion of these benefits

### **7.11 The use of languages**

The rights to use languages in Kosovo are protected by the Constitution<sup>184</sup> aiming this way to protect and preserve the identity of minority communities, which is further regulated by a series of laws and regulations which stipulate that the right of these communities' members to exercise any of their recognised rights cannot be denied because they have not been given the possibility to address public institutions and bodies in Kosovo and receive responses, in their own language.

On year by year basis, the Ombudsperson Institution in Kosovo monitors the situation in the exercise of language rights of all communities in Kosovo and regularly reports on this issue within its annual reports. During the monitoring of the official use of languages in the Republic of Kosovo, and adhering of the legislative framework in the field of use of languages, it is evident that the exercise of the right for equal official use of Albanian and Serbian language,<sup>185</sup> as well as the use of other official languages of non-majority communities at the local level, cannot be considered satisfactory. By monitoring the realization of language right and analysing data and practices collected at central and local level<sup>186</sup> during the reporting period, the Ombudsperson concludes that, despite minor changes, the situation in relation to the use of official languages has not changed compared to previous reporting periods.<sup>187</sup> Most of problems are still existent.

---

<sup>184</sup> Constitution of Republic of Kosovo, Articles 5, 57, 58 and 59.

<sup>185</sup> Article 5, paragraph 1 of Constitution of the Republic of Kosovo

1. "Official Language in the Republic of Kosovo are Albanian Language and Serbian Language."

Article 2 of the Law on the Use of Languages

2.1". Albanian and Serbian and their alphabets are official languages of Kosovo and have equal status in Kosovo institution ."

<sup>186</sup> Data collected during the meeting in 2017 with Language Commissioner, OSCE Mission in Kosovo, NGO ECMI Kosovo, CSD, during the monitoring of reports and their research in relation to the implementation of language rights in Kosovo; during the meetings of OI representatives with citizens, based on the individual complaints filed in OI in relation to the violation of language rights, when reading the law and bylaws and other documents of state bodies; through media, etc.

<sup>187</sup> See Ombudsperson Annual Reports for 2012, 2013, 2014, 2015 and 2016, in the section "The use of languages".

Therefore, the Ombudsperson reiterates several of the key problems, such as: public authorities do not urge the implementation of the right in the official use of the language at local and central level; the problems of the issue of languages in the process of drafting legislation make difficult the inclusion of communities in the legislative process in two governance levels, lack of officials with the public authorities those who know well official languages and may establish proper communication with parties; the problem at two levels of governance is the insufficient number of translators, their qualifications, their insufficient development and certification, which results in low level of the quality of texts translated and inconsistencies between the different linguistic versions; violation of the right on the equal use of Serbian language in the administrative procedure initiated before competent authorities at central and local level; failure to respect official languages in the official websites of specific institutions on both levels of governance.

The focus is still on key problems related to the process and quality of translations of laws in official languages, which the Ombudsperson has repeatedly reiterated in its annual reports for many years. No language review of law texts in Serbian language has taken place during this reporting period.<sup>188</sup> The Ombudsperson considers the situation in the northern municipalities of Kosovo to be concerning, with the exception of North Mitrovica municipality where the situation has small positive movements, whereas in the municipalities populated by the Serb majority community, Kosovo Albanians still have problems in exercising their language rights.

The Ombudsperson does not deny the Government's good will to ensure that adherence of language rights, in accordance with the legislative framework, is fully regulated and adequately implemented without discrimination based on language, however its necessary for the Government to act without any further delays and with full dedication in that regard. We are witnessing a situation in which problems are being repeated and accumulated.<sup>189</sup> The process of realization of official languages equality at the central level, as well as official languages and languages in official use at the local level,<sup>190</sup> is moving slowly. The Ombudsperson reiterates that the multi-language concept in the legislation of Kosovo is extremely demanding and ambitious and is concerned that the state has not still approached the problem with the required seriousness, and with the engagement of all state and social structure aiming to find an efficient and sustainable systematic solution.

With regard to monitoring the exercise of the language rights, the Ombudsperson noted that the Office of Language Commission (OLC), as a central mechanism for protection and respect of language rights, has made efforts and does engage, within its own

---

<sup>188</sup>Information taken from the meeting of the representative of Ombudsperson with Language Commissioner on 5.12.2017.

<sup>189</sup>For all problems related to the language use, the Ombudsperson reported in detail in all previous annual reports from 2012 to 2016. In order to not reiterate what has already been mentioned, you can be informed in more details on this issue in the abovementioned annual reports.

<sup>190</sup> See Article 1 and 2 of the Law on the Use of Languages



activities, to systematically solve the problems related to the language rights. In 2015, the OLC drafted a Medium-Term Strategy (2016-2020) for the systematic implementation of the Law on the Use of Languages. The proposal for submitting the strategy was approved in the meeting of the Inter-Ministerial Group for Communities, in June 2016. Despite the fact that the decisions of this Commission should be binding on the Government, the final approval of this strategy is still pending. The Language Commissioner has explained that the reason for the delay is the lack of funds, because large financial funds are required for implementation of this strategy, which would be allocated to different ministries responsible for implementation of strategy purposes.<sup>191</sup> The Ombudsperson has been informed by the OLC that the Government has issued a decision for establishing a working group that will draft a concept paper on the establishment of a central translation service in the Government of Kosovo and that there is a clear government plan for establishing this group by 2018.<sup>192</sup>

In compliance with its recommendations, when OLC recommendations regarding the legal remedy or compensation are not respected by relevant institutions, the OLC has the competence to impose sanctions determined in the applicable Administrative Instruction for Determining the Administrative Sanctions for Violation of the Law on the Use of Languages; in case a person fails or refuses to comply with the Officers requirements, or prevents or makes impossible for the Office to perform its duties, or in cases when there are violations of such nature, the Office may initiate legal or disciplinary procedure through relevant authorities against the person or organization that is responsible for violation.<sup>193</sup> The Ombudsperson notices that, despite the unsatisfactory situation in respecting language rights and violating the principle of equality before the law, the OLC has, from its very establishment until today, imposed no sanction or measure within its scope of competencies and authorizations for failure to respect the Law on the Use of Languages, despite having had the reasons to do so, considering that some of the OLC's recommendations addressed to several responsible institutions have not been respected.<sup>194</sup>

The Ombudsperson also notes that none of the Commissioner's recommendation addressed to institutions who have failed to implement the Law on the Use of Languages has been published in the OLC's website so far. The Ombudsperson considers that OLC is obliged to inform the public about its work in a fully transparent manner and start providing more information on citizen's complaints in its website and publish its recommendations addressed to institutions with regard to violation of the right on the use of languages, so that such information are clearly visible, hence increasing the work of the office to a higher level. The Ombudsperson considers that OLC, as a central

---

<sup>191</sup> Information taken in the meeting of the representative of Ombudsperson with the Language Commissioner, on 5.12.2017.

<sup>192</sup> Ibid.

<sup>193</sup> Administrative Instruction No. 07/2012 on Office of Language Commissioner, Article 17 – Office competencies and authorizations, paragraph 2.5 and 2.6.

<sup>194</sup> Information taken in the meeting of the representative of Ombudsperson with the Language Commissioner, on 5.12.2017.

mechanism in monitoring and implementing the Law on the Use of Languages, needs more support from the Government in its efforts to improve the implementation of the law in question. The OLC must be provided with a larger budget and most be allowed to increase the number of the professional staff, with the purpose of increasing work efficiency in the OLC.

During this period, the Ombudsperson received several complaints which are related to the violation of several other rights and violation of language rights. The complainants are advised to preliminarily make use of existing available legal remedies and address OLC as a central mechanism for the protection of language rights. The Ombudsperson is of the opinion that such a small number of complaints requesting from OI the protection of the right on the official use of languages is not a reflection of the real problem indicator and the level of violation of language rights of minority communities in Kosovo. Given that the public authorities in Kosovo have not made significant efforts for implementing recommendations of Ombudsperson provided in the annual reports and are related to the exercise of language rights, the Ombudsperson considers that this issue should be addressed more seriously by the state because it is its duty and responsibility to create and ensure adequate conditions in view of full and effective enjoyment of language rights of all citizens, without discrimination.

The conclusion that arises at the end of this topic is that the rights of minority communities and community-based affirmative measures are part of the general framework of human rights and as such must be respected and protected by state authorities, both by legislation and by the practical and consistent application of the law. The rights of minority communities are based on the recognition that minorities are in a vulnerable situation compared to the majority population. They also aim to protect them from discrimination, assimilation or violence as a consequence of their status as a minority. It is therefore necessary to show them that their integration is welcome, desirable and expected, and not sensational or surprising. Respect for the rights of minority communities contributes to the development of political and social stability, not to reduction and degradation of the same. Finally, it is necessary to emphasize those members of minority communities also have to respect the rights of the majority and institutions and laws of the state in order to show their affiliation to the society and the country in which they live.

## **7.12 Gender equality**

Gender equality is one of the key issues for the development of a society and a fundamental precondition for elimination of all gender-based discrimination forms. Law No. 05/L-020 on Gender Equality, adopted by the Assembly of Republic of Kosovo in 2015 establishes the Ombudsperson as an equality institution that handles cases related to

gender discrimination, in compliance with procedures established by the Law on Ombudsperson<sup>195</sup>.

Due to his mandate, the function of Ombudsperson is twofold: make efforts to fight gender discrimination by investigating complaints and prevent it by requiring proper law implementation and by engaging in promoting human rights, including the right of each individual to be free from any form of discrimination, including gender-based discrimination.

### **7.13 Law No. 05/L-020 on Gender Equality and bylaws**

During the reporting period, the amendments in bylaws of the Law on Gender Equality have been made upon the proposal of Gender Equality Agency. On 5<sup>th</sup> of April 2017, the Administrative Instruction No. 03/2017 on the Registration of Joint Immovable Property on Behalf of Both Spouses and has been amended with the Administrative Instruction No. 04/2017, whereby the period for implementation of this instruction has been extended from one year to two years. Government of Kosovo made a positive step with this affirmative measure in order to encourage spouses to register the joint property in the cadastral register.

Also, the approval of the National Strategy of Republic of Kosovo for Protection from Domestic Violence and Action Plan 2016 –2020 is considered as a positive step of the Government. This strategy has been designed as a roadmap towards a society without violence and its implementation is expected to be transparent and effective.

During this reporting period, the Ombudsperson has requested the implementation of Law No. 05/L-020 on Gender Equality by political parties during the elections, in order to provide equal opportunities for both genders in the lists of candidates submitted to the Central Election Commission (CEC). On 17 May 2017, the Ombudsperson stated in his Statement that the Law No. 05/L-020 on Gender Equality clearly defines that “Equal gender representation in all legislative, executive and judiciary bodies and other public institutions is achieved when ensured a minimum representation of fifty percent (50%) for each gender, including their governing and decision-making bodies (Article 6, paragraph 8)”<sup>196</sup>.

#### ***The right of women to work***

Gender discrimination at work happens when a person or a group of persons are treated unequally in the context of work due to gender. Unequal treatment may affect the level of payment, e.g. when a woman is paid less than a man for the same work. Gender discrimination may happen also based on the manner of treatment of women at work. Additionally, unlawful dismissals from work, unequal opportunities for vocational

---

<sup>195</sup> Article 13 of the Law No. 05/L-020 on Gender Equality.

<sup>196</sup> Statement of Ombudsperson: <http://www.ombudspersonkosovo.org/sq/lajme/DEKARATE-E-AVOKATIT-TE-POPULLIT-LIDHUR-ME-PERFAQESIMIN-E-BARABARTE-GJINOR-NE-LISTAT-E-KANDIDATEVE-NGA-SUBJEKTET-POLITIKE-1511>

training and advancement at work are considered as discrimination at work. Law on Gender Equality prohibits the discrimination at work, prohibition of sexual harassment, health and safety at workplace.

During the reporting year, the Ombudsperson received complaints from citizens in relation to the discrimination at the workplace. Complaints are related to violation of the right to return to the previous position,<sup>197</sup> then sexual harassment at the workplace and failure of the supervisor to take measures, despite the notice for sexual harassment, which the Ombudsperson is investigating.<sup>198</sup>

### ***Property right***

The applicable laws provide women and men equal rights to ownership, despite the fact that majority of properties are registered in the name of men. The greatest obstacle for an independent life of a woman is the fact that women, in most of cases, have no private property. The laws enabling the implementation of gender equality and equal access of women to property are: Law on Property, Law on Gender Equality, Law on Inheritance, Law on Family and Law on Protection from Discrimination.

Law on Gender Equality allows equal participation in all fields of life of both genders in Kosovo, and in the property right as well. However, particularly in rural areas, there is an advantage of male members of families to inherit the family property as a result of customary law, which continues to have an impact on Kosovo society to a great extent.

With regards to the issue of property and inheritance, even in 2017 our society has discussed many times the issue of withdrawal of female heirs in favour of male heirs. This is the case for all communities in Kosovo, without exclusion.

In order to improve the situation in the field of property and gender equality, during 2017, the issue of women property ownership in Kosovo has been subject to special attention by the Government of Kosovo, and local NGOs as well as international organizations. The Government of Kosovo, which in the beginning of 2016 made a positive step and adopted the Administrative Instruction 03/2016 as an affirmative measure for the registration of joint immovable property in the name of both spouses, in 2017 the same amended this instruction (04/2017) whereby expanding the time period for implementation of this instruction. The purpose of this affirmative measure was to increase women access to property, as well as register the property under their name, and accelerate the achievement of equality between men and women in terms of property rights. Benefits deriving from this Instruction are: exemption for the registration service fee, exemption from the property tax for one-year period and exemption from the notary fee.

Problems related to the registration of property under the name of both spouses occurred in situations when both spouses were required to make payments for the same property.

---

<sup>197</sup> A.no.788/2017

<sup>198</sup> A.no.788/2017

Such cases have been reported only in the Municipality of Prishtina. Following an investigation from the Ombudsperson Institution, it resulted that the situation has improved and this practice is not present anymore.

In view of gender equality in the aspect of property rights, the Ombudsperson has the holding of a roundtable as necessary, which took place on 7 December 2017, with the title “Gender equality and the right to register joint property in the name of both spouses”. In this roundtable, representatives of the OI introduced findings from the research in the Municipality of Prishtina, Ferizaj and Graçanica and stated that 302 requests have been filed in these municipalities, namely 66 in the Municipality of Prishtina, 201 in the Municipality of Ferizaj and only 35 in the Municipality of Graçanica,<sup>199</sup> and then there was an opportunity for joint discussion and exchange of experiences on this topic even from public institutions of central and local level and NGOs which directly deal with the issue of gender equality and which participated in this roundtable.

On this occasion, the Ombudsperson stated that affirmative measures are the standards that the lawmaker uses for certain cases until the purpose is achieved, but in this case the same have not been implemented. The participants agreed that citizens should be more informed on their rights so institutional mechanisms for joint property are functional. They also stated that laws address this topic and bylaws issued thereafter should be implemented more in practice.

During the reporting year, the Ombudsperson received complaints related to the gender-based violation of property right. One of the cases is related to the violation of the property right from the husband’s family. The case is being handled by the competent court; however, this does not prevent the Ombudsperson from conducting investigations in relation to the complaint based on his competencies deriving from the Law on Gender Equality and Law on Protection from Discrimination. To this end, the OI is monitoring court sessions in the Basic Court in Prishtina<sup>200</sup>.

The Ombudsperson also received a complaint against the Basic Court in Prishtina for procedural delays with regards to allocation of joint property of spouses, and is conducting the investigations on this issue.

### ***Domestic violence***

The Law establishes domestic violence as a form of abuse exercised by a person against another person, resulting in infringed physical, moral, psychological, sexual, social or economic integrity. This type of violence knows no cultural, ethnic, educational or economic environment.

---

<sup>199</sup> <http://www.ombudspersonkosovo.org/sq/lajme/Avokati-i-Popullit-mbajti-tryezen-me-temen-Barazia-Gjinore-dhe-drejta-ne-regjistrim-te-prones-se-perbashket-ne-emer-te-dy-bashkeshorteve-1564>

<sup>200</sup> Case registered under A.nr.521/2017

Violence against women is often not reported to the police; therefore, it is considered that the number of women victims of domestic violence is much greater than that provided by statistics. Responsible institutions have many difficulties when assessing the domestic violence. An obstacle for reporting the case of domestic violence is the social pressure and prejudices, where the domestic violence is considered as a shame and a private issue that should not be revealed outside the family circle. The existence of the Law on Protection from Domestic Violence means that domestic violence is not only a personal issue of a family member, but a social and state issue which should be handled by institutions and NGOs of the Republic of Kosovo.

National Strategy of the Republic of Kosovo for Protection against Domestic Violence, adopted by the Government (2016- 2020), aims to ensure that responsible parties handle all cases of domestic violence with priority, provide access to integrated qualitative services, guarantee justice and accountability for victims, ensure rehabilitation and reintegration of victims/survivors of domestic violence and raise our society's awareness. That is the grounds for elimination of violence against women and girls in compliance with Kosovo's vision of for a society with no tolerance against any form of violence.

The number of domestic violence cases reported to the OI during 2017 is not high. It is evident that violence against women and domestic violence is considered a concerning fact and is concluded that the relevant institutions' response to such situations was inappropriate and inadequate. The increased number of reported cases shows that the acts of violence are increasing and that victims have, over the time, been legally educated to report violence before the competent authorities. Also, women empowerment to recognize and seek their rights is an essential fact in the fight against violence and not only in the fight against physical violence, but also the psychological, economic or political violence.

Nonetheless, additional work is required to develop and improve the services provided to victims of violence, including financial assistance, housing, education, training and support for employment, as well as establishment of a sufficient number of safe homes for women and children who are victims of violence.

The Republic of Kosovo has not yet ratified international documents in relation to the prevention and protection from violence against women and domestic violence, including the European Council Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>201</sup>.

In its previous annual reports, the Ombudsperson has regularly recommended to include in the Constitution of the Republic of Kosovo even the European Council Convention (Istanbul Convention) on violence against women and domestic violence, which was adopted in August 2014. This recommendation has been provided within the Enlargement Strategy of European Commission.

---

<sup>201</sup> Based on UN data, more than one third of women around the world have suffered physical or psychological violence and 750 million women have been married before adulthood.

Upon the ratification of this Convention, the state will engage in the future to take necessary legislative and other measures in order to establish an efficient, inclusive and coordinated system for prevention and protection against domestic violence, namely protection from gender-based discrimination.

The rights of crime victims are fundamental rights guaranteed by the Constitution and Laws of the Republic of Kosovo, international conventions and as such they should be protected by the law. Kosovo legislation foresees a scheme for compensation of victims by the state, which are regulated by the Criminal Procedure Code, Law on preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking and Law No. 05/L-036 on Crime Victim Compensation.

The Ombudsperson participated in the National Conference for marking the week of crime victims' rights, 30-31 October 2017, organized by the State Prosecutor, which is related to the crime victims' compensation pursuant to the Law on Crime Victims Compensation that covers violent compensable offences for several crime categories. The Ombudsperson welcomes the issuance of bylaws for the implementation of law, even though it expects the expansion of categories list in the future.

The Ombudsperson considers the establishment of the legal base for compensation of victims of human rights violation, in the field of civil and administrative right as necessary.

### ***Women victims of sexual violence during the war***

Any type of violence against women, including the sexual violence during the war, means the violation of human rights. From 2006-2007, in the seventh annual report, the Ombudsperson Institution requested the inclusion of women victims of sexual violence during 1998-99 in the list of persons entitled for compensation, pursuant to the Law on the Status and Rights of Families of Martyrs, Invalids, Veterans and Members of Kosovo Liberation Army and Civilian Victims of War and their Families. However, although on 20 March 2014 the Assembly of Kosovo adopted the Law No. 04/L-172 on amending and supplementing the Law No. 04/L-054 on Status and Rights on the Status and Rights of Families of Martyrs, Invalids, Veterans and Members of Kosovo Liberation Army and Civilian Victims of War and their Families in relation to the compensation of sexual violence victims, victims are still waiting for the pension.

Even though the Government Commission for Recognition and Verification of the Status of Sexual Violence Victims has been established, the work of this Commission has not been functionalised yet. The Ombudsperson is supporting the rule of law in Kosovo, the issue of women victims of war, recommending the increase of cooperation of institutions and other stakeholders who are responsible for law enforcement of sexual violence victims enjoy their rights as civilian victims of war.

## 7.14 LGBT community

The respect of LGBT rights can be obtained as an indicator of democratic development of the country, whether in legislative level or in practice. This population is increasingly becoming an object of public attention in Kosovo. The life of persons belonging to LGBT community in Kosovo is not easy and they are discriminated in all spheres of life. They continue to fear the free expression of their sexual orientation or gender identity due to hatred they receive and face. However, the situation is changing. Kosovar society is increasingly discussing this issue. The LGBT community is becoming more and more visible and is no longer a taboo subject that is silenced.

During this reporting period, the public support for LGBT persons is much more present and more pronounced than in previous years. The “Pride Parade” was held during the International Day against Homophobia and there were no incidents. This gathering was supported by the President of Kosovo and the Government along with the Prime Minister, showing that Kosovo is willing to respect the rights of this community. This gathering was supported even by the representatives of Ombudsperson Institution.

During the reporting period, the Ombudsperson also observed an increase in civil sector activities in order to review the rooted traditional and conservative norms against LGBT persons, thus breaking the prejudices and advocating for the respect of diversity and legal rights of the LGBT people, so they are protected from discrimination and are equal part of the society. However, the LGBT community, as part of Kosovo society, still remains marginalized and the situation is far from being satisfactory.

During the reporting period, the Ombudsperson, in the capacity of the friend of the court (*amicus curiae*), submitted a legal opinion to the Basic Court in Prishtina with regards to the issue of homophobia and transphobia<sup>202</sup> in the Republic of Kosovo. The Ombudsperson appeared in the capacity of *amicus curiae*, following the investigations of cases A. no. 451/2016, Ex-officio 379/2016 and A.no.72/2017, whereby the complainants belong to the LGBT community and this was the ground for physical violation and discrimination.

Following the analysis of the abovementioned cases, the Ombudsperson observes that criminal offenses committed against members of the LGBT community, are admitted from responsible institutions in the very first phase and are further treated as criminal offenses defined by the Criminal Code but without raising the issue that these offenses are directed against members of LGBTI community, *motivated and committed on the basis of hatred against sexual orientation and gender identity*, therefore, the Ombudsperson considers that provisions on the ban of discrimination on any grounds, particularly on the basis of sexual orientation, must be reciprocal with Article 74 of the

---

<sup>202</sup> Legal Opinion of Ombudsperson with regards to the issue of homophobia and transphobia submitted to the Basic Court in Prishtina on 2 May 2017.



Criminal Code, which defines severity, more precisely in paragraph 2, point 2.12.<sup>203</sup>

The Ombudsperson is concerned due to the fact that there is no court decision in relation to the violence against any person or group of persons due to their sexual orientation or gender identity. This seems as a failure of courts to make use of the opportunity and legal competence to rigorously apply Article 74, paragraph 2, point 2.12 of the Criminal Code No. 04/L-082 of the Republic of Kosovo.

The Ombudsperson also considers that work disputes, in which parties in the proceedings claim to be victims because of their sexual orientation, the courts should review and decide on these cases, in compliance with the Law on Protection from Discrimination and Article 5, paragraph 1 of the Law on Labour, as this is the only way to guarantee equal treatment before the law for everyone.

In this context, the Ombudsperson states that the human rights and fundamental freedoms guaranteed by the Constitution should be interpreted in compliance with the court practice of the European Court on Human Rights, as stated in the Article 53 of the Constitution of Republic of Kosovo.

The legal analysis of issues, regardless of the provisions of legal instruments mentioned, should commence with the practice of European Court on Human Rights and perception towards homosexuality and gender-based discrimination and sexual orientation. The Ombudsperson concludes beyond any reasonable doubt that the national legal framework applies all international standards in relation to implementation and protection of human rights with regard to prevention of gender-based discrimination and sexual orientation, meaning implementation of European Convention on Human Rights and Fundamental Freedoms (ECHR) and case law of ECHR. The interpretation of the Convention by ECtHR has created a wide room for implementation of the prevention of discrimination based on sexual orientation and gender identity.

The Ombudsperson draws attention, as is stated in the document of the European Commission Experts on the fight against discrimination based on sexual orientation in EU, to Kosovo's legal framework which certainly protects the rights guaranteed by ECHR and prevents any type of discrimination based on sexual orientation and gender identity. Based on the legal framework, in combination with ECHR case law, there is no gap in the existing legislation requiring supplementing in relation to the further protection of human rights based on sexual orientation and gender identity. However, the problem is that the relevant legislation in this field is not adequately implemented.

---

<sup>203</sup>Kosovo Criminal Code No. 04/L-082, Article 74, paragraph 2, point 12 reads: "2. When determining the punishment the court shall consider, but not be limited by, the following aggravating circumstances: (...)  
2.12 if the criminal offence is committed against a person, group of persons or property because of ethnicity or national origin, nationality, language, religious beliefs or lack of religious beliefs, color, gender, sexual orientation, or because of their affinity with persons who have the aforementioned characteristics;

The state has a specific obligation for protection of human rights through its legal system, by providing extra guarantees for the individual to effectively enjoy these rights.

### **7.15 Freedom of religion in Kosovo**

After many years of failure to adopt the new Law on Freedom of religion in Kosovo, on November 29, 2017, the Assembly of Kosovo adopted the Draft law on amending and supplementing the Law no. 02-L-31 on Freedom of Religion in Kosovo, and by the decision of the Speaker of the Assembly 06-V-01<sup>204</sup> the law was forwarded to the Parliamentary Committees for consideration. Article 8 of the Constitution of the Republic of Kosovo provides for the secularity and confessional neutrality of the state.

Kosovo society is a multinational and multi-confessional society, with a large number of believers belonging to different religions, and the legal arrangement of the functioning of religious communities is very important for the society and the state as a whole. The membership of religious communities in Kosovo is closely related to the national structure of the population. The majority population in Kosovo consists of Albanian community members, of which 80% are members of Islamic Religious Community, and the rest of the population are members of other religious communities, mostly of Roman Catholic Church, the Protestant Church, and the Tarikats Community. Other ethnic communities in Kosovo are mainly related to one of these religious communities, while members of the Serbian and Montenegrin nationalities are almost completely members of the Serbian Orthodox Church.

The imperative of a modern state and society is respect for the rights and freedoms of religious communities guaranteed by the Constitution and international conventions, and it is the challenge of the state when passing laws on religious freedom, to find a balance between the freedom of religious communities to independently regulate their functioning and maintain their independence on the one hand, which is guaranteed by Article 39 paragraph 2 of the Constitution and Article 7 of the Law on Religious Freedom, and on the other hand, harmonization of their regulation with the legal norms of modern society. The challenge for the state is that in regulating the legal status of religious communities find an adequate balance between the privilege and discrimination, so that all religious communities that represent the tradition of Kosovar society as much as possible are satisfied with the new legal solution.

The Kosovo Islamic Community, Serbian Orthodox Church, Catholic Church, Jewish Religious Community, Kosovo Protestant Evangelical Church and the Kosovo Tarikats Community are religious communities recognized by the new law which provides them the right to be registered directly as communities that represent historical, cultural and social heritage of Kosovo. In order to avoid possible discrimination against a future religious community expressing the desire and need to register as such, and in order to

---

<sup>204</sup>[http://ligjet.skupstinakosova.org/Uploads/Data/Documents/VendimperPLperlirinefetare\\_HUc5vzPstranici\\_pristupljeno\\_26.12.2017](http://ligjet.skupstinakosova.org/Uploads/Data/Documents/VendimperPLperlirinefetare_HUc5vzPstranici_pristupljeno_26.12.2017).

provide the possibility of freedom of religious organization within the framework of the legal system, the law provides a very acceptable condition for the registration, i.e. in order for one religious organization to be registered only 50 members, citizens of R. Kosovo are needed.

Condition in terms of small number of members for the registration of new religious communities is also recommended in the opinion 743-2013 " Venice Commission<sup>205</sup>.

The adoption of this law represents significant progress in regulating the legal position of religious communities, and it also provides solutions to numerous problems highlighted in previous years. The issue of registration of religious communities and the implementation of the Law will be regulated by the Office of Religious Community within the Office of the Prime Minister. The new law regulates the issue of the formation and functioning of the cemeteries, protection of the rights of believers to be buried in accordance with the beliefs of their religion, and regulation of the burial in public graves of members of small religious communities and people with philosophical beliefs and protection from the influence of large religious communities.

One of the positive sides in relation to the demands of all religious communities is that according to this law, religious communities enjoy the possibility of tax and customs privileges for economic activities that are important for their financial stability, which will be in accordance with the regulations that will be determined by the Ministry of Finance. This is important because the state does not finance any religious organization by law, thus protecting the financial stability of religious communities.

For the Islamic Religious Community, except the issue regarding the adoption of the law, the issue of wearing of religious scarves (hijab) in schools remains legally unregulated, and depends on the point of view of school directors.

In recent years, the Islamic Religious Community pointed the need to restore a large number of facilities and other immovable property that belonged to it in the past, and in various ways have been alienated after World War II. This issue remains unresolved because the Law on Restitution is still not approved.<sup>206</sup> Other religious communities also pointed this issue in previous periods.

The legal status of the Serbian Orthodox Church (SOC) is one of the issues that had been of major importance for the past years, and the new law on religious communities regulates SOC with Article 7A based on which the SOC in Kosovo is considered as part of the SOC, while the name, internal organization, hierarchy and its activities, are regulated by Article 13 of the Law no. 04/L-115 on Amendments to the Law Concerning the Conclusion of International Monitoring of Kosovo's Independence.

Regarding the problem of damage of religious premises of the SOC, in 2017 there were

---

<sup>205</sup>[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)012-e) , pristupljeno

<sup>206</sup> [http://www.ombudspersonkosovo.org/repository/docs/RAPORTI\\_2014\\_-\\_SERBISHT\\_191899.pdf](http://www.ombudspersonkosovo.org/repository/docs/RAPORTI_2014_-_SERBISHT_191899.pdf) , strana 57, pristupljeno dana 7.2.2018.

less of these cases than before. On several occasions, there were graffiti of unwanted contents on walls around or near religious premises, while the church “Sv. Petar i Pavle” was damaged, also in Tallinoc/Talinovac near Ferizaj at the beginning of April 2017, during the Easter holidays, unknown attackers broke the windows of the church.

Protestant church, this year as in previous had similar requirements, firstly regulation of the legal position of religious communities. On December 23, 2017, the first Protestant Church in Kosovo was inaugurated.<sup>207</sup>

The Jewish community in Kosovo during the year was present in public religious events, and at the end of November 2017 Jewish Week was celebrated, where representatives of state institutions and other religious communities attended various events.

### **8. National Preventive Mechanism against Torture**

The Republic of Kosovo is not a signatory party of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, since it is not a member of the United Nations yet. However, Article 22 of Constitution of the Republic of Kosovo determines human rights and fundamental freedoms guaranteed by the international agreements and instruments guaranteed by this Constitution are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions: One of the conventions foreseen by this Article is also United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The Law no. 05/L-019 on Ombudsperson provides for establishment of a special mechanism, under the Institution, which will perform all functions of the National Preventive Mechanism against Torture. The staff of this branch in addition to jurists, shall include a variety of professionals of different fields, including medical doctors, psychologists and social workers with relevant experience in this field.

Law defined the duties of this Mechanism, which are: undertake regular and unannounced visits to places of deprivation of liberty, including police detention, detention on remand, stay at health institutions, customs detention, prohibition of emigration and every other place when it is suspected that there are violations of human rights and freedom.

During the reporting year, National Preventive Mechanism Against Torture (hereinafter referred to as “the NPM”) continued with visits to places where persons deprived of their liberty are held, as well as other institutions where persons may be deprived of their liberty or who cannot leave these institutions on their will, due to any decision of the competent authorities.

---

<sup>207</sup><http://www.ekonomiaonline.com/nacionale/afet-germis-sot-perurohet-kisha-e-pare-protestante-ne-kosove/> pristupljeno stranici 25.12.2017.

The NPM team has identified all the institutions to be visited by NPM. Their number is around 70, such as: 4 correctional facilities; 6 detention centres; the juvenile educational correctional centre; approximately 33 Detention Centres; over 24 mental health institutions (including psychiatric wards within general hospitals in different regions of Kosovo, social care institutions, Community Integration Homes); Asylum Centre and Foreigner Detention Centre; Border Crossing Points; Airport; etc.

During 2017, the NPM conducted a three day visit to the High Security Prison and after the visit published a report with recommendations.<sup>208</sup> The NPM has noted that the conditions of accommodation at the High Security Prison are good and in accordance with international standards, apart from some floor damage to the prison stationary and two other wards. NPM was informed by the Directorate that these renovations are planned to take place next year.

Regarding the visit to the High Security Prison, NPM has recommended to the competent authorities the following: To undertake necessary actions for repairing damaged floor in HSP infirmary and Wards; To remove white colour which causes blinding reflection to detainees and presents obstacle for activities outside their cells, To enable access of detainees to daily press; To put in function premises for professional trainings; To increase activities for on remand detainees.

On 9 September 2017, the High Security Prison Directorate informed the NPM that following the recommendations derived from the report, it had succeeded to implement the recommendation regarding the provision of daily press to detainees and convicts and that now the daily press is now ensured regularly. Also, the directorate informed that it has increased activities for remand detainees.

The NPM has conducted 4 *ad hoc* visits to the Correctional Centre in Dubrava in order to address the complaints of detainees accommodated in this centre, 4 visits to the Correctional Centre for Women and Juveniles, 3 visits to the Juvenile Educational Correctional Centre, 4 visits to the Detention Centre in Lipjan. The NPM also conducted 1 *ad hoc* visit to the Psychiatric Clinic in Pristina (UCCCK).

During this year, the Directorate of the Correctional Centre in Dubrava informed the NPM regarding the implementation of the recommendations derived from report with recommendations following the NPM visit in 2016. The Dubrava Correctional Centre informed the NPM that now in Pavilion 1 there is a regular water supply, the issue of supplying the daily press has been solved, the detainees have been transferred to Lipjan Detention Centre, the whitewashing has been performed, the defects in the showers and taps are mended according to the recommendation of the NPM. Pavilion 4 was under renovation, pavilion 5 is put in operation, and pavilion 8 was completely whitewashed. The recommendation that the cells of the convicts be supplied with lockers for the

---

<sup>208</sup> [http://ombudspersonkosovo.org/repository/docs/947-2017,\\_Raport\\_me\\_rekomandime\\_i\\_MKPT\\_921071.pdf](http://ombudspersonkosovo.org/repository/docs/947-2017,_Raport_me_rekomandime_i_MKPT_921071.pdf)

placement of their belongings has not yet been implemented, and occasional problems with material supplies (consumables) for prison officials still persist. The NPM is still awaiting the implementation of other recommendations.

The NPM also conducted complete visits to the Detention Centre in Prizren as well as visited the police stations in Prishtina (Regional Police Custody Centre), Mitrovica, Vushtrri, Lipjan, Suhareka, Dragash, Prizren, Podujeva; Nurseries of Elderly Persons with no Family Care. Regarding these visits, the NPM has compiled reports with recommendations as a result of findings during visits to these institutions.

During the visit to the Detention Centre in Prizren (DCP), the NPM concluded that the cells in which the detainees were held did not comply with the standards set by the European Committee for the Prevention of Torture in terms of size<sup>209</sup>, while some of them should be whitewashed. Based on this standard, the space for detainees or convicts in cells should be at least 4m<sup>2</sup> per person in a space where more than one person is accommodated, not counting the annex of toilets.

During the visit, the NPM also noted that in some cells due to lack of space, some detainees and convicts slept on the floor, old mattress and without adequate lining. Therefore, the NPM concluded that the DCP faces overcrowding which should be avoided as far as possible and cannot provide accommodation space in accordance with the standards set by the European Committee for the Prevention of Torture and the Law on Execution of Criminal Sanctions.

Following the visit to the Detention Centre in Prizren, the NPM delivered to the Ministry of Justice a report with recommendations, as follows: The Ministry of Justice shall notify the Ombudsperson about the planning for construction of the new Detention Centre in Prizren; To provide adequate working conditions for medical personnel; the number of detainees accommodated should be in accordance with the official capacity of the DCP , and the issue of overcrowding should be resolved as soon as possible, To take appropriate measures to ensure that the privacy of detainees is observed, To paint the cells as needed; To improve the working conditions of correctional officers. The Directorate of the Detention Centre in Prizren had no objections to NPM's findings and recommendations.

The NPM has received constant complaints from convicts regarding the amendments to the Law on Execution of Penal Sanctions, which came into force in May 2017, which significantly reduced their leave days, granted to them in the name of privileges which are earned with their good behaviour and the work performed in the correctional facility as well as the ban on receiving food packages. With the previous law, this category of convicts was entitled to 21 days of leave per year, whereas with the amendment of the Law on Execution of Penal Sanctions recently they were reduced to 7. The competent

---

<sup>209</sup> European Committee for the Prevention of Torture, Living Space per Prisoner, see: <https://rm.coe.int/16806cc449> (14.11.2017)

Ministry is working on the re-amending the Law on Execution of Penal Sanctions and seeks changes regarding these rights entitled to convicts under the previous law.

All the visited institutions extended full cooperation to the NPM. The team had due access to all the facilities of these institutions. The team was provided with all the information needed to carry out the task and was enabled to have interviews with convicts and detainees without the presence of correctional officers or other staff.

During the visits to the abovementioned police stations, the NPM has noticed that police authorities have informed the detainees with their basic rights, which are written in Albanian, Serbian and English. The NPM did not receive complaints from detained detainees for failure to observe their rights guaranteed by the Constitution of the Republic of Kosovo, applicable laws and international human rights standards.

Regarding physical conditions, all police stations visited provided accommodation conditions for detainees in accordance with the standards established by the European Committee for the Prevention of Torture, except for the police station in Prizren for which the NPM has concluded that the cells in which detainees are held should be whitewashed and should be supplied with clean sheets and blankets. None of the stations visited had a call system, which would enable faster and more efficient contact between detainees and police officers in case of a need.

The NPM has recommended to the Ministry of Internal Affairs to establish call systems in all the cells where the arrested persons are held and also reminded them that such a recommendation has been made by the European Committee for the Prevention of Torture during the visit to Kosovo in 2015.

During the visits, the NPM was informed by police officers that during interviews of arrested persons no audio-video recording of interviews is practiced. The European Committee for the Prevention of Torture (CPT) considers that:

*“The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in a number of countries. Such a facility can provide a complete and authentic record of interviewing process thereby greatly facilitating the investigation of any allegation of ill-treatment. This is in the interest both of parties, respectively of persons who have been ill-treated by police and of police officers confronted with unfounded allegations that they have engaged in ill-treatment and psychological pressure. Also, electronic recording reduces the opportunity for defendants later to falsely deny that they have made certain admissions”.*

In the report on the 2006 visit to Ireland, the CPT emphasizes:

*“The findings during the 2006 visit suggest that audio-video recording in the interrogation rooms of Garda stations may have been a significant contributing factor to reducing the amount of ill-treatment alleged by persons detained”.*

Therefore, the NPM/Ombudsperson encourages the Kosovo Police to consider the opportunity of implementing such a facility of audio and video recordings of interviews of detainees in accordance with the findings of the CPT and to notify the Ombudsperson thereof. The NPM noted that at the police stations visited, security cameras are operational at the premises and at the cells where the detainees are held, except at the Lipjan police station.

Following the visits to these police stations, the NPM has published the report on the visit, which it has delivered to the Ministry of Internal Affairs and the Kosovo Police the following recommendations: to undertake the necessary steps to provide more natural light to the Regional Police Custody Centre in Prishtina; provide better working conditions for police officers in this Centre; to make renovations and supplies to the Detention Centre in Prizren; to install call systems in all cells of the police stations where custody rooms are; to functionalize security cameras at Lipjan Police Station.

Also, during this year, the NPM visited the House for the Elderly persons with no Family Care (EPWFCH) and found that serious investments are needed in this social care institution by the competent authorities, especially in the part where the medical service is located. The NPM has noted that there are also 3 persons under the age of 65 accommodated in this institution, who have different psychiatric diagnoses and mental disabilities or mental development impairments. Accommodation of these persons in this institution is in contradiction with Administrative Instruction 07/2011 and the Regulation on Internal Organization of Work in Elderly and People without Family Care Houses.

During the visit, the NPM interviewed a number of residents and received no complaints on physical abuse or verbal abuse, as well as conduct that would impair the human dignity of residents in the EPWFCH. The NPM highly appreciates the commitment of the staff to care for the elderly people, especially towards those with disabilities. The NPM got an impression that relations between the staff and residents are good and friendly.

Some residents complained that it was cold over the night, some reported to the monitoring team that they use heaters during the absence of central heating.

Based on findings achieved during the visit, NPM recommended to competent authorities as follows: to undertake urgent improvements according to assessment of needs in the old building and the premises where health and dentistry service functions, supply the residents with appropriate inventory in their rooms, equip the Institution with an auto-ambulance, to apply protocols for self-hurt, bodily injuries, hunger strikes, sexual abuse, suicide, and deaths in the institution by medical service, to organize specific trainings for the staff in accordance with residents' treatment needs, to increase staff number based on assessment of needs from the health service.

During this year, NPM visited the Foreigners Detention Centre. This Centre serves for accommodating foreigners subject to forced return. The NPM has noted that the physical conditions of this Centre are good. During the visit, the NPM interviewed two foreigners



accommodated in this Centre, who did not complain about accommodation and treatment conditions by Centre officials and security officials. The NPM noted that the Centre possesses several types of brochures in different languages through which foreigners accommodated in this Centre are informed of their rights. Yet the Centre does not provide opportunities for more activities for accommodated foreigners. Medical services are provided by the Family Medicine Centre and UCCK, medical examinations for contagious diseases in this Centre are made only if there are suspicions that are then verified in the respective health facilities.

During the visits to these institutions, the NPM did not receive any complaint of physical abuse or excessive use of physical force by correctional officers, police officers or misconduct in social care institutions that would violate human dignity, elderly persons.

During this reporting period, the NPM received 180 complaints from prisoners. Of these, 56 are open cases for investigation. While, against the Police, it has received 85 complaints, of which 35 are open for further investigation. The complaints received by the prisoners have been related to the decisions of the Conditional Release Panel (CRP) which legally cannot be appealed, and for which the OIK has notified CRP. The NPM has also received complaints regarding the right to use weekends and inequitable treatment of prisoners; complaints regarding the non-response of the correctional Centres in the complaints lodged by the prisoners due to procedural delays in handling their cases in the courts and the prosecutor's office, which are not under the mandate of the NPM. All of these complaints have been forwarded to the Department of Investigation for further proceeding and from which the NPM draws conclusions on the overall situation in the inspected institution. The complaints received by the NPM regarding health treatment have been investigated and most of them have been found to be unfounded.

During the visit to the Correctional Centre for Women and Juveniles, the NPM received complaints from juveniles about the stagnation in continuing education for juveniles at this Centre, the quality of the education provided and failure to provide adequate certificates after completing the education. Concerns regarding this issue have been forwarded by the NPM to the Complaints Investigation Department and after the investigation, the OIK has published the report with recommendations through which it has requested the relevant authorities to issue legal acts that are relevant to the progress of the education process for persons deprived of freedom and clarify the competencies of the competent ministry and the municipalities on this issue. This issue remains unresolved.

Also during this year, the correctional services are yet run by acting directors. During the visits, the NPM noted that correctional institutions are facing difficult working conditions and occasional lack of materials for everyday work, especially with radio communication equipment. According to officials, this is happening because of procurement/tendering procedures. The Detention Centre in Lipjan and the Correctional Centre for Women and Juveniles faced a lack of correctional officers because a number of existing ones were

attending school at the Public Safety Academy in Vushtrri and a number were transferred to the Correctional Educational Centre.

During this year, Kosovo was visited by the UN Special Rapporteur against Torture. Special Rapporteur met with the Ombudsperson and NPM where information and discussions were exchanged regarding the respect of the rights of persons deprived of their liberty. The Special Rapporteur also held meetings with government officials, civil society and NGOs that monitor the institutions where deprived persons are held. During the visit to Kosovo, the Special Rapporteur has visited several institutions where persons deprived of liberty are held.

Even during this year, a challenge for institutions, where persons deprived of liberty are held, was the placement in the special units of detainees and convicts with mental problems in accordance with applicable laws and international standards.

A support to the strengthening of NPM has been provided by the Council of Europe, a project also covering correctional service and the prison health service. In this context, the Department of Health in Prison in cooperation with consultants from the Council of Europe has drafted a document titled the Standard Action Practice which will describe in details the actions of health units in detention Centres and prisons from the moment of arrival of a detainee or convict. The NPM has been part of the workshop where the provisions of this document have been discussed giving the professional opinion regarding the compliance of the document with the international standards on the rights of the persons deprived of liberty. Building these procedures will facilitate the work in prison health care and at the same time the work of the NPM.

## **9. Summary of reports with recommendations**

### **9.1 Ex officio reports**

In conformity with the authority entrusted to Ombudsperson under Article 135, paragraph 3 of Constitution of the Republic of Kosovo, and Article 16, paragraph 8 and Article 27 of Law on Ombudsperson no. 05/L-019, during 2017, Ombudsperson published reports, opinions, *amicus curiae*, requests for interim measures, summarized as follows:

### **9.2 Ex officio Report with recommendations no. 1/2017 concerning Flat rate (presumptive) invoicing of water expenses by water supply companies**

On 11 January 2017, the Ombudsperson published the *ex officio* report no 07/2017, whose purpose is to investigate the situation within the legal framework and the applicability of the legal framework into practice regarding the setting of water tariffs where there are no technical conditions for installation of the water meters. The report addresses the area of consumer protection in relation to the application of the rules defined by law and by-laws as well as the legality of the application of the rules established by the Water Service Regulatory Authority (hereafter referred to as the Authority). In addition, this report will review the unequal treatment based on the setting

of the flat rate invoicing, as well as the potential intervention on the property right. The report is based on the daily newspaper Koha Ditore, titled “*Water is invoiced the same by the Water Supply company to 20 owners of the buildings in Bregu i Diellit*” on 23 October 2016, based on the analysis of such an issue.

The possessions expressed in consumers’ money, earned through salary or even pension, constitutes “property” in conformity with Article 1 of Protocol 1 of ECHR, which is an integral part of Constitution of the Republic of Kosovo. In this regard, whatever intervention into the “possessions” of the consumer, which is not in accordance with Law, constitutes violation of this right. The water invoicing can by no means be a violation of this right, but the violation will be caused by the disproportionate water invoicing. In spite of the fact that Law foresees flat rate water invoicing in certain cases, and in particular where there are no technical conditions for installation of water meters, this invoicing should be done proportionately and fairly. Flat rate (presumptive) and disproportionate water invoicing constitutes violation of the property right based on Article 1, Protocol 1 of ECHR.

Not only does flat rate (presumptive) and disproportionate invoicing constitute an intervention into the property right of consumers, but it also constitutes unequal treatment. Despite the fact that Water Supply Company considers that water invoicing is done the same in collective buildings, by not considering other factors as the basis which could have an impact on the proportional water invoicing, it constitutes unequal treatment of consumers.

Hereby this report, the Ombudsperson recommends that Water invoicing is done based on the real consumption showed on the consumer’s water meter and according to real expenses. Setting the flat rate price where measuring is not possible based on the water meter, should be done in conformity with rules in force, especially in conformity with Rule on minimum service standards of water service providers in Kosovo (R-03/U&K), Article 38 (b) and taking into consideration licencing of Service Providers by the Authority, I recommend better monitoring of the Service Provider regarding the implementation of the secondary legislation approved by the Authority itself. Irrespective that such an obligation is foreseen by the regulations of the Authority, what was mentioned above is an indication towards the exercise of more strict monitoring measures in order to prevent further intervention in the protection of the consumer’s rights and the exercise of the property right.

### **9.3 Ex officio Report with recommendations no. 44/2017 concerning Procedural delays in treatment of cases by the Special Chamber of the Supreme Court**

On 31 January 2017, the Ombudsperson published an ex officio report with recommendations no. 44/2017, which aims to draw the attention of the relevant state authorities to human rights violations committed by the procedural delays in treatment of

cases by the Special Chamber of the Supreme Court (Special Chamber) and making recommendations for the elimination of these violations. The report is based on 49 (forty-nine) separate complaints, which are currently initiated with the Ombudsperson Institution (OI) regarding the delay of treatment of cases by Special Chamber, by not including here the complaints filed against Privatisation Agency of Kosovo, which relate to the issues dealing with Special Chamber and which according to their nature are similar to the complaints filed against Special Chamber, as these complaints too, depend on final decisions taken by Special Chamber. Complaints received with OI are dating from 2012 and their list is attached as an annex to the published report.

On the basis of the responses that Ombudsperson received from Special Chamber, it clearly seems that we have to do with a backlog of cases and that such a situation has become common for Special Chamber which seems to be a result of a limited number of judges by law, frequent substitution of judges, in particular of international judges and the lack of legal advisors and translators. Ombudsperson, therefore, considers that above all, we have to do with the conduct of state authorities regarding the situation in Special Chamber.

ECHR determines the obligation of states in the organisation of their justice systems, in order for courts to comply with the obligation to review cases within a reasonable time, irrespective of the expenses that may arise for this organisation. Otherwise states will be held accountable not only for delays in the resolution of any special cases but also for the failure to build resources for the resolution of the backlog of cases and for structural absence in justice system causing such delays.

When it comes to the backlog of cases pending review, ECtHR make a difference between situations when we have to do with the backlog of cases for a definite time, where state may not be held accountable if it has timely undertaken proper actions for improvement of situation and the continuous backlog of cases for which the state is held accountable. Despite the requests made by President Judge of Special Chamber and numerous citizens' complaints, which are party to the proceedings within the Special Chamber, it seems that relevant authorities have taken no actions for improving the situation regarding the resolution of the backlog of cases.

According to ECtHR case-law, it is the obligation of states to organise their legal systems in order to guarantee the right to take a final decision for each citizen regarding their rights and civil obligations, within a reasonable time (*Scordino v. Italy (no.1)*, § 183), where the overload with cases cannot be taken into consideration (*Vocaturo v. Italy*, § 17; *Cappello v. Italy* § 17). In case the delay in the settlement of cases is an issue of structural organisation, the state must provide the adoption of efficient measures for the resolution of backlogged cases, (*Zimmermann and Steiner v. Switzerland*, § 29; *Guincho v. Portugal*, § 40). The fact that backlogging of cases has become common does not justify extraordinary delay of procedures (*Unión Alimentaria Sanders S.A. v. Spain*, § 40).

The Ombudsperson considers that procedural delays in the Special Chamber may have caused a violation of the right to a fair and impartial trial, Article 31 [Right to Fair and Impartial Trial] and the right to an effective remedy, Article 54 [Judicial Protection of Rights], which provides for the right to effective legal remedies of the Constitution, and therefore recommends that the Government of Kosovo, on the basis of the rules and procedures for legislative initiatives, propose amending the Law on the Special Chamber and Section 3.1 of the Law in order to provide fair and effective access to the parties to the proceedings before the Special Chamber. Also, the Kosovo Judicial Council is to provide support to the Special Chamber in an organizational and operational aspect in accordance with the requirements and needs of the Special Chamber functioning properly. While the Special Chamber drafts a strategy resolution of backlog cases, establishing not only equal distribution of cases to each judge, but also norms and deadlines within which a specific number of cases should be resolved by each judge.

#### **9.4 Ex Officio Report with recommendations no. 265/2017 concerning billing of electricity costs consumed in four northern municipalities of Republic of Kosovo**

On 13 June 2017, the Ombudsperson published the report with recommendations through which raised his concern regarding the manner of billing electricity. A sum of 8 million euros of the electricity consumed in four northern municipalities of the Republic of Kosovo, precisely in Leposaviq, Northern Mitrovica, Zubin Potok and Zvečan, is invoiced to consumers of other parts of Republic of Kosovo per year. A sum of 8 million euros of the electricity consumed in four northern municipalities of the Republic of Kosovo, precisely in Leposaviq, Northern Mitrovica, Zubin Potok and Zvečan, is invoiced to consumers of other parts of Republic of Kosovo per year. In relation to this report there are three main goals: a) To assess whether this form of invoicing practice fully complies with the legislation stated by the ERO and the Department of Energy; b) To assess whether this invoicing practice signifies violation of human rights, respectively property rights, the right not to be discriminated and customers rights, and; c) To provide competent institutions with specific and tangible recommendations regarding actions to be undertaken to fully comply with laws at force and human rights.

Since billing of electricity consumed in the north is not supported by the law, the Ombudsperson analysed also the Decision of ERO V\_399\_2012 of 6 February 2012, which according to ERO, comprises the basis for electricity billing in the north of the country. As can be understood, the decision deals with increase of investments in KEDS in order to evade losses which are determined by law. Furthermore, it can be seen that the Decision is issued on 6 February 2012, while Operator of Distribution System (KEDS) and the Public Supply Company (KESKO) undertook function of distribution and supply in May 2013. 1 It can be noticed that the relevant authorities of Republic of Kosovo previously have set convenient circumstances for KEDS and KESKO by guaranteeing to them investments to cover those losses that are determined by law. ERO's reasoning that

the value of 8 million euros is unaffordable for KEDS does not stand. Related to this justification, the Ombudsperson, during the meeting with ERO on May 22, 2017, wanted to be informed about the sum of KEDS annual profits. ERO representatives were not in possession of this information. In the absence of this crucial information, the Ombudsperson refuses to accept for granted the allegations that the above stated losses are unsustainable for KEDS. Unsustainable are as well allegations that consumption of consumed energy in the north is reasonable lost which should be covered by citizens of other parts of Kosovo while at the same time to be justified that these expenses have high costs to be bared by the Distribution System Operator since it is really unknown if those are losses of reasonable level or loses with unaffordable costs.

The Ombudsperson considers that claims of ERO and the MED, Department of Energy that citizens' supply with electricity is a legal obligation should be clear and grounded. The Law on Electricity, Article 1, stipulates that the purpose of the law is ". . . guaranteeing secure supply . . . **with affordable prices**. . ." (Emphasis added). When it comes to the "universal supply service", the law links this concept with the fixing of "affordable prices" (ibid. Article 3, paragraph 1, and subsection 72). These provisions imply that guaranteeing with supply of electricity is not free of charge.

It is obvious that the billing practice at question constitutes an unequal treatment between persons in similar situations. Namely, some electricity customers do not pay for the amount of energy they consume, while other customers pay not only for their consumption but also pay for the electricity consumed by those who do not pay electricity bills. In this way KEDS with ERO authorization, does not treat all customers of electricity grid with the same standard.

The Ombudsperson considers that despite potential public perception that inequality is based on **ethnicity**, the Ombudsperson deems that here we deal with inequality not based on **ethnicity** but based on **settlement**: Residents of the northern part of Republic of Kosovo are not obliged to pay bills for consumed energy while citizens of other part of Kosovo are obliged to pay their bills for consumed energy as well as pay for the electricity consumed by residents of the northern part of the country

This cannot be qualified as inequality based on ethnicity, since in the northern part of the country resides not only Serbian community and also in the other part of the country resides people that are not of Albanian Community. With this report, the Ombudsperson sent three recommendations to the authorities: a) ERO urgently to terminate unlawful practice of billing of the consumed electricity in the northern part of the Republic of Kosovo to customers of other parts of the country; b) The Government of Republic of Kosovo, in cooperation with ERO and KEDS to find alternative way to evade losses in the north of the country, by treating all customers equally according to constitutional and legal norms against discrimination; c) ERO, in compliance with the Law No. 05/L-084 on Energy Regulator, to promulgate a decision through which it will approve tariffs' reduction up to that level which will enable customers' reimbursement that unjustly have

been invoiced, and continue to be invoiced for the energy consumed in four northern municipalities of the country.

Since the recommendations were not taken into account, pursuant to the authorizations conferred by the Constitution and the law, on 15 August 2017 the Ombudsperson filed a claim with the Basic Court in Prishtina - Department for Administrative Affairs for annulment of ERO's decision V\_399\_2012 dated February 6, 2012, as well as to oblige the RO to compensate the consumers who are billed for the electricity consumption in the four northern municipalities of the Republic of Kosovo. As the continuation of the implementation of such a decision would cause irreparable damage to the citizens of Kosovo, the Ombudsperson together with the claim filed a request with the Court for postponement of the execution of the decision.

While the claim is in the review proceedings, the Basic Court in Prishtina acted in accordance with the request of the Ombudsperson to postpone the execution of the decision by fully approving the claim on 11 September 2017. This decision of the Basic Court on 20 October 2017 is confirmed by the Court of Appeals.

#### **9.5 Ex-officio Report with recommendations no. 278/2017 concerning the failure to treat persons with chronic psychiatric disorders in compliance with legal procedures**

On 21 August 2017, the Ombudsperson published the report with recommendations regarding the failure to provide adequate treatment to persons with chronic psychiatric disorders in compliance with legal procedures from the Municipality of Shterpce. The report aims at drawing the attention of the authorities of the Municipality of Shterpce, Centre for Social Work, Basic Court in Ferizaj, regarding the positive obligations they have for the treatment of persons with severe mental disorders, which would result in the protection and security which is jeopardized by the irresponsible actions of these persons.

The Ombudsperson opened investigations on this case based on the news article of the newspaper "Koha Ditore" titled "*Personat e sëmurë Mendorë Rrezikojnë Qytetarët dhe Pronat*" (ANG- Persons with Mental Disorders Pose Risk to Citizens and Property" dated 11 April 2017, where representatives of NGO "Handicap Kosova", branch in Ferizaj, have accused the municipal institutions and the Centre for Mental Health for failure to properly treat persons with chronic psychiatric disorders, who as a result of this failure are causing problems by damaging public and private property.

After the case investigation, the Ombudsperson notes that in the present case and other cases of the same nature, the institutions have not taken the actions that are required by the law in order to prevent the problems associated with persons with mental disorders. Moreover, the institutions inaction is noticed, in terms of improving the quality of life of these persons, who wander through the roads malnourished and untreated, posing danger to others, and at the same time harming themselves. The negligence of the institutions and responsible bodies towards the treatment of persons with mental disorders, is

conflicting the Law on Mental Health No. 05/L -025, whereby in Article 1 stipulates clearly that: “ *This law aims to protect and promote mental health, prevent the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders*”.

From the investigation of this case it results that B.V. is from the Municipality of Strpce and the institution responsible for his psychiatric treatment is CMH in Ferizaj. At the time being in this centre are being treated patients with psychiatric problems (neurosis, depression, psychosis, Schizophrenia). Even though some of these patients have attempted self-harm and suicide, have committed criminal offences of property damage, criminal offences against life and body, against sexual integrity, they were not treated in compliance with the law by responsible institutions. What is more, the institutions (CMH, CSW, court) did not collaborate, which would be an indispensable premise for the adequate treatment of these persons in compliance with the laws in force. Meanwhile, CSW in the Municipality of Shterpce has not undertaken any action towards filing a request for a guardianship order for the case B.V. who is without family care and continuously wandering.

On this occasion, the Ombudsperson recommended to the Municipality of Shterpce and the Centre for Social Work that, In compliance with legal powers, to undertake urgent measures for treating the case of B.V. and other potential cases of this nature within the powers of this centre. Whereas the Basic Court in Ferizaj is to urgently address the proposal of Prosecutor of BPF P.949/15, dated 7 August 2015, for the imposition of compulsory psychiatric treatment measure for B.V.

#### **9.6 Ex Officio Report with recommendations no. 575/2016 concerning the Right on Education of persons deprived of liberty – failure to comply with legal deadline for commencement of educational process in the Correctional Centre in Lipjan**

On 5 September 2017, the Ombudsperson published a report with a recommendation on the right to education for persons deprived of liberty - failure to comply with legal deadline for commencement of educational process in the Correctional Centre in Lipjan. This report aims to draw attention to one of fundamental human rights, such as the right to education, namely provision of this right to juveniles of the Correctional Centre in Lipjan (CCL). In this regard, the issue of delays and other omissions related to the organizing of educational process in CCL will be addressed, and based on findings, recommendations will be provided for competent institutions of the Republic of Kosovo to undertake necessary measures for efficient implementation of educational process in CCL. The report aims to make a concise analysis of this problem.

The Ombudsperson reiterates that education of convicted juveniles, who are placed in correctional institutions, is one of crucial liabilities of responsible institutions of Republic of Kosovo, liability which derives from Constitution, laws at force as well as



international legal instruments. As such, this institution's liability to accomplish one of fundamental human rights, such as provision of the possibility for access to education for juveniles, cannot be disregarded for those residing in correctional centres, as is the case in CCL. Furthermore, the Ombudsperson draws attention that this right for convicted juveniles ought to be allowed within CCL or even outside the institution, respectively on regular public schools.

Data provided from the survey conducted by OI officials, reveals that delays at the beginning of the educational process at CCL occurred in previous years as well. These delays occurred due to lack of timely coordination between responsible institutions, namely MED in Lipjan and MEST, lack of teachers, lack of budget allocation (specific grants) from MEST etc. On this occasion, the Ombudsperson recommended to the MEST on the bases of its legal and constitutional responsibilities, undertake necessary measures a) to issue sub-legal acts as provided by law related to organization of the educational process for persons deprived of their liberty, including juveniles residing in CCL by addressing their needs. In this context, it is necessary to amend also paragraph 1 of Article 4 of Administrative Instruction no.16 / 2011, of the date 30.12.2011, in order to find a solution for request on altering of educational profiles for students in CCL beyond deadlines that are currently set out in this instruction; b) through sub-legal acts, responsibilities which are entrusted to MEST and municipalities, in this case municipality of Lipjan for the regular flow of educational process in CCL, to be clearly defined; c) to allocate on time and according to needs the budget related to organizing of educational process in CCL as well as other correctional facilities. In cooperation with Municipality of Lipjan, as well as relevant ministries, to ensure sufficient budget for teachers' engagement in CCL. While the municipality of Lipjan is recommended that based on the Decision of the Minister of MEST No.294/01B of the date 22 October 2012, and in cooperation with MEST, without further delays, to undertake all necessary measures to provide juveniles with school documents when released from CCL.

### **9.7 Ex Officio Report with recommendations no. 582/2017 concerning of Handling of unfinished business by the previous legislature, according to the Rules of Procedure of the Assembly of the Republic of Kosovo**

On 12 September 2017, the Ombudsperson published the report with recommendations regarding the handling of unfinished business by the previous legislature under the Assembly's Rules of Procedure. In the Albanian and Serbian language versions of the Rules of Procedure of the Assembly of the Republic of Kosovo (hereinafter: the "Regulation"), Article 86 of the Regulation, titled "Unfinished business", states that: At the end of the term of the Assembly, all items of business entrusted to it shall be deemed **finished**"(emphasis added). In inter-institutional communications with the Ombudsperson, legal officials of the Assembly have claimed that the words "**finished**" as used in this provision should be treated as equal to "**cancelled**". According to this

interpretation, all unfinished business at the end of a mandate cannot be renewed at the beginning of the next mandate but must be restored to the first step. This report has four main purposes: a) To argue that words “finished” according to linguistic logic and based on the context, should not be interpreted as equal to “cancelled”; b) To argue that the words “finished” correctly interpreted leave the issue of how a new Assembly should handle unfinished business from the previous Assembly; c) To argue that, based on the principles of democracy and legislative efficiency, and in accordance with practices of the European Parliament, the Regulation should be supplemented to give each new Assembly the right, with the decision of the Presidency, to continue unfinished business of the previous Assembly, instead of returning all these businesses to the first step; d) To provide the Assembly with concrete recommendations for regulating this issue, based on the above mentioned arguments.

Unlike official versions, the version of Article 86 in the English language stipulates that: “At the end of the term of the Assembly, all items of business entrusted to it shall be deemed unfinished” (Emphasis added). This means that the key words of this provision (“finished” in Albanian and Serbian language, “unfinished” in English), not only are not equal in the three versions of the Regulation but are also *completely contradictory and contradicts each other*. This serious discrepancy appears to have been inherited from the previous edition of the Regulation, where there is the same discrepancy between the language versions of the provision in question (see the Rules of Procedure of the Assembly of 2005, as amended and supplemented in 2006, Article 63, in all three language versions).

In fact, Ombudsperson considers that the obligation of the Assembly to return all unfinished items of business in the first step not only is not in compliance with democratic principles, but would constitute a violation of those principles. According to the democratic principles, an Assembly elected by people should have a wide competence to decide how to address each item of business remaining from the previous legislature. It should have the right to decide for all such items of business, or continue the work where it was left or cancel it and commence from the beginning.

Article 86 of the current Rules of Procedure of the Assembly questions the issue of how a newly elected Assembly should deal with unfinished business from the previous legislature. Full respect for the principles of legislative efficiency and democracy requires that the Presidency of the Assembly be competent to decide, at the request of various commissions and institutions, to continue unfinished business from the old legislature, rather than resume these items of business from the first step. Based on what was said above, the Ombudsperson recommended to the Assembly of Kosovo: Explicitly clarify that Article 86 of the Rules of Procedure of the Assembly does not decide the issue of how a newly elected Assembly should address unfinished business from the previous legislature; and to Supplement the Rules of Procedure of the Assembly of the Republic of Kosovo to determine that the Presidency of the Assembly, at the beginning of each

legislative body, will have the right to decide, at the request of various commissions and institutions, to continue unfinished items of business from the previous legislature, rather than resuming these items of business from the first step.

### **9.8 Ex Officio Report with recommendations no. 594/2017, concerning effective defences in criminal proceedings and guarantee of equality of parties - assignment of the defence council at the public expenses**

On 19 September 2017, the Ombudsperson published the report with recommendations concerning effective defences in criminal proceedings and guarantee of equality of parties - assignment of the defence council at the public expenses. On enforcement of constitutional and legal competences, the Ombudsperson, through this Report aims to address the legal basis pertaining the right of defendants in criminal proceedings to have defence counsel, focusing on the right of appointment of attorneys free of charge (at public expense) in cases when the defendant lacks financial means to have one. Equality of parties as a fundamental principle of contemporary criminal proceedings is an integral part of fair trial, as a right set forth in Article 6 of the European Convention on Human Rights ( hereinafter: ECHR). The report analyses the right to have defence counsel in criminal proceedings in the spirit of the ECHR and decisions of the European Court of Human Rights as primary sources under the Constitution of the Republic of Kosovo.

There are three purposes that the report aims at: to analyse current problems and challenges in Kosovo criminal justice system regarding failure to guarantee the right to effective defence, namely guaranteeing free of charge defence counsel for the defendants; to analyse liabilities of judicial institutions (in particular of the court) which derive from the Constitution, the CPC as well as other legislation at effect to guarantee the right to effective defence in criminal proceedings, through interpreting accurately the legal provisions at force; to recall liabilities for the judicial bodies which derive from international acts in relation to guarantee the right to effective defence in criminal issues, in particular from the ECHR and ECtHR decisions concerning this right; based on findings accomplished to give specific recommendations as solution for the future, in accordance with the constitutional and legal authorizations that the Ombudsperson has.

Starting from the position of the defendant in criminal proceedings, which faces suspicion of committing criminal offense and the possibility of imposing criminal sanctions, makes compulsory the need to strictly respect rights and procedural guarantees against him. In this regard, it is of particular importance that the defendant is equal with the state prosecutor who represents the prosecution body, which is articulated with the principle of equality of parties in criminal proceedings. Equality of parties in criminal proceedings implies in the first instance equality from professional aspect between the defendant and the state prosecutor. In this regard, given that the defendants in majority of cases are laic (without legal knowledge) and on the other hand are burdened emotionally due to the procedural position, such professional equality can only happen if the defendant is represented by the attorney.

A system of mandatory and non-mandatory defence (optional) system is established in the Kosovo justice system regarding defence in criminal proceedings. The main problem that occurs in Kosovo courts practice deals with assignment of defence counsels at public expense in cases where the defence is not compulsory according to the law, therefore it is optional, which is also the main focus of the analysis.

The obligation of Kosovo's justice institutions to implement international human rights standards derives from the Constitution, namely Article 22 thereof, listing some of the basic human rights acts “*are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions...* “. This principle stands for the right to have defence council in the criminal proceedings, including appointment of the defence council at public expenses. With the intention of proving this fundamental right, the Ombudsperson will further analyse provisions of these acts, with the focus on interpretations provided on ECtHR decisions.

While the CPC apart cases when the defence is mandatory (in cases when the defendant does not engage defence counsel, he is appointed *ex officio*), also determines the possibility of appointing defence counsel at public expense when the defence is not mandatory. The final one, according to the CPC, has been left in the court’s discretion that upon defendant’s request and the declaration that he has no financial means to pay the expenses of the defence, to decide whether the interests of justice require so.

Concerning the main task that this Report addresses and based on findings from the monitoring of the criminal courts’ practice in Kosovo, finds that: Courts in Kosovo, in the absolute majority of criminal cases, where according to the CPC the defence is not mandatory, have not appointed defence counsel at public expense. Even in cases where the imprisonment sentence was imposed, the defendants were tried without a defence counsel.

This practice represents violation of legal and constitutional liabilities that courts have regarding provision of guarantees on the right to effective protection of the defendant in criminal proceedings. As such, this practice of the courts constitutes a violation of the principle of equality of arms in criminal proceedings. Furthermore, this constitutes violation of the liabilities which derives from international acts, such is ICPCR, ECHR and ECtHR decisions related with the right that the defendant enjoys free of charge legal protection.

The Ombudsperson considers as of indispensable importance that the current practices are not to be repeated in the future, so that the decisions of bodies of criminal justice related to the appointment of defence counsel at public expense (in case the defence counsel is not assigned *ex-officio*) is in conformity with constitutional, legal and international standards which are mandatory (with the emphasis on ECHR and ECtHR decisions). The Ombudsperson recommended to the Ministry of Justice/Legal Department that in the scope of amendments/alternations of the CPC to determine more distinctly the right on appointment of defence counsel at public expenses, that this right is

to be mandatory and in accordance with the practice set by the ECtHR; On the basis of constitutional and legal powers the Supreme Court of Kosovo issue a legal opinion in order to instruct the lower instance courts to enforce ECtHR decisions also related to the appointment of defence counsel at public expense and based on this court's standards, the principle of equality of parties in criminal proceedings to be respected; The Kosovo Judicial Council shall instruct all courts so that judges in criminal matters have due concern to strictly respect defendant's right to have defence counsel, in particular for the right on assignment of a defence counsel at public expense. T To this end, the ECtHR's practice will serve as the key reference and to ensure to propose a higher budget with regard to coverage of defence expenditure, in cases where the defence counsel ought to be appointed at public expense; On the basis of the constitutional and legal powers Kosovo Prosecutorial Council and Chief State Prosecutor shall take the necessary measures to instruct and oversee the respect of defendant's right to be timely informed on the right of having a defence counsel, in particular the right of appointment of defence counsel at public expense, and that the right on defence and equality of arms principle in criminal proceedings (with emphasis on the investigation and filing of the indictment phase) is strictly respected and in accordance with the highest professional standards; The Justice Academy / Program Council shall within their program provide additional trainings focused on the right of a defendant to have a defence counsel, in particular for the right of appointment of the defence counsel at public expense. Trainings related to this issue have ECtHR practice, as the main reference.

**9.9 Ex-officio Report with recommendations no. 551/2017, concerning the Revocation of certain competencies of Kosovo Property Comparison and Verification Agency according to Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency**

On October 19, 2017, the Ombudsperson published a report concerning the Revocation of certain competencies of Kosovo Property Comparison and Verification Agency according to Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency. According to the law, the revocation of two important competencies of this Agency (hereinafter: "Agency" or "KPCVA") is foreseen. First, the law stipulates that, after 18 months from the entry into force of the present Law, the Agency will no longer continue to administer the properties under its custody. Secondly, in any case where KPCVA carries out two evictions of occupants of the same property, The law on KPCVA stipulates that the responsibility for any other eviction related to that property will be transferred to the owner himself, within the regular private enforcement system. The report has two main purposes: to assess whether the revocation of such two competencies of KPCVA is a violation of owners' rights under the Constitution and European and international human rights standards; and to provide concrete and specific recommendations to competent authorities on steps to be taken to fully respect the human rights.

The Ombudsperson considers that revoking these two competencies from the scope of KPCVA - the competence to administer properties, including the renting scheme, as well as the competence to carry out evictions after two occupations of the same property - is a violation of the right to own property, according to the Constitution of the Republic of Kosovo and European and international human rights instruments.

United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the so called “Pinheiro Principles”) provide further support to this position, highlighting the positive obligation of the state to protect property rights. These principles make it clear that the state cannot give up the protection of the property right of displaced persons. This protection is part of its positive obligation. The termination of the existing 18-month old property management mechanism is a breach of this obligation and a violation of the right to property under the Constitution and European and international human rights instruments. The Ombudsperson also considers that this termination may have serious consequences due to some special circumstances of the Republic of Kosovo.

The Ombudsperson also finds that the transfer of the burden of executing of decisions for eviction decisions to the owners constitutes a violation of the right to property. Based on ECHR judgments cited above, the Ombudsperson considers that, with the transfer of execution of evictions to the owners themselves, the law prevents the fulfilment of a positive obligation to protect the right of property, including the obligation to ensuring that, “once a solution has been adopted by a State, it must be implemented with reasonable clarity and coherence, in order to avoid, in so far as possible, legal uncertainty and ambiguity for the legal persons concerned by the measures to implement it” (*Paduraru*, ECtHR, *op. cit.*, par. 92).

By compelling the Agency to waive from conducting evictions after two re-occupations, the Law violates the obligation that “any State. . . must equip itself with an *adequate and sufficient legal arsenal* to ensure compliance with the positive obligations imposed on it “(*Ibid.*, para 93, emphasis added).

In this report the Ombudsperson recommended that Article 21, par. 7, of the Law on KPCVA, (“The Agency shall administer the properties and implement the rental scheme in accordance with this article, at latest eighteen months (18) from the entry into force of the present Law”); Article 19, par. 7 of the Law on ACAAP, (“For any subsequent re-occupation of the same property, the rules of the general enforcement procedure shall be applicable based on the same decision/judgment and eviction order as an enforcement document”) shall be abolished entirely; and Article 19, para. 6, the Law on ACAAP, be amended as follows: “For any reoccupation following the execution date of an eviction order, after notification by the claimant for illegal re-occupation of the property, the Agency shall re-execute it once more by re-evicting occupants from the property based on a newly issued warrant, following the procedure in paragraph 3-5 of this Article. With regard re-eviction the Agency shall inform the applicant of the day of re-eviction and invite him/her to be present. In case the claimant or his/her representative fails to

participate in re-eviction, the Agency shall enforce eviction and issue repossession acknowledgment”.

### **9.10 Ex officio report with recommendations no. 707/2017 concerning the freedom of expression (media) and safety of journalists**

On 2 November 2017, the Ombudsperson published the ex officio report with recommendations on freedom of expression (media) and safety of journalists. The purpose of this report is to treat freedom of expression as a fundamental right in the Republic of Kosovo, with special emphasis on the safety of journalists in fulfilling their mission. This report was initiated in response to concerns about the violation of freedom of expression, with emphasis on media freedom and safety of journalists in Kosovo.

The tendency to limit the freedom of expression, the challenges of journalists in exercising their profession and threats against them in one hand, and the risk of privacy violation, incitement of hate and other problems related to the freedom of expression and media on the other hand, have been continuously discussed in Kosovo. This report was initiated due to the on-going concerns in this regard, and information of the Ombudsperson, in various forms, about the challenges and problems in this field, especially on the lack of judiciary efficiency for addressing such cases.

A specific reason for the drafting of this report by the Ombudsperson is the assault against the journalist and director of the newspaper "Insajderi", Mr Parim Olluri, the assault against the journalist Mr Vehbi Kajtazi, the threats against the journalist Mr Leonard Kerquki, and the assault against the former editor-in-chief of the daily newspaper "Zëri", Mrs Arbana Xharra, who joined political party prior to endure a physical violence. These cases represent the worst forms of endangering the bodily integrity and life of journalists in Kosovo. As such, it is one of the most severe forms of violation of the freedom of expression and threat of journalists in Kosovo.

In this report, freedom of expression as a fundamental right will be mainly identified with the concept of media freedom. The Ombudsperson declares the high level of sensitivity and complexity to establish equilibrium between freedom of expression as a fundamental right in every democratic society and determining its limitations toward other rights. It should be stated that this topic represents an on-going challenge in all countries and the interpretation of such limitation is difficult even in the highest international institutions, such as the European Court for Human Rights (ECHR). However, conclusions in main international documents, notably the ECHR jurisprudence, have established a standard on guaranteeing the freedom of expression and determining necessary limitations. The complexity of this topic represents the challenge for careful as well as balanced handling in order to prevent the hate speech and guaranteeing human rights. On the other hand, guaranteeing the safety of journalists and efficiency of justice bodies in fighting and preventing attacks and violence against journalists is a precondition for building a democratic society.

Through this report, the Ombudsperson draw attention on the necessity of guaranteeing the freedom of expression, namely the freedom of media as a fundamental right and as an indicator of the level of democracy, and the observance of international standards on human rights in general; Draw attention on the necessity of journalists' effective protection from any form of violation against their safety and ensuring the free discharge of their profession. In particular, pointing out the obligations of Kosovo institutions to efficiently investigate and adjudicate perpetrators of official offences against journalists; Draw attention on the limitations to the freedom of expression in relation to other rights and the risk of violating privacy, dignity, incitement of violence, hatred, intolerance or disruption of public order; By analysing the legal grounds and international standards in this field, to provide concrete recommendations on guaranteeing the freedom of expression in relation to other fundamental rights; and Emphasize the necessity of having the institutions of the Republic of Kosovo, particularly courts, always refer to ECHR's decisions in all cases when rendering a decision regarding freedom of expression and its limitations.

With this report, the Ombudsperson reiterates that it is a special obligation of the state of Kosovo to efficiently guarantee freedom of media and safety of journalists as one of the major standards of democracy. Apart from the provisions of the international acts mentioned above and the Constitution of the Republic of Kosovo, this obligation of the state also derives from the standards set out in some other documents for this purpose.

At the global level, the UN Resolution No. 68/163 on the safety of journalists and the issue of impunity is important,<sup>210</sup> where among others it is determined that the states should “...do their utmost to prevent violence against journalists... to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies” (point 5). Moreover, a reference at the European level is the 2016 Recommendation on the protection of journalists and safety of journalists and other media stakeholders,<sup>211</sup> which highlights the need for adoption of a comprehensive legal framework by states in order for the purpose of guaranteeing the freedom of media, with particular emphasis on the effective implementation of criminal legislation in order to guarantee the physical and moral integrity of journalists.

The Ombudsperson warns on the need to advance the legislative aspect in Kosovo, to build a comprehensive legal framework that guarantees sufficient protection for the freedom of media and safety of journalists. It is also of particular importance that all cases of violence and threats be investigated and effectively judged by the justice system authorities. For this purpose, it is necessary that the leading authorities of the

---

<sup>210</sup> This resolution was adopted by the UN General Assembly on 18 December 2013 (Resolution 68/163. The safety of journalists and the issue of impunity).

<sup>211</sup> See Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.



prosecutorial and judicial system determine that cases of criminal offences against journalists are treated with priority and based on the principle of efficiency.

Based on the analysis of the legal basis and the findings reached, the Ombudsperson recommends the institutions of the Republic of Kosovo to take the necessary measures to guarantee the freedom of expression (media) and the safety of journalists, respectively that the Government of the Republic of Kosovo, in the framework of its constitutional and legal powers, undertakes the necessary measures: To ensure on-going transparency in the function of public accountability and freedom of expression as a basis for the development of democracy and respect of human rights; To refer to and implement the recommendations of international organizations regarding freedom of expression and safety of journalists (*especially the UN Recommendations on the Safety of Journalist and the Issue of Impunity, and Recommendations issued by EU institutions*); to ensure that the legislation on all issues related to freedom of expression is in full harmony with international documents and standards built by ECtHR. For this purpose, it is necessary to advance the legal basis that guarantees the freedom of expression, the media and in particular the safety of journalists. The Judicial Council, the Prosecutorial Council and the Office of Chief State Prosecutor, cases of threats and assaults against journalists should be treated with priority and should be effectively resolved by the prosecutorial and judicial system in Kosovo. There should be proper coordination of the state prosecutor with the police, and efficient use of all legal remedies to investigate these offences; In cases of deciding on the freedom of expression should be based on the standards built from the ECtHR case law as a primary source, and in all cases where the respondents are found guilty, a merit-based punishment should be imposed, thus enforcing a preventive policy by using adequate punitive measures for reaching the punishment goal and the Kosovo Police should intervene with priority in cases of threats against journalists, as a preventive measure for degrading situations of verbal threats in physical assaults.

## **10. Reports based on complaints**

### **10.1 Report with recommendations no. 12/2017, pertaining unequal treatment in determination of salary coefficient for the officials of Municipal Directorate of Education in Prishtina**

On 3 March 2017, the Ombudsperson published the report with recommendations regarding unequal treatment in determining the salary coefficient for officials of the Municipal Education Directorate in Prishtina. The purpose of this report is to promote equality and drawing the attention of the Municipality of Prishtina regarding the need to take actions for harmonizing the positions and coefficients for officials of the Municipal Education Directorate in accordance with the law, in order to eliminate the current inequality in their treatment. The report is based on individual complaints of officials of this directorate and aims to draw the attention on the right to be informed about the claim filed on 23 September 2016, with Prot. no. 01-120-240188.

The complainants expressed their dissatisfaction regarding the unequal treatment, seeking to improve the salary coefficient by qualification, vocational training, work experience, duties and responsibilities at work. They also complain that their salary coefficient is smaller and differs from the salary coefficient in the same positions in the Municipal Education Directorates of other municipalities. For comparison, the payroll of Municipal Education Directorates in Municipalities: Prishtina, Gjilan, Ferizaj, Gjakova, Rahovec, Peja, Prizren, Kamenica, Klina, Vushtrri, Fushe Kosova, Mitrovica, Istog, Skenderaj and Podujeva as well as payroll of pre-university institutions in the municipality of Prishtina were used.

Based on all the presented evidence and the facts gathered in case, the Ombudsperson found that there has been a violation of Fundamental Human Rights and Freedoms, as the persons in charge at the Ministry of Public Administration have not taken the appropriate actions to ensure equal treatment for all MED employees in Kosovo, according to work position, qualifications and responsibilities, whereas the persons in charge at the Municipality of Prishtina did not take appropriate measures to review the lodged claim and, therefore, the complainants were denied the right to use efficient remedies. It is considered necessary for relevant ministries and municipalities to have better coordination so that the above-mentioned differences are eliminated without further delays. Standardization of jobs helps institutions to provide better and more efficient services, enables efficient budget management and can also have an impact in increasing the quality of education. On this occasion, the Ombudsperson recommended to the Municipality of Prishtina: to take all the necessary measures for reviewing the complainants' claim in accordance with the Law on Administrative Procedure; To ensure that all civil servants - complainants, enjoy equal rights and opportunities in equal situations. Whereas the recommendations to the Ministry of Public Administration were that it should conduct individualized assessments of job positions and salary coefficient

for each position of civil servants in the Municipal Education Directorates in the Republic of Kosovo.

## **10.2 Report with recommendations no. 347; 729; 730; 333/2015 concerning the Municipalities conditioning citizens to pay property tax upon registration of vehicles**

On 20 March 2017, the Ombudsperson published the report with recommendations regarding municipalities conditioning citizens to pay property tax upon registration of vehicles. The report aims to draw the attention of authorities regarding human rights violations and the recommendation on amending the Administrative Instruction no. 07/2011 of the Ministry of Finance on Orders Banning Offer of Municipal Services for Enforcement of Property Tax Payment, dated 13 July 2011 (AI No. 07/2011).

The Ombudsperson considers that the imposition of tax payment, of the municipal tax in this case, necessary for the registration of the vehicle is under the competence of relevant state authorities, in this case, the Ministry of Internal Affairs, upon vehicle registration or continuation of its registration. The conditionality by municipalities, according to AI no. 07/2011, by which the citizens are obliged to pay the property tax in order to issue them a proof of payment of the municipal tax required for registration of the vehicle, according to the Administrative Instruction No. 16/2016 of the Ministry of Internal Affairs, is not a legitimate method for collecting property tax. The Ombudsperson considers that the collection of property tax is vital for the functioning of municipalities, but he considers that this should be done in accordance with the law. The aforementioned provisions of AI no. 07/2011, bypass the procedure for enforced tax collection, determined by Article 18 of the Law No.03/L-204 on Tax on Immovable Property. These provisions do not bypass only the Law on Immovable Property Tax but also bypass the Law no. 03/L-222 on Tax Administration and Procedures.

Bypassing the Law on Tax on Immovable Property and the Law on Tax Administration and Procedures aims the “facilitation” and shortening of the road to tax collection, thus endangering the rights of citizens in a due process determined by these laws. Based on these, the Ombudsperson recommended to the Ministry of Local Government Administration to change its official position expressed in the Explanatory Memorandum of 20 June 2012 addressed to the Mayors of the Municipalities of the Republic of Kosovo and the Chairpersons of the Municipal Assemblies and to issue a new position with the conclusion that the conditioning of the provision of services to citizens by municipalities with the payment of property tax has no legal basis and is contrary to human rights and as such cannot be applied; and to request the abolition of municipal regulations and orders on conditioning municipal services from the municipalities that apply this conditioning. Whereas the Ministry of Finance was recommended to amend Administrative Instruction no. 07/2011 on Orders Banning Offer of Municipal Services for Enforcement of Property Tax Payment,

### **10.3 Report with recommendations no. 11/2017 concerning non-enforcement of the work contract and the final decision in administrative proceeding by the Municipal Directorate of Education in Shtime**

On 19 June 2017, the Ombudsperson published the report with recommendations concerning non-enforcement of the work contract and the final decision in administrative proceeding by the Municipal Directorate of Education in Shtime. This report is based on an individual complaint and is aimed at promoting equality and drawing the attention of the Municipality of Shtime - Municipal Education Directorate, regarding the need to undertake relevant actions for implementation of the law.

The complainant used administrative legal remedies but, apart ascertained violations according to Inspection Section of Education, she still cannot put in place her right to implement the work contract due to non-enforcement of the final decision in administrative procedure by MDE in Shtime.

After analysing the case, the Ombudsperson finds that the Professional Actives within school should firstly examine requirements of the employed teachers in respective school, and then if any other teaching hour remains, it can be delivered to teachers coming from other schools, in the current case since the Professional Active in school did not agree with the division of teaching hours, according to the MDE response, the school directory decided to accomplish this task by itself. In this regard, the Ombudsperson finds that the director of the school institution is responsible to allocate the fund of hours, but he/she initially should take care to fulfil teaching hours according to the contracts issued to the teachers employed in the school which he/she manages, whereas regarding remained teaching hours must notify the MDE, which as an employer, will decide on the remaining teaching hours and will engage teachers from other school to fulfil them. The school director has exceeded delegated responsibilities by engaging teaches from other schools, although this is responsibility of MDE as employer, therefore the stand of school director to give priority to candidates who are hired by the MDE in other schools and to decrease fund of teaching hours of the complainant from 20, as foreseen with the work contract, to 14 is opposite with the work contract of the complainant.

The Ombudsperson considers as a failure non-enforcement of final decision in administrative procedure by municipal authorities by breaching in this case legal security and rule of law. Based on this, the Ombudsperson recommended to the Municipality of Shtime To apply without further delays the indefinite work contact No.05/308, of the date 26.01.2016, according to which the Complainant is a teacher of the subject of Physics with 20 teaching hours per week, and to reset teachers' gained right according to the final decision in the administrative procedure of the General Secretary of the Ministry of Education, Science and Technology, No.2-1086, of the date 24.02.2017.

#### **10.4 Report with recommendations no. 597/2014 Related to the length of judicial proceedings in the Basic Court in Prishtina**

On 20 June 2017, the Ombudsperson published the report with recommendations regarding the length of court proceedings in the Basic Court in Prishtina. The report is based on an individual complaint and aims to analyse the case on the basis of the facts available to the Institution and to assess the impact of the extended length of judicial proceedings in human rights in the spirit of the European Convention on Human Rights. The complainant initiated the claim, at the time, before the Municipal Court, now the Basic Court in Prishtina, on 14 July 2008, to confirm the rights of ownership and possession of illegally occupied immovable property.

In this report, the Ombudsperson notes that civil disputes concerning attestation of property rights and ownership of immovable property are considered civil rights within the meaning of Article 6 of the Convention, which is therefore applicable in the proceedings of this case. The case law of the European Court of Human Rights found that, in the case involving the determination of a civil right, the duration of the proceedings is usually calculated from the time when the judicial proceedings are initiated (*see, for example, Sienkiewicz v. Poland, judgment of 30 September 2003*) until the time when the case is finally decided upon and/or the judgment is enforced (*see Vocaturo v. Italy (II) Judgment of 24 May 1991*). The procedures initiated at the then Municipal Court, now the Basic Court in Prishtina, on 14 July 2008, when the claim was filed against the respondent, continue to this day for almost 8 years only at the first instance. The rationale of the length of the proceedings must be assessed in the light of the particular circumstances of the case and by taking into account the criteria established by the case law, especially when it comes to the complexity of the case, the behaviour of the parties and authorities working in this case, which is in the interest of the complainant (*see the Case of Gollner v. Austria, Judgment of 17 January 2002*).

The Ombudsperson pointed out that the behaviour of the complainant did not cause any delay. According to developed inter-institutional communications, the delay in examining the complainant's case occurred due to the lack of judges and the fact that the court is overloaded with a large number of priority cases.

The European Court of Human Rights notes that Article 6, paragraph 1 imposes on States the obligation to organize their legal systems in such a way that the courts comply with the requirements of the Convention. The Ombudsperson notes that there is no legal approach through which the complainant, in the concrete case, could have complained about the delay of the proceedings with the possibility of achieving preventive or compensatory assistance. The Ombudsperson recommended that the Basic Court in Prishtina, considering the previous delays, takes actions in terms of review and deciding on the complainant's case without further delay. Whereas the Kosovo Judicial Council should initiate compiling of legal instrument which would constitute effective legal remedy in the meaning of Article 13 of the European Convention on Human Rights,

which ensures lenience in the form of prevention or compensation related to the complaints on lengthy proceedings.

### **10.5 Report with recommendations no. 438/2015 concerning lengthy judicial proceedings in review of the lawsuit submitted in the Basic Court in Ferizaj**

On 20 June 2017, the Ombudsperson published the report with recommendations concerning lengthy judicial proceedings in review of the lawsuit submitted in the Basic Court in Ferizaj. The report is based on the individual complaint and the purpose of this report is to draw the attention of the Basic Court in Ferizaj regarding the need to undertake the relevant actions for review and placement in the claim filed by the complainant in 2003, without further delay.

Based on the analysis of the evidence and facts, the right to a fair trial within a reasonable time and the right to an effective remedy guaranteed by the aforementioned legal acts has not been fulfilled in this case because the Basic Court has delayed the review and decision on the complainant's case for more than 14 years, the proceedings of which have been initiated since 2003 and have not yet been finalized until the day of issuance of this report. The excessive delays in court proceedings without a court decision are in violation of the right to a fair trial within a reasonable time, guaranteed by Articles 31, 32 and 54 of the Constitution of the Republic of Kosovo and paragraph 1 of Article 6 of the ECHR.

The European Court of Human Rights (ECtHR) has, in many cases, emphasized that the right of a party for his case to be decided upon in a timely manner is an essential element of the right to a fair and impartial trial (see *Azdajic v Slovenia*, 8 October 2015). The Ombudsperson considers that a court proceeding un-finalized for 14 years, as in the case of the complainant, would create a general situation of legal insecurity, reduce and lose the trust of citizens in justice and the rule of law.

In this case, the Ombudsperson recommended to the Basic Court in Ferizaj to take measures for review and decision on the case C.no. 133/2003 of 7 March 2003, of Mr Isuf Qorolli, which according to the decision Ac.No.887/2008 of the District Court in Prishtina, has been returned to proceedings at the Basic Court in Ferizaj, without further delay; whereas to the Kosovo Judicial Council it has recommended to initiate the compiling of legal instrument which would constitute effective legal remedy in the meaning of Article 13 of the European Convention on Human Rights, which ensures lenience in the form of preventive or compensatory related to the complaints for lengthy proceedings.

### **10.6 Report with recommendations no. 765/2016 related to the right to life and positive obligations for efficient investigations**

On 14 September 2017, the Ombudsperson published the report with recommendations related to the right to life and positive obligations for efficient investigations. The report addresses the elementary right to life guaranteed by the Constitution and international

instruments incorporated within the latter. In the complainant's case, the right to life is alleged to have been violated by the negligence of medical personnel within the University Clinical Centre and the ineffective action of the state prosecution. The report examines the factual situation of the case filed by the complainant and presents a legal analysis of the potential violation of the right to life by analysing the domestic legislation and the case law of the European Court of Human Rights.

The right to life is listed as first in the catalogue of human rights and freedoms protected by the ECHR because it is the most basic right of all. Another thing that proves this fact is the inability to derogate from this right, even at times of emergency. The case law of the ECtHR starts with the case of *McCann and others v. the UK*<sup>212</sup>, where: *the right to life, especially in relation to Article 3 of the Convention (Prohibition of Torture), represents one of the most basic values of the democratic society.* Article 2 of the Convention sets out the general duties of the state to protect the right to life and includes the positive and negative aspects: *a) the positive obligation to protect life; and b) the negative obligation to refrain from unlawful taking of life.* The positive obligation imposes prevention and investigation duties. The obligation of prevention<sup>213</sup> obliges state governments to prevent and fight criminal offences. If it is established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk, the same shall be responsible for the failure to execute positive obligations.

The case law of ECtHR recommends that all available remedies should be used, even when the party does not believe the same can be effective or produce a fair result for the party. Otherwise, the ECtHR does not treat the non-exhaustion of all available remedies as a violation of Article 2, unless it is not clear that such remedies could not address the factual or legal issues raised.<sup>214</sup> The exhaustion of legal remedies also means a civil procedure where compensation of non-material damage may be sought but which, according to ECtHR case law, excludes the possibility of a further investigation into the circumstances of the death of a person, the case of *Powell v. The United Kingdom* “When a relative of the deceased receives damage compensation through a civil lawsuit on medical negligence, he or she has no right to be considered a victim in relation to the circumstances on the treatment of the deceased or to request further investigation regarding his/her death”. With this report, the Ombudsperson recommended to the Basic Prosecution in Prishtina, in accordance with the competences and authorizations deriving from the law and in cooperation with all relevant agencies, to take all the necessary

---

<sup>212</sup> *McCann and others v. UK*, dated 27 September 1995; available at: [http://hudoc.echr.coe.int/eng#{"appno":\["18984/91"\],"itemid":\["001-57943"\]}\];](http://hudoc.echr.coe.int/eng#{)

<sup>213</sup> *Osman v. The United Kingdom*, dated 28 February 1998, available at: <file:///C:/Users/Ideapad/Downloads/001-58257.pdf>;

<sup>214</sup> Douwe Korff: A guide to implementation of Article 2 of the European Convention on Human Rights, November 2006, available at: <https://rm.coe.int/168007ff4e>, fq.80.

measures to conduct rapid and effective investigations in the case of the complainant, revealing all the circumstances and causes of the death of the complainant's wife; to assess the responsibility, including objective and subjective responsibility, which could facilitate the issue of compensation for the party, whereas the recommendation for the Ministry of Health was, in accordance with the legal authorizations and powers, to establish a special commission for determining the situation, which after determining the situation on-site, would draft work protocols with strict rules for cases of blood transfusion.

### **10.7 Report with recommendations no. 592/2016 regarding the non-recognition of work experience for former police officers pursuant to the Law on Internal Affairs of 1978**

On 23 October 2017, the Ombudsperson published the report with recommendations regarding the non-recognition of work experience for former police officers pursuant to the Law on Internal Affairs of 1978. The report aims to address the issue of non-recognition of contributing work experience during 1989-1999 for former police officers as well as non-recognition of the work experience according to the then applicable law.

The report is prepared as a result of the individual complaint by the complainant on behalf of the union of former police officers who feel discriminated since the work experience for the education and health employees of that period (1989-1999) has been recognized, while the work experience of former police officers has not been recognized. Also, the beneficiary work experience, foreseen by Law on Internal Affairs which was in force at the time when these police officers were employed, is not being recognized to this category.

The jurisprudence of the European Court of Human Rights defines the concept of "possessions", referred to in the first part of Article 1 of Protocol no. 1, as a concept that is not limited to the ownership of physical goods, and is independent of the formal classification in domestic law. Some other rights and interests that constitute assets may also be seen as "property rights" and hence as "possessions" for the purpose of Article 1, Protocol no. 1.

Moreover, "possessions" may be either "existing possessions" or assets, including affirmations, in the sense of which the Applicant may argue that he or she has "legitimate expectations" of effectively gaining and enjoying a right property. Based on the 1978 Law on Internal Affairs, as well as the Law on Pension and Invalidity Insurance no. 11-24/83 (Official Gazette of SAPK No. 26/83), former police officers had legitimate expectations that they would enjoy the recognition of their work experience to benefit from pension schemes. Such legitimate expectation is guaranteed by Article 1 of Protocol no. 1 of the Convention, its nature is concrete and not merely a sole hope, and it is based on legal acts, namely the law of that time. This right cannot be annulled through the adoption of a new law because it would be in violation of the fundamental rights



guaranteed by the Constitution and the European Convention on Human Rights and the principle of non-retroactivity of law. Non-retroactivity of laws is a general principle and exists since Roman law. The Constitution and the Laws define the form of legal actions in the future and cannot extend to actions that have been created earlier unless it is explicitly foreseen that they also relate to the earlier time and only to legal actions which are still not completed. In this report, the Ombudsperson recommended to the Ministry of Labour and Social Welfare that former employees of the Kosovo Police, forcibly dismissed from work, should enjoy the right to a pension based on the benefit that was once regulated by the 1978 Law on Internal Affairs; this absolute statutory right recognized on the basis of the law should be recognized to this category from the moment of application; it should be clarified through sub-legal acts Article 8, paragraph 6 of Law 04/L-131 on Pension Schemes Financed by the State, to which other possible categories is recognized the internship during 1989-1999.

### **10.8 Report with recommendations no. 71/2015 concerning the delay of judicial proceedings on deciding upon the Case No. 82/ 2013, in the Basic Court in Mitrovica**

On 25 October 2017, the Ombudsperson published the report with recommendations concerning the delay of judicial proceedings on deciding upon the Case in the Basic Court in Mitrovica. The purpose of this report is to draw the attention of the court regarding the need to undertake appropriate actions for the effective review and decision on judicial cases within reasonable timeframes. The report is based on the individual complaint of the complainant and relies on the evidence and facts of the complainant as well as on the case files in possession of the Ombudsperson Institution regarding the delay of court proceedings in deciding upon the case C.no.82/2013, in the judicial matter of the employment relationship for the compensation of personal income. The complainant's case has started to be processed in courts since 3 March 2003 and to date. Thus, the complainant is awaiting the decision for 14 years, the case of whom has not yet been finally decided upon by a decision based on merit. The second instance court has returned the decision of the first instance court for retrial.

In the disputes from the employment relationship, based on Article 475 of LCP, the legislator has foreseen that the court should undertake all measures to urgently settle these disputes. The measures to be taken by the court for urgently resolving these disputes, consist on deciding on such cases with priority compared with other cases, on setting the shortest deadlines for conducting court hearings, on the fact that litigants are set the shortest deadlines for undertaking procedural actions, but without violating the possibility of carrying them out as well as to ensure that the dispute is ended as promptly as possible. Furthermore, the court should ensure that the time between the hearings is as short as possible and that the parties, within the shortest period possible, present the entire material of the case with which they claim to realize or defend their rights or subjective interests. Delays in court proceedings cause serious consequences for the rule

of law and the protection of human rights. With this report, the Ombudsperson recommended to the Basic Court in Mitrovica to review the possibility of undertaking actions in deciding upon the case C.nr. 82/2013, as the case is dated back since 3 March 200.

### **10.9 Report with Recommendation no. 500/2015 regarding the delay of the procedure in the Court of Appeals in the Case AC. No. 3141/2013**

On 1 December 2017, the Ombudsperson published the report with recommendations regarding the delay of the procedure in the Court of Appeals. The purpose of this report is to draw the attention of the Court of Appeal on the need to undertake the relevant actions for reviewing and deciding on the complainant's case without further delay. This report is based on the individual complaint of the complainant and is grounded on the facts and evidence as well as on the case files available at the Ombudsperson Institution (OI) regarding the delay of the court procedure in the case AC 3141/2013, dated 9 September 2013, regarding compensation of material and non-material damage, due to work injury.

The Ombudsperson recalls that the ECtHR case law has established that the duration of proceedings is normally calculated from the time of initiating court proceedings (see Judgment *Moldovan and Others v. Romania*, 12 July 2005 and Judgment *Sienkiewicz v. Poland*, 30 September 2003) until the time the case is completed and/or the judgment is executed (see Judgment *Poitier v. France*, 8 November 2005). Article 6 of the ECHR does not foresee any absolute time limit for determining the reasonable duration of proceedings, but such determination depends on the particular circumstances of the case. In the case of *Zimmerman and Steiner v. Switzerland*, ECtHR emphasised that a factor to be taken into consideration is the conduct of competent judicial and administrative authorities, and that the court is responsible to organize its work in such a way that individuals are informed about the progress and results on their cases within a reasonable time. According to ECtHR case law, "reasonableness of the duration of proceedings must be assessed... referring to the following criteria: complexity of the case, conduct of applicant and relevant authorities and what was at risk for the applicant in the case in question" (ECtHR [Grand Chamber], *Frydlender v. France*, Application no. 30979/96 (2000), par. 43, citing ECtHR [Grand Chamber], *Comingersoll S.A. v. Portugal*, Application no. 35382/97, par. 19 (2000), par. 19).

In the present case, the period for reviewing the complainant's case begins on 27 January 2012 when the complainant filed the claim with the Basic Court in Gjilan. As no final decision has been made regarding the case, the last date of the investigation of this case under review is considered to be the date of publication of this report. Therefore, the Ombudsperson finds that the proceedings lasted for over 5 years, and that there was a violation of the right to a fair hearing within a reasonable time. In this case, the Ombudsperson recommended to the court to undertake all relevant actions for reviewing and deciding on the case AC. No. 3141/2013, without further delay

### **10.10 Report with Recommendation no. 929/2016 regarding the delay of procedure in the Court of Appeals in the case AC. no. 1553/2014**

On 1 December 2017, the Ombudsperson issued a report with a recommendation regarding the delay of procedure in the Court of Appeals. The purpose of this report is to draw the attention of the court regarding the need to undertake the relevant actions for reviewing and deciding on the case AC 1553/2014, without further delay. The report is based on an individual complaint and relies on the facts and evidence of the complainant, as well as in the case files available at the Ombudsperson Institution regarding the delay in the court proceedings relating to the verification of ownership.

The Ombudsperson reiterates that the court is obliged to apply the court procedure, without any unreasonable delay. Based on information available, the Complainant did not contribute to the delay of the procedure with her actions or omissions, whereas delays without any final decision contributed to the violation of the rights for court protection, as guaranteed with Article 54 of the Constitution of the Republic of Kosovo. For the case in question, three Judgments have already been rendered by the Municipal Court so far, namely Basic Court in Prishtina, and that the second instance court returned the first two Judgments for re-adjudication and after rendering the third Judgment C.no.3344/12, dated 26 December 2013, the case is at the Court of Appeals for the third time (Ac.no. 1553/14).

The case law of the European Court of Human Rights (ECtHR) has established that the duration of proceedings shall be calculated from the initiation of court proceedings (see *Moldova and Others v. Romania* Judgment, 12 July 2005, and *Sienkiewicz v Poland* Judgment, 30 September 2003) until the case is completed and/or the judgment is executed (see: *Poitier v. France* Judgment, 8 November 2005). In the case of the Complainant, the court procedure was initiated on 16 July 2004

In addition, in this report, the Ombudsperson notes that Article 13 of the ECHR directly reflects the obligation of the state to initially and primarily protect human rights through its legal system by establishing, on this occasion, an additional guarantee for an individual to ensure that he/she enjoys the rights effectively. In this perspective, the right of an individual to a fair trial within a reasonable time will be less effective if there is no opportunity to first submit this complaint with a local authority. Requirements of Article 13 support those of Article 6 (see the abovementioned Judgment of *Kudla vs. Poland*). Thus, Article 13 guarantees an effective complaint remedy before a local authority for an alleged breach of the requirements of Article 6 to review a case within a reasonable time. Regarding the applicability of Article 13, the Ombudsperson recalls that ECtHR has frequently ascertained that the great delays in administration of justice in relation to the parties in dispute that do not have means, pose a threat to the rule of law within the domestic legal order (see Judgment in the case *Bottazi v. Italy*, on 28 July 1999, and Judgment in the case *Di Mauro v. Italy*, on 28 July 1999). In this case, the Ombudsperson

recommended to the court to undertake all relevant legal actions for reviewing and deciding on the case AC 1553/2014, without further delay.

### **10.11 Report with Recommendation no. 503/2015 regarding the delay of the procedure in the Court of Appeals in the Case AC.1926/14**

On 1 December 2017, the Ombudsperson published the report with recommendations regarding the delay of the procedure in the Court of Appeals in the Case AC.1926/14. The purpose of this report is to draw the attention of the court on the need to undertake relevant actions for reviewing and deciding on the case of AC. 1926/14, without further delays. The report is based on an individual complaint and relies on the evidence, facts and other documents available at the Ombudsperson Institution regarding the length of court proceedings in the complainant's case filed with the court since 14 January 2002, which by the time of publication of this report did not have a final decision. The proceedings have lasted for around 16 years and there is still no final decision. The Ombudsperson recalls that the court is obliged to apply the court proceedings without any unreasonable delay. Based on the available information, there is no other complexity of the case which has contributed to any delay in the procedure, whereas delays without a final decision have contributed to violations of the right to judicial protection, to the detriment of the complainant. These actions of the judiciary prove the denial of justice and legality for judicial protection of rights. In this case, there has been a violation of the right to a fair trial within a reasonable time, guaranteed by the aforementioned legal acts in the case in question. Based on this, the Ombudsperson recommended to the Kosovo Court of Appeals to undertake all relevant actions for reviewing and deciding on the case AC. 1926/14, without further delay.

### **10.12 Report with Recommendation no. 161/2015 regarding the delay of the procedure at the Court of Appeals in the case AC. No. 1457/2014**

On 1 December 2017, the Ombudsperson published the report with recommendation no. 161/2015 regarding the delay of the procedure at the Court of Appeals in the case AC. No. 1457/2014. The purpose of this report is to draw the attention of the Court of Appeal on the need to undertake relevant actions for reviewing and deciding on the case AC. no. 1457/2014, without further delay. The report is based on the individual complaint and rests on the facts and evidence of the complainant, as well as on the case files available at the Ombudsperson Institution, regarding the delay of the proceedings for case AC. no. 1457/2014, which deals with the compensation of jubilee salaries upon retirement.

In numerous cases, the European Court of Human Rights (ECtHR) emphasized that the right of a party for its case to be decided within a reasonable time limit is an essential element of the right to a fair and impartial trial. Ombudsperson recalls that the ECtHR case law has established that the length of proceedings shall be calculated from the initiation of court proceedings (see Judgment of *Moldova and Others v. Romania*, 12 July 2005, and *Sienkiewicz v Poland* Judgment, 30 September 2003) until the case is completed and/or the judgment is executed (see: *Poitier v. France* Judgment, 8

November 2005). However, the Ombudsperson reminds that Article 6 of the Convention does not provide for any absolute timeframe to determine the reasonable time of proceedings, but such determination depends on the special circumstances of the case.

In its decisions, the ECtHR has emphasized that judicial authorities should pay special diligence to cases where deliberation on that case is of vital importance to the applicant (see, for example, ECtHR, *Doustaly v. France*, Case No. 26256/95 91998), par. 48).

Regarding the requirements of Article 13, the Ombudsperson recalls that the effect of this Article is to require that a provision of a domestic remedy deal with the substance of a “challenged complaint” under the Convention and allow the relevant relief (see, for example, the judgment in the case of *Kaya v. Turkey*, 19 February 1998). Any such means shall be effective both in practice and in law (see, e.g., Judgment in the case of *Ilhan v. Turkey*, 27 June 2000). Regarding the complaint for delays of the proceedings, the Ombudsperson reminds that “effective remedies” within the meaning of Article 13 should have been able to prevent the alleged violation or its continuation, or to provide adequate correction of any violation that had already occurred (see the abovementioned Judgment of *Kudla*). Therefore, considering this, the Ombudsperson recommends the court to undertake all relevant legal actions for reviewing and deciding on the case AC. Nr. 1457/2014, without further delay.

### **10.13 Report with Recommendation no. 238/2015 regarding the delay of the procedure in the Basic Court of Prizren on the case C.No.450/2009**

On 1 December 2017, the Ombudsperson published the report with recommendations no. 238/2015 regarding the delay of the procedure in the Basic Court of Prizren on the case C.No.450/2009. The purpose of this report is to draw the attention of the Basic Court in Prizren regarding the need to undertake relevant actions for reviewing and deciding on the case C.No.450/2009, without further delay. The report is based on the individual complaint of the complainant, which in this legal matter is an intercessor and relies on the facts and evidence of the complainant, as well as on the case file held by the Ombudsperson Institution (OI) regarding the delay of the court procedure in the case C.No.450/2009 on verification of ownership and handover of immovable property.

Ombudsperson recalls that the ECtHR case law has established that the length of proceedings shall be calculated from the initiation of court proceedings (see Judgment on the *Moldova and Others v. Romania*, 12 July 2005, and *Sienkiewicz v Poland* Judgment, 30 September 2003) until the case is completed and/or the judgment is executed (see: *Poitier v. France* Judgment, 8 November 2005). However, the Ombudsperson reminds that Article 6 of the Convention does not provide for any absolute timeframe to determine the reasonable time of proceedings, but such determination depends on the special circumstances of the case. The Ombudsperson notes that ECtHR in the case of *Zimmerman and Steiner v. Switzerland* emphasised that a factor to be taken into consideration is the conduct of the competent judicial and administrative authorities, and that the court is responsible to organize its work in such a way that individuals are informed about the progress and results on their matters within a reasonable time.

(Zimmermann and Steiner v. Switzerland Judgment, 13 July 1983)). The review of the complainant's case dates since 2000 when the claim was initiated in the former Municipal Court in Prizren (now the Basic Court). Considering that no final decision has been rendered regarding the case, the final date of investigating the case is considered the date of publication of this report. Therefore, the Ombudsperson finds that, irrespective of the court's allegations regarding the complexity of the case, the court has failed to find a solution. It is noted that judicial proceedings have lasted for over 17 years, therefore the Ombudsperson finds that the Article 6 of the ECHR has been violated. In this case, the Ombudsperson recommended the Court to take all the relevant legal actions for reviewing and deciding on the case C.no. 450/2009, without further delays.

#### **10.14 Report with Recommendation no. 236/2017 regarding the delay of procedure in the Court of Appeals in the case AC. No. 1717/2015**

On 1 December 2017, the Ombudsperson published the report with recommendations no. 236/2017 regarding the delay of procedure in the Court of Appeals in the case AC. No. 1717/2015. The purpose of this report is to draw the attention of the Court of Appeal on the need to undertake the relevant actions for reviewing and deciding on the case AC.no.1717/2015, without further delay. The report is based on the individual complaint of the complainant as a respondent of the third order and relies on the evidence and facts as well as the case files that are available at the Ombudsperson Institution regarding the delay of court proceedings in the case AC.no. 1717/2015, related to the confirmation of ownership based on the right of pre-emption according to the counterclaim of the Respondent - Complainant.

According to the evidence available to us, on 20 June 2013, the complainant filed a counterclaim against the claimant, thereby requesting the handover of the immovable property in the contested parcel in the freehold possession, whereby it is stated that the contested parcel was purchased by the husband of the Complainant based on the purchase contract legalised on 1 April 1992, while she and her children are the only legal heirs after the death of the deceased and based on the inheritance of the contested parcels, the same are registered under their name in the cadastral evidence. On 10 December 2014, the Basic Court in Prizren concluded the main hearing with the Judgment C. No. 1250/92 thereby rejecting all statements of claims of the Claimants, and approving as grounded the counter statement of claim of the *complainant*, to hand over in freehold possession of the cadastral parcel. On 6 April 2015, the representative of the claimants filed an appeal before the Court of Appeals against the Judgment C.No.1250/92 of 10 December 2014. The complainant considers that this court did not carry out procedures within a reasonable time limit which may constitute a violation of her rights for a regular process within a reasonable time limit guaranteed under paragraph 1 of Article 6 of ECHR, which stipulates that: “*In the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing within a reasonable time [...]*”. In many cases, the ECtHR stated that the right of the party to have his or her case decided within a

reasonable time limit is an essential element of the right for fair and impartial judgment (see among others, the case *Azdajic v. Slovenia*, 8 October 2015). Also, ECtHR case law has established that the duration of proceedings shall be calculated from the initiation of court proceedings (see Judgment on *Moldovan and Others v. Romania*, 12 July 2005, and *Sienkiewicz v Poland* Judgment, 30 September 2003) until the case is completed and/or the judgment is executed (see judgment *Poitier v. France*, on 8 November 2005). However, the Ombudsperson reminds that Article 6 of the Convention does not provide for any absolute timeframe to determine the reasonable time of proceedings, but such determination depends on the special circumstances of the case.

Given the analysis of available information, evidence and facts, the Ombudsperson finds that due to procedural delay: there is a violation of the right to a fair trial within a reasonable timeframe, guaranteed by the aforementioned legal acts in the matter in question; and there is a violation of the right to judicial protection of rights. Under these circumstances, the Ombudsman recommends to the court to undertake all relevant legal actions for reviewing and deciding on the case AC. No. 1717/2015, without further delay.

#### **10.15 Report with Recommendation no. 306/2016 regarding the delay of the procedure in the Court of Appeals, in the case AC. No. 3194/2015**

On 1 December 2017, the Ombudsperson published the report with recommendations no. 306/2016 regarding the delay of the procedure in the Court of Appeals, in the case AC. No. 3194/2015. The purpose of this report is to draw the attention of the Court of Appeal on the need to undertake the relevant actions for reviewing and deciding on the case AC. no. 3194/2015, without further delay. The report is based on the complainant's individual complaint and relies on the evidence, facts and case files available at the Ombudsperson Institution regarding the delay of the court proceedings in the case AC. no. 3194/2015, which relates to compensation of damage.

The applicant is complaining for delay of procedures in the Court of Appeals. He considers that this court did not develop the proceedings within a reasonable time limit, which could constitute a violation of his right for a regular process within a reasonable time limit, guaranteed in paragraph 1 of the Article 6 of the ECHR, which stipulates: “*In the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing within a reasonable time [...]*”. In many cases, the European Court of Human Rights (ECtHR) highlighted that the right of the party to settle his case, in a reasonable time limit, represents an essential element of the right to a fair and impartial adjudication. ECtHR case law has established that the duration of proceedings shall be calculated from the initiation of court proceedings (see Judgment of the *Moldovan and Others v. Romania*, 12 July 2005, and *Sienkiewicz v Poland* Judgment, 30 September 2003) until the case is finalized and/or the judgment is executed (see: *Poitier v. France* Judgment, 8 November 2005). However, the Ombudsperson reminds that Article 6 of the

Convention does not provide for any absolute timeframe to determine the reasonable time of proceedings, but such determination depends on the special circumstances of the case.

In this case, the Ombudsperson assesses that the relevant period for reviewing the case of the applicant starts running as of 2011 when the complaint was submitted before the Municipal Court in Prizren. Considering that no final decision has been rendered regarding the case, the final date of investigating the case is considered the date of publication of this report, hence the Ombudsperson concludes that the procedure has lasted for 6 years, and that Article 6 of the ECHR was violated.

Also, the lack of effective remedies in violation of the right to a fair hearing within a reasonable time, as guaranteed by Article 6 of the ECHR, constitutes a violation of Article 13 of the Convention, 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”*.

Regarding the applicability of Article 13, the Ombudsperson recalls that the ECtHR has repeatedly emphasized that the great delays in the administration of justice in relation to parties in dispute which have no remedies constitute a threat to the rule of law within the domestic legal order.

Given the analysis of available information, evidence and facts, the Ombudsperson finds that due to procedural delay: there is a violation of the right to a fair trial within a reasonable timeframe, guaranteed by the aforementioned legal acts in the matter in question; and there is a violation of the right to judicial protection of rights. Under these circumstances, the Ombudsman recommends to the court to undertake all relevant legal actions for reviewing and deciding on the case AC. No. 3194/2015, without further delay.

#### **10.16 Report with recommendation no. 262/2014 regarding the delay of the procedure in the Court of Appeals in the Case AC.no.3930/2016**

On 1 December 2017, the Ombudsman published the report with recommendations No. 262/2014 regarding the delay of the procedure in the Court of Appeals in the Case AC.no.3930/2016. The report is based on the individual complaint filed by the complainant and is based on the evidence, facts and documents available at the Ombudsperson Institution. The purpose of the report is to draw the attention of the Court of Appeals of Prishtina on the necessity of undertaking relevant actions for reviewing and deciding on the case of the complaint, without further delay, considering that the case was submitted to the first instance court in Prizren on 2004 and the case still has no final epilogue until today.

The complainant is complaining that he has waited for the first instance judgment of the Basic Court for nearly 10 years, but after receiving the first instance judgment and after submitting a complaint against the same by the respondent, the Court of Appeals returned the case for review, whereas the judgment was again issued in favour of the complainant



in April of 2016, against whom a complaint was filed again by the Municipality of Prizren, while the case, according to the complaint, was again sent for review to the Court of Appeals in Prishtina, which has not decided on the case from the day of submission of the complaint against the first instance judgment by the Basic Court in Prizren until the day of publication of this report. The complainant complains that the case remains unsolved for a relatively long time, namely the procedure for this disputable matter has lasted for more than 13 years and this constitutes a violation of his right to a fair trial within a reasonable time, guaranteed by paragraph 1 of Article 6 of the ECHR, which states: “*In the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing within a reasonable time [...].*” Civil disputes for compensation of damage to unfair expropriation of immovable property by public authorities are considered as civil rights within the meaning of Article 6 of the Convention, which is therefore applicable in the proceedings of this case.

In some cases, the European Court of Human Rights has established that, in cases involving the assignment of civil law, the duration of proceedings is normally calculated from the time of initiating court proceedings (see Judgment *Sienkiewicz v. Poland*, 30 September 2003) until the time the case is finalized and/or the judgment is executed (see *Vocaturo v. Italy* (II), judgment dated 24 May 1991). The Ombudsperson recalls that the reasonableness of the duration of proceedings must be assessed referring to the particular circumstances of the case, taking into account the criteria established by the case law, particularly when it comes to the complexity of the case, conduct of the parties in the procedure and the authorities working in the case, and what is in the best interests of the complainant (see the case of *Gollner v. Austria*, judgment dated 17 January 2002).

The Ombudsperson notes that the complainant's case was not complex and that the complainant's conduct did not contribute to any delay. Therefore, the Ombudsperson recommended to the court to undertake all relevant actions for reviewing and deciding on the case AC.no. 3930/2016 without any further delay.

#### **10.17 Report with recommendation no. 477/2017 concerning the delay of the procedure in the Court of Appeals in the case AC No. 1168/14**

On 1 December 2017, the Ombudsperson published the report with recommendations no. 477/2017 concerning the delay of the procedure in the Court of Appeals in the case AC No. 1168/14. The purpose of this report is to draw attention of the Court of Appeals regarding the need to undertake relevant actions for reviewing and deciding on the case without any further delay. The report is based on the individual complaint of the complainant and is grounded on the facts and evidence of the complainant, as well as on the case file held by the Ombudsperson Institution (OI) regarding the delay of the court procedure in the case AC.No. 1168/14 on the matter for ownership verification. The Applicant is complaining about the delays in the Court of Appeals. He considers that the Court has failed to conduct the procedures within a reasonable time limit, which comprises a violation of his right to a public hearing within a reasonable time limit,

which is guaranteed under Article 6, paragraph 1 of ECoHR, which states “*In the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing within a reasonable time [...]*”

In numerous cases, ECHR emphasized that the right of a person for its case to be decided within a reasonable time limit is an essential element of the right to a fair and impartial trial. The ECtHR case law has established that the length of proceedings shall be calculated from the initiation of court proceedings (see Judgment on the *Moldova and Others v. Romania*, 12 July 2005, and *Sienkiewicz v Poland Judgment*, 30 September 2003) until the case is completed and/or the judgment is executed (see: *Poitier v. France Judgment*, 8 November 2005).

Regarding the applicability of Article 13, the Ombudsperson recalls that the ECtHR has repeatedly emphasized that the great delays in administration of justice in relation to parties in dispute which have no remedies constitute a threat to the rule of law within the domestic legal order (see Judgment in the case of *Bottazi v. Italy*, 28 July 1999, and the judgment in the case of *Di Mauro v. Italy*, 28 July 1999). The Ombudsperson also recalls that although ECtHR decided that effective remedies shall be interpreted in such a way as to understand that the remedies may be effective in the sense of limited spectrum of an effective remedy within a particular context (Judgment in the case of *Klass and Others v. Germany*, 6 September 1978), the ECtHR also decided as follows “*As regards an alleged failure to ensure trial within a reasonable time, however [...], no such inherent qualification on the scope of Article 13 can be discerned. On the contrary, the place of Article 13 in the scheme of human rights protection set up by the Convention would argue in favour of implied restrictions of Article 13 being kept to a minimum (judgment in the case of Kudla v. Poland, 26 October 2000).*” Therefore, the Ombudsperson concludes that there has been a violation of the complainant's right to an effective remedy guaranteed by Article 13 of the European Convention on Human Rights, and consequently there has also been a violation of the right to a fair trial within a reasonable time. On this occasion, the Ombudsperson recommended to the court to undertake all the relevant actions for reviewing of and deciding on the case AC.no 1168/14 with no further delay.

#### **10.18 Report with recommendation no. 553/2017 regarding the delay of the procedure in the Court of Appeals, in the case AC No 2823/16**

On 1 December 2017, the Ombudsperson published the report with recommendations regarding the delay of the procedure in the Court of Appeals, in the case AC No 2823/16. This report aims to draw the attention of the Court of Appeals, with regard to the need of undertaking appropriate actions for the review and adjudication on the case AC. No 2823/16, without further delays. The report is based on the individual complaint of the complainant and is grounded on the evidences, facts and case files available at the Ombudsperson Institution (OI) regarding the delay of the court procedure in the case AC. No. 2823/16, for the issue of return to the work place.

The complainant considers that the Court has failed to conduct the procedures within a reasonable time limit, which comprises a violation of his right to a public hearing within a reasonable time limit, which is guaranteed under Article 6, paragraph 1 of the European Convention on Human Rights, which stipulates that *“In the determination of his civil rights and obligations [...], everyone is entitled to a fair and public hearing within a reasonable time [...].”* The Ombudsperson draws the attention to the European Court of Human Rights (ECHR) case law with regard to Article 53 of the Constitution of the Republic of Kosovo, according to which the human rights and fundamental freedoms guaranteed by this Constitution, are interpreted in harmony with ECtHR court decision. In numerous cases, the European Court of Human Rights (ECtHR) emphasized that the right of a person for its case to be decided within a reasonable timeframe is an essential element of the right to a fair and impartial trial. The ECtHR practice has established that the proceedings length is normally calculated from the time of initiating judicial proceedings (see the judgment in the case of *Moldovan and Others v. Romania*, 12 July 2005, and the judgment in the case of *Sienkiewicz v. Poland*, 30 September 2003) until the case has been completed and/or the judgment is executed (see the judgment in the case of *Poitier v. France*, 8 November 2005). However, the Ombudsman recalls that Article 6 of the Convention does not provide for an absolute timeframe for determining a reasonable extension of the proceedings but such determination depends on the particular circumstances of the case.

The judicial proceedings in the complainant's case lasted for seven (7) years and four (4) months, and there is a violation of Article 6 of the ECHR. The lack of effective remedies regarding violation of the right to a fair hearing within a reasonable time, as guaranteed by Article 6 of the European Convention on Human Rights, constitutes a violation of Article 13 of the Convention, which stipulates that *“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.”*

Based on the analysis of available information, evidences and facts, the Ombudsperson concludes that there was a violation of the right to a fair trial within a reasonable time limit, guaranteed by the aforementioned legal acts of the case in question. The Ombudsperson determines that the right to a fair and impartial trial was violated in this case due to the delays in judicial proceedings by the Court of Appeals. Based on this, the Ombudsperson recommended to the court to undertake all relevant legal actions for the reviewing and deciding on the case AC. No. 2823/16 without any further delay.

#### **10.19 Report with Recommendation no. 690/2017 regarding the delay of the procedure in the Basic Court in Prishtina - Branch in Lipjan**

On 1 December 2017, the Ombudsperson published the report with recommendations no. 690/2017 regarding the delay of the procedure in the Basic Court in Prishtina - Branch in Lipjan. This report aims to draw attention of the Basic Court of Prishtina – Branch in

Lipjan (hereinafter the Court) to the need of undertaking relevant actions for reviewing and deciding on the case C.No.187/15 without any further delay. The report is based on the individual complaint of the complainant and relies on the evidence, facts and case files held by the Ombudsperson Institution related to the delay of judicial proceedings in the case C. No.187/15 concerning the cancellation of the sale contract.

The complainant alleges that the lack of effective remedies regarding violation of the right to a fair hearing within a reasonable time, as guaranteed by Article 6 of the ECHR, constitutes a violation of Article 13 of the Convention, which stipulates that “*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.*”

As regards the applicability of Article 13, the Ombudsperson recalls that the ECtHR has repeatedly emphasized that the great delays in the administration of justice in cases of parties which do not have effective remedies for these delays in their countries, constitute a threat to the rule of law within the domestic legal order (see the judgment in the case of *Bottazi v. Italy*, 28 July 1999, and the judgment in the case of *Di Mauro v. Italy*, 28 July 1999). The Ombudsperson also recalls that although the ECtHR has established that the effective remedies should be interpreted in such a way as to mean that the remedies can be effective in the sense of the limited spectrum of an effective remedy within a particular context (judgment in the case of *Klass and Others v. Germany*, 6 September 1978). The Ombudsperson finds that there has been a violation of the complainant's right to an effective remedy guaranteed by Article 13 of the ECHR; there has been a violation of the right to a fair trial within a reasonable time, guaranteed by the aforementioned legal acts, in the case in question; and there has been a violation of the right to judicial protection of the rights. Based on this, the Ombudsperson recommended to the Basic Court in Prishtina – Branch in Lipjan to undertake all the relevant actions for reviewing of and deciding on the case C. no.187/15 with no further delay.

#### **10.20 Report with Recommendation no. 431/2017 concerning the restriction of the right to access public documents**

On 20 December 2017, the Ombudsperson published the report with recommendations no. 431/2017 concerning the restriction of the right to access public documents. This report aims to draw attention of the Municipality of Ferizaj regarding the complainant's complaint filed on behalf of the Non-Governmental Organization “Iniciativa për Progres (Initiative for Progress) – INPO” for denial of access to public documents, analysis of the Law on Access to Public Documents, duties and responsibilities of respective institutions in relation to the implementation of this law in cases of receipt of requests for access to public documents.

On 18 May 2017, the Executive Director of the NGO “Initiative for Progress - INPO”, addressed to the then Mayor of the Municipality of Ferizaj, to provide access to the cooperation agreement between the Municipality of Ferizaj and the company “Doranova

Oyme”, agreement concluded in 2014, as well as the feasibility study report on the assessment of municipal property. On 25 May 2017, the Applicant, the NGO “Initiative for Progress - INPO”, received the notification 01. no. 215/17 in which among others is stated; “ ... *Your request is not approved within the legal deadline due to the fact that the legal officer of the Directorate of Economic Development has informed me via email that for responding to your request we need time to prepare in order to answer if this falls within our competence, ... for proper information contact the officer of the above mentioned directorate after 29.05.2017...*” Thereafter, Executive Director of the NGO “Initiative for Progress - NPO”, addressed to the Ombudsman requesting to protect the right to access to public documents of this NGO within legal responsibilities, because even though almost a month had passed, she had not received any answers about it.

In the Ombudsperson's communications with the municipality, it was said that the complainant was not allowed access because she could misuse it. The right to be informed is a right guaranteed by the Universal Declaration of Human Rights, i.e. Article 19 which stipulates that: “*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*”. The European Convention on Human Rights (ECHR) also foresees the freedom to receive and impart information, namely Article 10, paragraph 1 - [Freedom of Expression]: “*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...*” The spirit of Article 41 of the Constitution is also reflected in Article 1 of the Law No. 03/L-215 on Access to Public Documents (hereinafter LAPD), which states that: “*This Law shall guarantee the right of every natural and legal person to have access, without discrimination on any grounds, following a prior application, to official documents maintained, drawn or received by the public institutions*”. As regards the request submitted by the party, the Ombudsperson notes that the municipality did not render a decision. Article 8, paragraph 7 of LAPD expressly provides that: “*The public authority shall, within seven (7) days from registration of the application, be obliged to issue a decision... for the total or partial refusal*”. The Ombudsman, having in mind that “*Only the law shall have the authority to determine the rights and obligations of legal and natural persons*”, and based on the facts provided, ascertains that the failure of the Municipality of Ferizaj to provide a feedback to the request of the NGO “Iniciativa për Progres (Initiative for Progress – INPO)” is in full contradiction with the provisions of the Law No. 03/L-215 on Access to Public Documents. In addition to the obligation of the body designated by the LAPD to decide on the request submitted by means of a decision, Article 47 of the Law No. 05/L-031 on General Administrative Procedure provides in detail the structure and statutory elements of the written administrative act.

Failure to make a decision in an adequate form and with a solid reasoning constitutes mismanagement.

Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. The ECHR notes that delays in the disclosure of information may permanently remove all information and interest in it, because a news item is a service that soon disappears and the delay of its publication for a short period of time, may deny this news the whole value and interest (see the case of *The Sunday Times v. The United Kingdom*)<sup>215</sup>

Based on what was said above, Therefore, in order to improve the respect of the right of access to public documents as a constitutional and legal right, and to increase transparency and accountability and in order for citizens to exercise this right as a powerful remedy for controlling the work of leading authorities, the Ombudsperson, recommended to the Municipality of Ferizaj to Review the request of the NGO “Initiative for Progress-INPO” of 18 May 2017 for access to public documents and to provide a rationale response, as well as Take steps to increase the capacity of public officials regarding implementation of the Law on Access to Public Documents.

---

<sup>215</sup> Case Of The Sunday Times V. The United Kingdom, (Application no. [6538/74](#) , 26 April 1979)

## **11. Reports of the National Preventive Mechanism against Torture**

### **11.1 Report with recommendations concerning the monitoring of the Correctional Centre in Dubrava**

In conformity with Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPMNPM”) of the Ombudsperson, visited the Dubrava Correctional Centre (hereinafter “DCC”) on 21, 22 and 23 November. The monitoring team comprised from two legal advisors, one doctor and one psychologist.

The construction of the DCC began in 1976 and was completed and opened in 1986. At that time the capacity was for approximately 1,000 convicted persons and there was a sub-branch of the DCC in Gurrakoc, where convicted persons with short-term confinement were concentrated and worked, having in mind that there was a chicken farm, workplace for machinist.<sup>216</sup> After the war, with the entrance of KFOR troops and UNMIK Administration, this institution began to be administered by UNMIK and was rebuilt thanks to foreign donations. Initially, Blocks 2,3,7 and 8 were constructed and it started its work in June 2000. DCC is a high security level institution composed of several different sectors. Inside place is divided into two parts where one of them is the area for development of agriculture as well as other purposes, and inhabited part, where adult prisoners are incarcerated.

Generally prisoners are placed in 8 residential blocks, but during the visit, NPM was informed that block 5 has been renovated, while in the Hospital Ward are accommodated patients who are provided medical assistance, except severe cases which are sent to public hospitals. Whereas, outside the prison wall there is semi-open block where low risk prisoners are accommodated who are escorted minimally. The capacity of DCC is 1183 beds. At the time when NPMT visited this centre, there were 840 convicted persons accommodated there. NPM was informed that due to the preparations for the closure of the Detention Centre in Lipjan (DCL), there were 40 detainees accommodated in DCC transferred from DCL. European Committee for the Prevention of Torture visited DCC in 2007, 2010 and 2015.

During the visit made by NPM to the DCC, the personnel of Correctional Service and personnel of Prison’s Health Department provided the monitoring team with full cooperation. The team, without any delay, had access to all places intended to visit. The team was provided with all necessary information to accomplish their task and the team was provided with the possibility to talk to the convicted and the detained persons without the presence of correctional officers or other personnel. In addition, NPM was also allowed to use photo cameras.

During the visit made to DCC, NPM also visited the kitchen where prisoners working outside the prison perimeter and the personnel of the correctional centre get their meals,

---

<sup>216</sup> Data from the website of the Ministry of Justice of the Republic of Kosovo, accessible at: <http://www.md-ks.net/?page=1,70> (31.10.2016).

while to other prisoners, the food is served into their cells. During the visit made to the blocks, NPM received no serious complaints concerning the food quality. NPM was also informed that the kitchen staff and the prisoners employed in the kitchen possess sanitary booklets. NPM checked refrigerators where food is kept, and checked the food expiry dates. NPM did not encounter any food with expired dates.

Final report has been published and relevant recommendations regarding the findings during the visit have been addressed to the responsible authorities. It is important to note that the team did not encounter physical abuse that would constitute a violation of human rights.

## **11.2 Report with recommendations concerning the monitoring of the Detention Centre for Foreigners in Vranidoll**

Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of Ombudsperson, on 7 and 12 December visited the Detention Centre for Foreigners (hereinafter DCF) in Vranidollë. The monitoring team was composed of a legal advisor and a psychologist. Final report was published on 7 February 2017.

DCF was opened in June 2015 and operates within the Department of Citizenship, Asylum and Migration (DCAM) of Ministry of Internal Affairs (MIA). According to Article 2 of Regulation (MIA) No. 03/2014 on Operation of the Detention Centre For Foreigners (hereinafter “Regulation”), foreigners who are subject to forced removal as well as for the foreigners who are considered to have breached public security are held in this centre, in order to verify their identity or for other reasons. Capacity of this centre is 76 persons. During the visit made to DCF, personnel of the centre offered NPM full cooperation. The team had access to all areas of the Centre. The team was provided with all necessary information to discharge the duty. During the visit to DCF, there were no foreigners accommodated there.

Based on the legal provisions of the Law on Foreigners, a foreigner who is accommodated in the centre shall be notified in written form, in one of the official languages and in English, for the reasons of his/her detainment at the detention centre, which shall contain the reasons for the detention, the detention period, the right to provide him/her with legal protection, as well as to contact his/her relatives”.<sup>217</sup> The NPM, based on the checked documentation, noted that these rights of the foreigners were respected in the Centre.

Furthermore, Article 114 paragraph 3 of Law on Foreigners determines that a foreigner shall enjoy the right for informing the diplomatic or consular representative for his/her detention. NPM was informed by the Centre’s officials that in some cases they are running into difficulties because the states from where some citizens come do not recognise the Republic of Kosovo as an independent state and have not established

---

<sup>217</sup> Law 04/L-219 on Foreigners, paragraph 108.



diplomatic relations with Kosovo. Based on the documentation we looked at during the visit, the Centre offered the possibility to foreigners to inform embassies or consulates of states where they come from.

1. NPM observed that there are security cameras operating in all corridors of the Centre which are continuously operational. In the report on visit to Ireland in 2010, CPT considered the existence of security cameras as one of safeguards against the physical ill-treatment in the centres where persons deprived of liberty are held.<sup>218</sup>

Standards set forth by CPT regarding the rights of the foreign detainee determine the right to receive services from a physician as a fundamental right and as one of the safeguards against ill-treatment. NPM was informed that medical services are administered to foreigners in this centre by the Family Medical Centre in Prishtina and the University Clinical Centre. Article 10 of Regulation (medical examination) expressly determines that professional medical personnel perform general medical examination for foreigners after their placement in the centre. The Regulation further determines that a tuberculosis test should also be conducted, performing also an X-ray for lungs to all foreigners placed in the centre who are over 5 years old.

Regarding foreigners with limited mental and/or physical disabilities who manifest symptoms of mental disorder, Regulation determines that they shall be ensured psychological treatment and professional medical counselling. According to Regulation, these treatments may be offered also by relevant Non-Governmental Organisations based on the request from the foreigner.

During the visit, NPM was informed that no general medical examination is conducted to foreigners accommodated in this Centre, except if they require this.

The NMPT recommends that medical screening should be conducted to foreigners accommodated in the Detention Centre for Foreigners upon their admission, in order to detect early diseases such as tuberculosis, hepatitis, HIV AIDS.

### **11.3 Report with recommendations concerning the monitoring of the Asylum-Seekers Centre**

Pursuant to Article 17 of Law No. 05/L-019 on Ombudsperson, the National Preventive Mechanism against Torture (hereinafter referred to as “NPM”) of the Ombudsperson visited the Asylum-Seekers Centre in Magura village, Municipality of Lipjan (hereinafter referred to as “the Centre”) in November 2016. The monitoring team consisted of a legal advisor and a psychologist. The report was published on 7 February 2017.

Asylum-Seekers Centre in Magura was inaugurated in 2012 and operates within the Ministry of Internal Affairs (MIA). Regulation (MIA) No. 02/2014 on Functioning of the Asylum-Seekers Centre (hereinafter “Regulation”) determines the functioning of the Asylum-Seekers Centre and its management, including the procedure of admission,

---

<sup>218</sup> CPT report on the visit to Ireland in 2010, published in 2011, paragraph 18

registration, accommodation and movement of asylum seekers within respectively outside the Centre.<sup>219</sup> This Regulation also regulates sanitation and hygiene conditions, nutrition, medical assistance, maintenance of order and discipline, as well as other important issues regarding its work.<sup>220</sup>

During the visit made to this Centre, personnel of the Centre offered NPM full cooperation. The team without any delay had access to all places visited. The team was provided with all necessary information to discharge their duty and was able to speak in private with persons deprived of their liberty without the presence of the officers of the Centre.

Article 19 of Law on Asylum determines that asylum-seeker has the following rights: to reside in the Republic of Kosovo, to basic living conditions, to basic health care, to basic social assistance, to free legal assistance, to education for children asylum seekers, to freedom of thought and religious belief, to employment and professional training. NPM received no complaints from asylum-seekers accommodated in this Centre, regarding the enjoyment of these rights guaranteed by Law on Asylum.

The NPM concludes that the Living conditions are offered to the accommodated asylum-seekers in the Centre for Asylum-Seekers in accordance with international standards and relevant domestic laws.

#### **11.4 Report with recommendations concerning the monitoring of the Regional Police Custody Centre in Prishtina**

Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPMT”) of the Ombudsperson, on 14 December 2016 visited the Regional Police Custody Centre in Prishtina. The monitoring team was composed of a legal advisor and a psychologist. The report was published on 7 February 2017.

During the visit to Regional Police Custody Centre in Prishtina, Kosovo Police provided NPM with full cooperation. The team without any delay had access to all places visited. The team was provided with all necessary information to discharge their duty and was able to speak in private with persons deprived of their liberty.

Persons suspected for committing a criminal offence may be detained by the police up to 48 hours before they are sent to the pre-trial judge. Police may detain and collect information from persons found on the spot where criminal offence was committed, who may provide relevant information (maximum period: six hours)<sup>221</sup>.

During the visit of NPM, there were three detained persons in the Centre. NPM checked their files and interviewed these persons. One of the detainees complained to NPM that

---

<sup>219</sup> Regulation (MIA) No. 02/2014 on Functioning of the Centre for Asylum Seekers, Article 1

<sup>220</sup> Regulation (MIA) No. 02/2014 on Functioning of the Centre for Asylum Seekers, Article 1 paragraph 2

<sup>221</sup> Articles 162, 163, 164 of the Criminal Procedure Code of the Republic of Kosovo

during the interview in the Police Station in Fushë Kosovë, he was physically ill-treated by two police officers.

Kosovo Police offered full cooperation to the NPM during the investigation of this allegation, thus offering access to the detainee's file and relevant medical reports. The NPM sent an official letter to the Kosovo Police Inspectorate, whereby requested it to investigate the complainant's allegation for ill-treatment by two police officers at the Police Station in Fushë Kosovë and inform the NPM thereafter on the outcome of the investigation.

According to CPT standards, there are three fundamental rights (the right of the person concerned to have the fact of his detention notified to a third party of his choice, the right of access to a lawyer, and the right to request a medical examination) that should be applied from the very outset of deprivation of liberty. These rights should be implemented not only in the case of persons detained but also in other cases when citizens are obliged to stay at police or with Police for other reasons as well (for example, for identification purposes).

Article 13 of Criminal Procedure Code determines that any person deprived of liberty shall be informed promptly, in a language which he or she understands, of the right to legal assistance of his or her own choice, the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest and these circumstances are applied every time during the period of deprivation from liberty.<sup>222</sup>

Regarding the notification of arrest, Article 168 of Criminal Procedure Code further determines that an arrested person has the right to notify or to require the police to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest; notification of a family member or another appropriate person may be delayed for up to twenty-four (24) hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. This delay shall not be applied in the case of minor persons.

According to Law on Police<sup>223</sup>, the right to inform the family or other persons on the arrest is also valid for persons under "temporary detention" with the purpose of identification or because of their protection and the protection of others. NPM received no complaints from arrested persons who were in the Regional Police Custody Centre in Prishtina regarding these rights. In addition, based on the documentation reviewed, it appears that Kosovo Police has complied with these rights. During the visit, NPM observed that there were written information in every cell regarding the rights of persons arrested, in Albanian, Serbian and English. During the visit made to this Centre, NPM encountered no minor arrested.

---

<sup>222</sup> See also Articles 29 and 30 of the Constitution

<sup>223</sup> Law on Police, Article 20

This Centre was renovated in 2016. The NPM observed that cells were clean, had sufficient space, each cell had clean mattresses and bedclothes, but they had very little natural light and cells were not equipped with calling system. The ventilation system was operating within the centre. The toilets and showers were in good condition and there were also hot water. The NPM observed that there were poor working conditions for police officers working in this Centre. The NPM considers that relevant authorities should undertake necessary actions to eliminate these deficiencies.

Medical services are a fundamental right of persons arrested by Police. Medical services are administered by public institutions, such as; Family Medical Centre and University Clinical Centre, depending on the needs for treatment. NPM received no complaints from persons interviewed, regarding this right. In addition, from the documentation reviewed, it was observed that Police recorded in their personal file the notification on the right to medical services. The NPM observed that all data regarding the administration of medical services to the arrested persons are kept in his/her personal file.

Based on the findings during the visit, the NPM, therefore, recommends relevant authorities to undertake actions to provide more natural light in this Centre; outdoor exercise should be provided, within possibilities, to persons detained who are accommodated in this Centre for more than 24 hours; The calling system should be installed in cells and better working conditions for police officers in this Centre should be provided.

### **11.5 Report on the monitoring of border crossing points at Prishtina International Airport “Adem Jashari”, border crossing point “Hani i Elezit” and border crossing point “Vërmicë”**

Pursuant to Article 17 of Law 05/L-019 on the Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of the Ombudsperson, during November 2016 visited the above-mentioned border crossing points. The monitoring team was composed of one legal advisor and one psychologist. The report was published on 7 February 2017.

During the visit, police officers who were on duty provided NPM with full cooperation.

NPM visited the room where temporary detained persons are held who stay there no more than six (6) hours and this detention is made based on a court or prosecution’s order, as well upon International arrest warrant. These persons are held in this room until they are taken from there by the respective unit of the Kosovo Police.

The competent police officer informed the NPM that at the airport there is no transit zone. During the to this border crossing point, NPM also visited the areas (2 rooms with 8 beds each) where persons are held or accommodated to whom the entry in the territory of the Republic of Kosovo is denied on different accounts. These persons should return where they came from within 72 hours. If this does not take place within this period of time, they are sent to the Detention Centre for Foreigners.

These rooms provide good accommodation conditions with proper cleanliness, toilets and showers in good condition, as well as Internet access through WI-FI, which enables them to contact their families or other persons. The NPM considers that these rooms meet the standards set by the European Committee for the Prevention of Torture on the conditions of detention of persons refused entry into the territory of a certain state.

During the NPM's visit there were no persons accommodated in these rooms, neither there was any person in the room where persons detained are held temporarily based on court orders or public prosecution's requests. Airport's medical service personnel is composed of six nurses and three general practitioners (doctors). Medical services are offered 24 hours to detained persons and to Airport personnel. During the visit, NPMT observed that this medical Centre is equipped with all necessary equipment, three beds, medicines and two ambulances with equipment.

#### Border Crossing Point "Hani i Elezit"

During the visit made to this border crossing point with the Republic of Macedonia, NPM was informed that there was a temporary detention room for persons who stay there no longer than 6 hours. Persons are usually detained based on domestic court and public prosecution's warrants and on the international arrest warrant.

NPM observed that the room for temporary detention in this border crossing point had sufficient space, clean mattresses and bedclothes, heating, and proper ventilation. According to competent officials in this border crossing point, after persons are detained, the Border Police immediately informs the respective units of Kosovo Police which takes the detained person and sends him/her to a respective institution. This unit informs the detained person on his/her rights and other procedures.

#### Border Crossing Point "Vërmicë"

During the visit made to this border crossing point with the Republic of Albania, NPM was informed that this border crossing point possesses two temporary detention rooms (for 6 hours) and one interview room. Border police had ready-made forms in the official languages and in English, through which detained persons are informed on their rights. While regarding the right to a lawyer, the lawyer is provided by the Kosovo Bar Association and they are usually lawyers from Prizren.

According to the officials of this border crossing point, Kosovo Police is in possession of a list of interpreters for European and the Arabic languages.

The temporary detention room was in good condition regarding the area, cleanliness; the room possessed clean mattresses and bedclothes, as well as satisfactory heating. Medical services are offered by Family Medical Centre in Prizren. There were complete data in the files of the detained persons regarding their detention and submission to the respective unit of Kosovo Police.

After visiting these border crossing points, the NPM concludes that they comply with standards on the temporary detention of persons who are detained on different accounts.

### **11.6 Report with recommendations on the visit to Special Institute in Shtime**

In conformity with Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter “NPM”) of Ombudsperson, on 13 December 2016 visited the Special Institute in Shtime (hereinafter “SISH”). The monitoring team was composed of one legal advisor, one doctor and one psychologist. The report was published on 22 February 2017.

Special Institute in Shtime (SISH) is managed by the Ministry of Labour and Social Welfare (MLSW), which is run by the Director of Institute. It is an open-type institution, which provides 24 hour services: food, footwear, health care, work therapy, education, and social treatment. Beneficiaries of services in this institution are mainly persons with mental disabilities – mental development delay.

The Capacity of SISH is 64 residents, while during the last visit made, there were 59 residents present, of whom 39 males and 20 females, the average age of whom was 45 years of age.

Personnel of SISH are 70 persons in total, divided in several services, such as; medical services, which is composed of: 1 general practitioner, 11 nurses, 1 pharmacy technician, 23 medical assistants, and one hairdresser; technical service is comprised of: 1 chief of service, 1 machinist, 4 launderers, 4 guards, 2 drivers; social service is comprised of: 1 social worker, 1 agricultural technician, 1 professional therapist, 1 craftsman instructor, 1 tailoring instructor, 1 carpentry instructor; catering service is comprised of: 1 chief of service, 4 cooks, 2 cook assistants, 2 dishwashers, 1 medical assistant; administration service is comprised of finance officer, personnel officer, petty cash officer, and storage officer.

First Law on Mental Health No. 05/L-025 which entered into force in December 2015 aims to protect and promote mental health, prevent the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders. Article 18 of this Law determines the promulgation of the sublegal act for the treatment of residents who are in the social care institution<sup>224</sup>. To date, no sublegal act or a special Law regulating the treatment of residents in social care institutions was promulgated, which are managed by MLSW and municipalities.

---

<sup>224</sup> Article 18, paragraph 1, of the Law No. 05/L-025 on Mental Health, states: “1. Persons who are in residential social care institutions are offered counseling, treatment, rehabilitation and mental health care equally and according to health standards, approved by the Ministry of Health. Paragraph 2 of this Article states: The way of organization and provision of services, as provided in paragraph 1. of this Article shall be determined by special sub-legal act proposed by the Ministry of Health in cooperation with the Ministry of Labour and Social Welfare, adopted by the Government.

These institutions continue to be regulated by two Administrative Instructions of the MLSW: AI No. 11/2014 for the work and the criteria for placement of the residents, persons with mental disabilities/delay in mental development in special institute in Shtime and community-based homes and AI No. 13/2010 on provision of community services - homes for people with mental disabilities – delay in mental development. AI No. 11/2014 for the work and the criteria for placement of the residents, persons with mental disabilities/delay in mental development in special institute in Shtime and community-based homes foresees the treatment of persons whose capacity for action has been withheld by the Basic Court. The NPM of the Ombudsperson has investigated all cases of residents without a court decision and in February 2016 published the report with recommendations. During the visit on 13 December 2016, the NPM was informed that the Ombudsperson’s recommendation was implemented by SISH.

During the visit made by NPM, personnel of SISH offered full cooperation to the monitoring team. The team without any delay had access to all places where residents were accommodated and was able to discuss with some residents with a slight delay of mental development, who were able to talk.

During 2016, a new facility was constructed in the area of SISH where the administration of this institution was located, while the part where administration was located was adapted for habitation, which facilitated the work of the personnel and enabled categorisation of residents according to sex and health status. Light category of residents was accommodated in the block A, medium category in Block A2 and serious category in Block B.

SISH also had activity areas, one room for painting, craftsman and tailoring room, and the recreational hall equipped with equipment, such; chess, domino, playing cards it also had a restaurant, where residents are able to be served with tea at any time. NPMT assesses positively the restructuring of blocks within the Institution, as well as categorisation of residents according to sex and health status, which provides security to residents.

Creating a positive therapeutic environment includes making available crucial sufficient area for patients, such as; light, heating, appropriate airing as well as satisfactory cleanliness. During the visit made by NPMT in rooms where residents were accommodated, there were mainly 2 to 3 beds in one room, there was natural light and rooms were warm and clean, and were in compliance with Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health<sup>225</sup>

According to standards of European Committee for the Prevention of Torture, attention should be paid to the decoration of patients’ rooms and entertainment environments, to

---

<sup>225</sup>Article 6, paragraph 1.10, of the Law No. 05/L-025 on Mental Health provides: “the right to provide appropriate living, hygienic, nutritional and security conditions”.

offer visual stimulation to patients, the making available of bedside cabinets next to beds and wardrobes is very desirable. During the visit by NPMT, in residents rooms there were bedside cabinets for placing clothes and personal belongings, there were also decorations for visual stimulation, e.g., different paintings, painted by residents in cooperation with instructors.

Based on the findings and conclusions made during the visit, it was recommended to the Ministry of Health and the Ministry of Labour and Social Welfare to issue sub-legal acts pursuant to Article 18, paragraph 2, of the Law No. 05/L-025 on Mental Health; to the Ministry of Labour and Social Welfare to provide adequate conditions (facilities) for the work of health personnel; to Special Institute in Shtime to create special registers of cases of self-injury, bodily injuries, attempted suicide, deaths and cases where restraint means are used; whereas to the Municipality of Shtime to take measures for tackling the problem of stray dogs in the institution's yard.

### **11.7 Report with recommendations on the visit to the Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime**

Pursuant to 17 of Law 05/L-019 on the Ombudsperson, National Preventive Mechanism against Torture (hereinafter "NPM") of the Ombudsperson, on 26 June 2016 and 13 December 2016, visited the Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime (hereinafter "CIRCPSP"). The monitoring team was composed of a legal advisor, a doctor and a psychologist. The report was published on 6 March 2017.

The Centre for Integration and Rehabilitation of Chronic Psychiatric Sick People in Shtime (CIRCPSP) is as an institution within the Hospital and University Clinical Service in Kosovo (HUČSK), which provides 24 hour services. It is established in 2006, with 3270m<sup>2</sup>, with 4 wards (A1-A4) with a total of 48 rooms, with capacity of up to 80 beds.

CIRCPSP is an open type institution. Residents in this centre are mainly diagnosed with psychotic disorders, such as *Schizophrenia*. Residents in this centre are mainly diagnosed with psychotic disorders, such as *Schizophrenia*. At the moment of the visit, there were 63 residents in total, of them 36 males and 27 females. The average age was about 54 years of age, belonging to different nationalities, such as; 43 Albanians, 8 Serbs, 5 Ashkali, 1 Macedonian, and 2 Bosniaks.

CIRCPSP's personnel is comprised of 39 persons, of them 1 psychiatrist who is also a Director of Institution, nine nurses, 12 medical assistants, one social worker, five kitchen workers and the other part of staff is for technical services and security, etc.

The Law No. 05/L-025 on Mental Health, which entered into force in December 2015, aims at protecting and promoting mental health, preventing problems related to mental health, guaranteeing rights and improving the quality of life for people with mental disorders. Article 18, paragraph 2, of this Law provides for the issuance of a sub-legal act



for the treatment of persons residing in social care institutions<sup>226</sup>. In addition, Article 34 foresees the issuance of sub-legal acts which shall be in compliance with this law<sup>227</sup>. To date, no sub-legal act has been issued.

During the visit made by NPM, personnel of CIRCSPSP offered full cooperation to the monitoring team. The team without any delay had access to all places and was to speak in private with some residents who were conscious and able to communicate with them, and the conversation was conducted without the presence of Centre's personnel.

The Centre is divided into four wards (A1-A4). Ward A1 was on the first floor, which used to be a rehabilitation section, now there are cases placed in this ward requiring enhanced attention, as identified as cases with suicidal ideas, while ward A4 was only for females, where showers and toilets were divided as well, according to sex and this made it easy for the staff to keep residents under control.

Creating a positive therapeutic environment includes making available crucial sufficient area for patients, such as; light, heating, appropriate airing as well as satisfactory cleanliness. During the visit made by NPM in rooms where residents were accommodated, there were mainly 2 to 3 beds in one room, there was natural light and rooms were mainly warm and clean, and were in compliance with Article 6, paragraph 1.10 of Law No. 05/L-025 on Mental Health.<sup>228</sup>

According to standards of European Committee for the Prevention of Torture, attention should be paid to the decoration of patients' rooms and entertainment environments, to offer visual stimulation to patients; also the making available of bedside cabinets next to beds and wardrobes is very desirable. During the visit by NPM in residents' rooms, there were bedside cabinets for placing clothes and personal belongings, however, residents lacked personal footwear, and every time they are washed they are changed among residents, there were no decorations for visual stimulation either.

The NPM team was informed that the laundry room of the Centre, which was equipped with large laundry machines, dryers and ironing clothes and sheets, was being renovated.

During the visit made to CIRCSPSP, NPM team visited the kitchen where food is prepared and served. Kitchen was on the ground floor, it lacked proper light and ventilation, and sanitary facilities were very close to the kitchen, while cleanliness was on a good level.

---

<sup>226</sup> Article 18, paragraph 1 of the Law No. 05/L-025 on Mental Health, stipulates: "Persons who are in residential social care institutions are offered counseling, treatment, rehabilitation and mental health care equally and according to health standards, approved by the Ministry of Health". Paragraph 2 of this law stipulates the following: "The way of organization and provision of services, as provided in paragraph 1. of this Article shall be determined by special sub-legal act proposed by the Ministry of Health in cooperation with the Ministry of Labour and Social Welfare, adopted by the Government.

<sup>227</sup> Article 34.1 of the Law on Mental Health: "For implementation of this Law, within one (1) year from the date of entrance into force of this law, the Government of Kosovo and respective ministries shall issue respective sub-legal acts foreseen by this Law."

<sup>228</sup> Article 6, paragraph 1.10, of the Law No. 05/L-025 on Mental Health foresees "the right to provide appropriate living, hygienic, nutritional and security conditions".

During the last visit, NPM observed that the dining hall was equipped with new tables and chairs.

European Committee for the Prevention of Torture places special attention to the patients' food, which according to them, not only should food be appropriate from the standpoint of quantity and quality, but it also should be provided under satisfactory conditions.<sup>4</sup> During the visit, NPMT was informed that Centre was supplied well and properly with food, and the kitchen staff possessed sanitary booklets. NPMT encountered no expired food. Food is prepared according to menu and is given in three meals. NPMT hails the staff engagement about care and cleanliness in kitchen. NPMT recommends relevant authorities to undertake appropriate actions to build a new kitchen.

Based on the findings and conclusions made during the visit, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 16, paragraph 4, of the Law No. 05/L-019 on Ombudsperson, it was recommended to the Ministry of Health to issue sub-legal acts pursuant to the Law No. 05/L-025 on Mental Health; to take measures for the construction of the vocational unit within CIRCPS; to take measures for the construction of a new kitchen facility; to hire a clinical psychologist and an additional social worker; and to increase the number of nurses at this Centre. It was also recommended to the Municipality of Shtime and CIRCPS to take measures for tackling the problem of stray dogs in the institution's yard. Finally, it was recommended to CIRCPS to provide regular gynaecological services to residents, as well as conduct regular laboratory tests of all residents.

### **11.8 Report with recommendations on the visit to the High Security Prison**

Pursuant to Article 17 of Law 05/L-019 on Ombudsperson, National Preventive Mechanism against Torture (hereinafter "NPM") of the Ombudsperson on 17, 21 and 31 March 2017 conducted a visit to the High Security Prison (hereinafter "HSP"). The monitoring team was composed of two legal advisors, a physician and a psychologist.

HSP is located in village Gërdoc, municipality of Podujevë, in Prishtinë-Podujevë highway. HSP has become functional in 2014 and at that time admission of high risk convicted persons has started. This prison provides three regimes: basic, standard and advanced regime. HSP's capacity is 390 persons. HSP comprises of sector of administration, infirmary, Wards 1, 2 and 3 as well as related facilities.

HSP is located in village Gërdoc, municipality of Podujevë, in Prishtinë-Podujevë highway. HSP has become functional in 2014 and at that time admission of high risk convicted persons has started. This prison provides three regimes: basic, standard and

advanced regime. HSP's capacity is 390 persons. HSP comprises of sector of administration, infirmary, Wards 1, 2 and 3 as well as related facilities.<sup>229</sup>

During the visit conducted by NPM to the HSP, personnel of Correctional Service and the Prison Health Department staff provided the monitoring team with full co-operation. The team without delay gained access to all prison facilities. The team was provided with all the information needed to carry out the task and enabled conversations with convicted and detained persons without the presence of correctional officers or other personnel. NPM was also allowed to use IT equipment to perform its task in accordance with Article 17 of the Law on Ombudsperson.

During NPM visits conducted to HSP a number of detained persons were interviewed and NPM didn't receive any complaint about ill treatment or excessive use of force exercised by any correctional officer.

Material conditions in HSP are generally good and provide comfort for prisoners; each cell contains only one prisoner. All cells have sufficient natural light, enough space, TV set, clean toilets and the incarcerated there can make shower whenever they want. Cells are equipped with beds, beddings, table, chair and alarming system.

HSP provides hygienic packages to detainees every month as well as cleaning kits for cleaning the Wing where they are located. No complaint has been filed with NPM concerning accommodation conditions in HSP. In addition, the NPM did not receive any complaint regarding the quality of food offered to convicted prisoners and detainees at the HSP.

During the visit, the NPM noted that the floors in wards 1, 2 and HSP station were significantly damaged. In ward 1 the bathrooms did not have good insulation, water was dripping, the walls had moisture. According to the management, these damages are a consequence of non-quality works carried out by the engaged company.

Based on the findings and conclusions made during the visit, it was recommended to the Kosovo Correctional Service to undertake necessary actions for repairing damaged floor in HSP infirmary and Wards; to remove white colour which causes blinding refraction to detainees and presents obstacle for activities outside their cells; to enable access of detainees to daily press; to put in function premises for professional trainings; and increase activities for on remand detainees.

### **11.9 Report of the National Preventive Mechanism against Torture on the visit to the Detention Centre in Prizren**

Pursuant to Article 17 of Law No. 05/L-019 on the Ombudsperson, the National Mechanism for the Prevention of Torture (hereinafter referred to as "the NPM") of the

---

<sup>229</sup> Report of the European Commission on Torture Prevention on the visit conducted in Kosovo, form 15 up to 22 of April 2015, the Report was published in September of 2016, see at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a1efc>

Ombudsperson on 31 October 2017 visited the Detention Centre in Prizren (hereinafter referred to as “DCP”). The monitoring group consisted of two lawyers, one doctor and one psychologist.

The building of the DCP was built in 1964; initially it operated under UNMIK administration until February 2005 where full management competencies were taken over by local staff. The DCP is dedicated for the detainees of the regions nearby Prizren, as well as it receives persons for serving the sentence imposed by the Basic Court for up to three months. This Institution has the capacity for 92 detainees, it has a total of four wings, in three wings are placed remand prisoners and in one wing are placed the sentenced prisoners with short sentences.<sup>230</sup>

The prisoners are placed in wings A, B, C, D. The total capacity is for 92 persons. At the time of the NPM visit to DCP, there were 100 prisoners accommodated, of whom 22 were sentenced prisoners. The European Committee for the Prevention of Torture visited DCP in 2010.<sup>231</sup>

During the visit to the DCP, the monitoring team was informed that the construction of a new detention Centre in Prizren is planned, but the procedures have stagnated and no progress has been made in this regard. The Correctional Service staff and the Prison Health Department staff provided full cooperation to the monitoring team. The team was provided with all the information necessary to carry out the task and had the opportunity to interview convicted and detained persons without the presence of correctional officers or other staff.

During the visits in the DCP, the NPMT interviewed a considerable number of detainees and sentenced prisoners and did not receive any complaints about ill-treatment or excessive use of physical force by correctional officers.

Official capacity of DCP is 92. During the visit in the DCP holding cells, the NPM the number of prisoners was 100. The NPM visited a number of cells and verified whether the living space was in compliance with the standards set forth by the European Committee for the Prevention of Torture<sup>232</sup>. Based on this standard, the living space for remand or sentenced prisoners in cells should be at least 4m<sup>2</sup> per prisoner for a multiple occupancy cell, excluding the annex of toilets.

Also, the Law on Execution of Penal Sanctions stipulates that each prisoner should have 4m<sup>2</sup> of space in a common cell.<sup>233</sup> During the visit, the NMP noted that in some cells due to lack of space, some remand and sentenced prisoners were sleeping on the floor in an old mattress and without adequate covers. Therefore, the NPM concludes that the DCP

---

<sup>230</sup> Data from the website of the Kosovo Correctional Service at: <http://shkk.rks-gov.net> (31.10.2017)

<sup>231</sup> See: <https://rm.coe.int/16806972c7> (14.11.2017)

<sup>232</sup> European Committee for the Prevention of Torture, Living Space per Prisoner, see: <https://rm.coe.int/16806cc449> (14.11.2017)

<sup>233</sup> Law no. 05/L0-129, Article 3 of the Law on Amending and Supplementing the Law no. 04/L-149 on Execution of Penal Sanctions.

faces overcrowding which should be avoided as soon as possible and cannot provide accommodation space in accordance with the standards established by the European Committee for the Prevention of Torture and the Law on Execution of Criminal Sanctions.

During the visit in some cells, the NMP noticed that prisoners lack the storage space for placing necessary personal belongings. In addition, in the two cells where the remand prisoners were accommodated, the toilets did not have doors and thus the privacy of the remand prisoners was not observed.<sup>234</sup> Rule 15 of the Mandela Rules, adopted by the General Assembly of the United Nations on 29 September 2015, stipulates that: “*Sanitary installations shall be adequate and enable every prisoner to comply with the needs of nature necessary and in a clean and decent manner*”.

During the visit, the NMP noted that the cells were generally warm, had enough lighting, generally there was no moisture (except for cell A3 where is noted little moisture), while the showers were in good condition. Also, the rooms where the convicts are fed were clean, had natural light and ventilation. The NMP concluded that cells generally need to be whitewashed (painted).

Regarding the supplies, the NPM was informed that there was a lack of toilet papers, lack of bed sheets, blankets, where according to the directorate they were not supplied for a long time. Usually the prisoners are allowed to receive the bed sheets from their family members. During the conversation with the prisoners, the NPM has received complaints about the lack of hygienic kits, while regarding water, this problem was fixed. Authorities should provide the detainees with hygienic products that enable them to clean the cells and maintain the hygiene adequately.<sup>235</sup>

The NMPT was informed that detainees can take a shower twice a week, which is in accordance with the European Prison Rules.<sup>236</sup> The NMP did not receive complaints from detainees and convicts regarding this right.

Based on the findings and observations found during the visit, the Ministry of Justice shall notify the Ombudsperson about the planning for construction of the new Detention Centre in Prizren; to provide adequate working conditions for medical personnel; the number of detainees accommodated should be in accordance with the official capacity of the DCP, and the issue of overcrowding should be resolved as soon as possible; to take appropriate measures to ensure that the privacy of detainees is observed (see paragraph 9 of this report); to paint the cells as needed (see paragraph 10); to improve the working conditions of correctional officers.

---

<sup>234</sup> European Prison Rules, Article 18.1.

<sup>235</sup> Law on Execution of Penal Sanctions, Article 38.2 stipulates: “In order to ensure the hygiene of convicted persons and the hygiene of premises, convicted persons shall be provided with sufficient cold and hot water, and appropriate toilet and cleaning articles. Installations and devices for personal hygiene shall assure sufficient privacy and shall be well-maintained and clean”.

<sup>236</sup> European Prison Rules, paragraph 19.4.

### **11.10 Report of the National Mechanism for the Prevention of Torture on visit to Elderly and People without Family Care Home**

Pursuant to Article 17 of the Law 05/L-019 on Ombudsperson, National Preventive Mechanism on Torture (hereinafter “NPM”) of the Ombudsperson , on 2 and 30 November 2017 visited the Elderly and People without Family Care Home (hereinafter “EPWFCH”). The monitoring team was composed by a legal adviser, a physician and a psychologist.

During the visit of the NPM to the EPWFCH, the staff of the institution offered to the monitoring team full cooperation, access to relevant documentation and enabled conversations with residents, without the presence of the institution's officials.

EPWFCH is an institution of social character and functions within the Ministry of Labour and Social Welfare (hereinafter referred to as “MLSW”). Official capacity of this institution is 110 residents. At the time of the visit, the number of residents was 63, 27 of which were men and 36 women. Out of them, 3 residents are under the age of 65. Under Regulation No. 09/2008 on Internal Organization of Work in Elderly and People without family care (hereinafter in the text “Regulation”) the issue of residents’ admission criteria is regulated, organizing of life and work with residents as well as house rules and activities. Similarly, criteria for residents’ placement in this institution are regulated in more detailed manner by Administrative Instruction no. 10/2014 on activities and requirements of placement of Residents in House of Elderly Persons without Family Care and Community Based Houses.

Legislation of the Republic of Kosovo does not impose involuntary placement in social care institutions. All residents residing in this institution are placed based on a signed contract with abovementioned institution. Therefore, it is considered that all residents are placed here on the basis of their free will.

In the EPWFCH are placed the following categories of residents: dependent persons, semi-dependent persons and those independent. Dependent users are those which cannot fulfil their life needs in an independent manner but ought to be assisted permanently by others. They also need medical assistance all the time. Semi-dependent users are those who have impaired or halved the capability for fulfilling life needs. Other category are residents who are independent, who even though are aged people have maintained capability to fulfil their life needs without being assisted by anyone.<sup>237</sup> During the visit NPM was informed that 13 residents are dependent and 5 residents are semi-dependent, while 4 other residents suffer from dementia.

In Article 7 of the Administrative Instruction 07/2011 are provided the basic criteria for the resident's placement in the EPWFCH. According to this Article, the following criteria must be met: a person should be a permanent resident of the Republic of Kosovo, should

---

<sup>237</sup> Article 10 of the Regulation no.09/2008 on Internal Organization of Work in Elderly and People without family care

be over 65 years old, have no offspring-biological or adopted child, should be in a good mental health and should not have infectious diseases.

However, during the visit and checking of relevant documents, the NMPT has noted that in this institution are accommodated also persons with different psychiatric diagnoses, people with mental disabilities or mental development impairments. Based on information provided by social worker, ability to act has been abolished to 7 residents and legal guardians from the Centres for Social Work from Municipalities from which the residents have come, show not interested in their cases, with the exception of the CSW in Gjilan, which through the designated officer appointed as legal guardian, responds to the legal obligations.

The NPM has observed that in this institution 3 persons under the age of 65 are accommodated. Accommodation of these persons in this institution is in contradiction with Administrative Instruction 07/2011 and the Regulation on Internal Organization of Work in Elderly and People without Family Care Home.

During the visit, the NPM interviewed a number of residents and no complaints have been served as per physical abuse or verbal abuse, as well as conduct that would impair the human dignity of residents in the EPWFCH. The NPM highly evaluates the commitment of the staff to care for the elderly people, especially towards those that are immovable. The NPM gained the impression that relations between the staff and residents are good and friendly.

NPM has observed that outer premises of the institution are under CCTV surveillance cameras covering the outside areas of the EPWFCH.

The building was built in 1960s. During the visit the NPMT observed that the yard and sidewalks of the institution were fixed and access for elderly people and persons with disabilities was significantly easier. They also have day-to-day access to the institution's garden which is vast and has sufficient green area. According to the Management, the elevator is functional but very often is out of order due to the fact that it is very old. There are no problems with water supply, although the boilers are old and damaged. Management's main concern are old boilers and laundry machines, which are small and do not fulfil residents' needs to clean their bed-sheets, clothes, blankets as well as other things, the fact that hampers the work of medical assistants. The NMP has noticed that the building needs serious investment, especially in the part where the medical service is located, in the part where water penetrating often causes serious damage of the inventory.

During the visit, the management presented to NPM the requests which have been addressed to the MLSW regarding the investments needed, for which no answer has been served to the management by this Ministry.

Rooms where residents are located have sufficient lighting, generally they do not have moisture, but the inventory is out-dated and much damaged. Residents are accommodated in rooms by 3, 2 and 1 person. According to the management, central heating is in

function at certain times and not 24 hours due to insufficient heating fuel. Some residents complained at cold night, some reported to the monitoring team that they use electric heaters when there is no central heating.

Based on the findings and observations found during the visit, the Ministry of Labour and Social Welfare was recommended to undertake urgent improvements according to assessment of needs in the old building and the premises where health and dentistry service functions; to supply the residents with appropriate inventory in their rooms; to equip the Institution with an auto-ambulance; to apply protocols for self-hurt, bodily injuries, hunger strikes, sexual abuse, suicide, and deaths in the institution by medical service; to specific trainings for the staff in accordance with residents' treatment needs; to increase staff number based on assessment of needs from the health service.

### **11.11 Report of the National Mechanism for the Prevention of Torture on Visits to Police Stations**

Pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05 / L-019 of the Law on Ombudsperson, the National Mechanism for the Prevention of Torture (hereinafter referred to as NPM) has paid visit to the following police stations: Regional Police Detention Unit in Prishtina, station "Centre", on 30 October 2017; Police Station in Lipjan, on 09 October 2017; Police Station in Podujevë, on 18 October 2017; Police Station in Mitrovica, on 19 October 2017; Police Station in Vushtrri, on 19 October 2017; Police Station in Prizren, on 27 October 2017; Police Station in Suharekë, on 27 October 2017; Police Station in Dragash, on 27 October 2017. The monitoring team consisted of a lawyer, a psychologist and a doctor.

During the visit conducted in the abovementioned stations, Kosovo Police provided the NPM with full co-operation. Without any delay, the team had access to all the premises. The team was provided with all the information needed to carry out its task and access to all requested documents and was able to speak in private with persons deprived of their liberty.

Pursuant to the applicable legislation in the Republic of Kosovo, the persons suspected of having committed a criminal offence may be detained by the police up to 48 hours before being before a pre-trial judge. The police may keep and collect information from persons found at the scene of a criminal offence that may provide relevant information (maximum time period: six hours)<sup>238</sup>.

European Committee for the Prevention of Torture (hereinafter CPT), in its 2<sup>nd</sup> General Report published in 1992, highlighted the importance of three fundamental right: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer and the right

---

<sup>238</sup> Articles 162, 163, 164 of the Criminal Procedure Code of the Republic of Kosovo



to medical examination by a doctor of his choice (in addition to a medical examination carried out by a doctor called by the police authorities).<sup>239</sup>

These rights should be implemented not only in case of detained persons, but also in other cases when the citizens are obliged to stay in the station or with the police for other reasons (for example, for identification purposes). According to CPT, these rights are fundamental safeguards against physical ill-treatment and should be implemented from the very first moment of deprivation of freedom, notwithstanding how it is described within the legal system. Similarly, these fundamental rights are also provided for in the Constitution of the Republic of Kosovo, Criminal Procedure Code and Law on Police.<sup>240</sup>

Article 13 of the Criminal Procedure Code stipulates that any person deprived of freedom shall be informed promptly, in a language which he or she understands, of the right to legal assistance of his or her own choice, the right to notify a family members or another appropriate person of his or her choice about the detention and these rights shall be applied during the whole time of his/her deprivation of freedom.<sup>241</sup>

With regards to the notification of arrest, Article 168 of the Criminal Procedure Code further provides that an arrested person has the right to notify or to require the police to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest; Notification of a family member or another appropriate person in accordance with paragraph 1 of the present Article may be delayed for up to twenty-four (24) hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. This delay does not apply in the case of juvenile offenders.

Pursuant to the Law on Police<sup>242</sup> the right to notify the family or another person about the detention applies to persons, who are under “temporary custody”, with the purpose of identification or their protection and protection of others.

During the visits, the NMP was notified by the police officers that audio-video recording of interviews is not applied during the interviewing of the detained persons. European Committee on Prevention of Torture (CPT) considers that:

*“Electronic recording (audio and/or video) of police interviews represents another important safeguard against the ill-treatment of detainees. CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or*

---

<sup>239</sup> See: <https://rm.coe.int/16806cea2f> (15.11.2017).

<sup>240</sup> The Constitution of the Republic of Kosovo, Articles 29 and 30. Criminal Code of the Republic of Kosovo, Article 13. Law no. 04/L-076 on the Kosovo Police,

<sup>241</sup> See also Articles 29 and 30 of the Constitution.

<sup>242</sup> Law on Police, Article 20.

*psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions”.*<sup>243</sup>

In the report on the 2006 visit to Ireland, the CPT emphasizes:

*“The findings during the 2006 visit suggest that audio-video recording in the interrogation rooms of Garda stations may have been a significant contributing factor to reducing the amount of ill-treatment alleged by persons detained”.*

The Ombudsperson’s NPM encourages the Kosovo Police to review the possibility of implementation of such audio and video recording system, in compliance to CPT conclusions and to notify the Ombudsperson about it..

The NMP has noticed that in the visited police stations, the security cameras are functional, in station premises and cells where the detainees are held, except in the police station in Lipjan.

The NMP did not receive complaints by the detainees found in the Regional Detention Centre in Prishtina, in relation to these rights. Similarly, according to the documents reviewed it is found that Kosovo Police respects these rights, in all the visited stations. During the visits, NPM has noticed that in each cell there were written information related to the rights of persons detained in Albanian, Serbian and English Language. During the visits, NPM did not encounter any detained juveniles.

Based on the findings and observations found during the visit, police stations were recommended to take the necessary steps to provide more natural light to the Regional Police Detention Unit in Prishtina, station “Centre”; to create better working conditions for police officers in the Regional Police Detention Unit in Prishtina, station “Centre”; to make renovations and provide supplies to the Prizren Correctional Centre, as specified in paragraph 20 of this report; in all cells of the police stations where there are holding rooms call systems shall be installed; to functionalize security cameras at the Police Station in Lipjan.

---

<sup>243</sup> European Committee for the Prevention of Torture, Extract from the 12th General Report, paragraph 36. For more information, please see: <https://rm.coe.int/16806cd1ed> (24.11.2017).

## **12. Recommendation Letters**

### **12.1 Recommendation Letter - Complaint no. 318/2016**

In this case, the complainant addressed the Ombudsperson with a complaint regarding the restriction of access to public documents by the Central Bank of Kosovo, namely restriction of access to “...*employment data from January 2013 until 05.04.2016. These data should include the list of names of employees during this period and the positions they are employed in*”.

According to the communications that the Ombudsperson had with the Central Bank it was understood that the reason for not responding to the request for access to public documents was for not filing a request according to the procedure provided for in the Access to Public Documents Policy of the CBK, considering the non-compliance to the form requested by CBK as a withdrawal of the request.

The Ombudsperson considered that Article 4, par. 2 of Law no. 03 / L-215 on Access to Public Documents (LAPD), is a provision which clearly specifies the manner of filing a request “*Documents shall be made accessible to the public based on a direct request, either following a written application or in electronic form, with exception to information restricted by Law*”. Based on this, we consider that the form set out in Article 6, as an integral part of the Policy on Access to Public Documents of the CBK, is not in full compliance with Article 4, par. 2, of LAPD.

In order to respect Article 41, par. 1 of the Constitution of the Republic of Kosovo, [Right of Access to Public Documents], according to which “*Each person enjoys the right to access public documents*”; and realization of the right of Access to Public Documents in accordance with the Law in question, which “*guarantees the right of every natural and legal person, without discrimination on any ground, to have access, upon request, to documents held, drafted or received by public institutions*”; The Ombudsperson, pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo, and Article 27, Law no. 05 / L-019 on the Ombudsperson recommended to the CBK that requests for access to public documents be handled in accordance with Article 4, paragraph 2 of the LAPD, irrespective of whether they are filed according to the form set out in Article 6 of the Policy on Access to Public Documents of the CBK.

### **12.2 Recommendation Letter - Ex officio no. 700/2016**

The Ombudsperson Institution, in the framework of promotional activities, during November and December 2016, the Ombudsperson Institution (OI) conducted the information campaign “Meet the Ombudsperson Institution” for lower and higher secondary school students, regarding the role of the OI in protecting and promoting human rights in Kosovo. This activity was organized in accordance with Article 18 paragraph 1.3 of the Law no. 05 / L-019 on Ombudsperson. The main purpose for organizing the campaign was to inform students about the role of the OI in protecting and promoting human rights and the possibilities of address the OI on human rights

violations, as well as to provide children with opportunities to be heard by OI representatives, respectively to express their opinions, attitudes or concerns about the various problems they face on daily basis, not just in school, but also in the streets and elsewhere.

During this campaign, among others were visited the SHFMU “Ganimete Tërbeshi” in the village Llukar and its satellite school in the Siqueve village. It is noted that the school in Siquevë is facing many deficiencies and difficulties in performing the learning process, which were emphasized by the students of this school during the discussion with the OI representative. Within the school building in Siquevë, the problems with the sewerage, water flows in toilets and sinks, heating problems due stoves spilling smoke, and poor lighting, are substantial. Whereas, in the school in Llukar, we noted that there is no signalization in the vicinity of the school and that there is a leak of water in the physical education gym. Management informed Ombudsperson officials that several times they addressed to Municipal Education Directorate (MED) in Pristina to take concrete measures to improve the learning conditions at the schools in Siquevë and Llukar, but so far they did not received any answer. For this reason, the Ombudsperson recommended to the Municipality of Prishtina to take measures to improve the conditions for the continuation of the teaching process in the satellite school of the SHFMU “Ganimete Tërbeshi” in Siquevë, as follows: elimination of problems with sewage; equipping of school with lighting; painting of classrooms with limestone; provision of a school with suitable heating stoves. While to the SHFMU “Ganimete Tërbeshi” (main school) in Llukar recommended to take measures to improve the conditions for the continuation of the teaching process, as follows: instalments of signalling signs near the school; cleaning of the bridge near the school to serve students as a subway; fixing of water leaks in the physical education gym.

### **12.3 Recommendation letter - Ex officio No. 43/2017**

Day care centres for children with disabilities are functioning in Ferizaj, Gjilan, Peja and Prizren. Activities of these centres in the provision of social and family services for children with disabilities are managed by NGO “PEMA”, an organisation which is licenced by state bodies. At the end of 2016, OIK representatives in accordance with Law on Ombudsperson, nr. 05/L-019 visited these centres. During the meetings, they were informed that due to financial difficulties, these centres risk to close and children with disabilities may not enjoy the right to social and family services in some of these day care centres due to lack of financial means.

The inability to provide social and family services to children with disabilities represents a concern for the Ombudsperson. The closure of day care centres, which to begin with were insufficient to meet the needs and rights of this group of the population, requires your attention and appropriate action. With the situation created in the field of social and family services, the situation of many children with disabilities, who have been attending

these centres, may be aggravated and deteriorated by the fact that they will not receive the necessary support and specialized care.

The area of social services is not the only area in which children with disabilities face difficulties. In reality, children with disabilities face many difficulties and barriers in all areas of life, thus there is much to be done in this regard by state institutions in the first place. It is more than necessary to do more with regards to community-based social services, so the Ombudsperson reiterates that the support of day care centres to continue the work in providing social services should be made by institutions of the Ministry of Labour and Social Welfare so that children with disabilities enjoy the right to quality social services, always taking into account their needs.

The Ombudsperson pursuant to Article 135, paragraph 3 of the Constitution of the Republic of Kosovo, as well as Article 18, paragraph 3 of the Law no. 05 / L-019 on Ombudsperson recommended to the Minister of Labour and Social Welfare to take the necessary measures to provide day care centres with the necessary support, including financial support to continue the work and provide social assistance and services to children with disabilities in order to ensure social integration and realization of rights in accordance with local and international legal standards.

#### **12.4 Recommendation letter – Complaint no. 549/2015**

Pursuant to Article 16.1 of the Law no. 05/L-019 on Ombudsperson on 20<sup>th</sup> of October 2015, the Ombudsperson received a complaint against the Basic Court in Prishtina (BCP), due to the lengthy proceeding regarding the Case C.41/2014 relating to the employment relationship dispute.

The complainant alleges that until his retirement he was an employee of the Kosovo Energy Corporation (KEK). The complainant further alleges that KEK by a decision in 2005 had assigned him a job as a physical worker. According to the complainant, until his retirement he was not returned to his workplace as a metal-engraver and that with this he was damaged both professionally and in personal incomes. On 15 February 2005, the complainant filed a claim against KEK, at that time the Municipal Court of Prishtina. Based on the documents submitted by the complainant to the Ombudsperson Institution, it is noticed that the case was preceded through all instances to be returned back for retrial in the BCP by the Supreme Court Rev.No.213 / 2013, dated 4 December 2013. The complainant alleges that the retrial of the case has started, but that the court proceeding is slow.

The Ombudsperson had contacted the complainant who was not able to provide information about the developments in the BCP because at that time he was in the hospital and complained of a serious health condition. The Ombudsperson noticed that the complainant's case started with the filing of the claim on 15 February 2005 and that the case is related to employment relation dispute and since 24 June 2015 no action was taken regarding the settlement of the case, and this constitutes an extraordinary delay in

the proceedings of this case. Therefore, the Ombudsperson recommended to the Basic Court of Prishtina to take all necessary measures in accordance with the Law on Contested Procedure and Article 6 of the European Convention on Human Rights to precede this case with urgency.

### **12.5 Recommendation letter – Complaint no. 914/2016**

Pursuant to Article 16.1 of the Law no. 05 / L-019 on Ombudsperson on 22 December 2016, the Ombudsperson received a complaint against the Municipal Education Directorate (MED) in Ferizaj, due to discrimination against him regarding rights deriving from the employment relationship.

Based on the complainant's statement and the evidence available to the Ombudsperson, the complainant, an Albanian language teacher has a working experience of 33 years as a teacher, while in the Lower Secondary Primary School (SHFMU) “Ahmet Hoxha” in Ferizaj, a teacher of Albanian language course was hired on 1 September 2005, for an indefinite period. Due to the new teaching assignment of the Albanian language teacher in November 2016, the Albanian language (elective subject) 10 class quota were vacant in this school, but even though the employee's indefinite employment relationship has a teaching quota of 15 hours per week (75% of the working volume), his teaching norm was not completed, but for these class hours the MED has hired another teacher without a competition, without adequate qualification and with lack of other requirements that are expressly provided for by the legal provisions for the establishment of employment relationship.

While dissatisfied with the treatment regarding his employment quota, the complainant on 30<sup>th</sup> of November 2016 submitted a request to MED asking for his quota to be completed, but although over 3 months have passed, he did not receive an answer in regard to his request.

In this case, the Ombudsperson notes that municipal authorities have failed to address the request within the legal deadline as foreseen by the LAP, as the public administration bodies, within their competencies, are obliged to decide on any claim filed by natural and legal persons by specifying the situations and deadlines for response. The situation of not having addressed the submission of the complainant represents a failure of the municipal bodies, and in this case the legal remedy exercised by the complainant has not produced the legal effect required in enabling the exercise of his right.

The Ombudsperson notes that the failure to review the request lodged on 30 November 2016 constitutes a violation of the right to a fair process within a reasonable time, guaranteed by Article 32 of the Constitution of the Republic of Kosovo, Article 6, paragraph 1, in conjunction with Article 13 of the European Convention on Human Rights (ECHR), as well as Articles 11, 38.4 and 131.1 of the LAP. The Ombudsperson considers that the procedure for reviewing the request should be conducted without

further delays and the issue raised should be decided by the public authorities based on merits of the case.

Therefore, the delays and ineffectiveness of the procedures lead to situations that are contrary to the rule of law principle, a principle sanctioned by the highest legal acts and international legal instruments which Kosovo authorities have an obligation to respect without exception. Therefore the Ombudsperson recommends the Municipality of Ferizaj, namely the Municipal Education Directorate to entirely annul its recommendation of 25 November 2016 on the assignment of the Albanian language teacher in the workplace at SHFMU “Ahmet Hoxha” due to lack of legal grounds; to take all necessary measures to ensure that the complainant's claim is reviewed in accordance with the Law on Administrative Procedure; regarding the technological surpluses, respectively for the cases of teachers with incomplete class hours (teaching norm), to undertake measures for their accommodation, respectively for the completion of their teaching norms, whereas job vacancy should only be announced once the legal requirements have been met.

### **12.6 Recommendation letter – Complaint no.792/2016**

The Ombudsperson, pursuant to Article 16.1 of the Law on Ombudsperson No.95/L-019, on 31 October 2016 has received the complaint against the Municipal Directorate of Education (MED) in Ferizaj due to not providing transportation for his children in the home-school and vice versa destination, covering a distance of 8 kilometres in both directions.

Based on the complainant's statement and the evidence available to the Ombudsperson, he has submitted a written request to MED on 23.09.2016 for the transportation of pupils (his 2 children), but although 5 months have passed so far, he has not received any response in this regard.

The Lower Secondary Primary School (SHFMU) “Skenderbeu” in the village of Jezerc is located on the mountainous terrain and most pupils are transported by a small bus in the direction home-school and vice versa. Since it is a mountainous area, the presence of wildlife such as wolves, bears, wild boars etc. is increased, especially during the winter season, which poses a direct danger to human life. The complainant's children are not included in transport with this mini-bus with the justification that these are only two pupils residing in the village of Verrishtë (Jezerc neighbourhood), a neighbourhood that does not gravitate to other neighbourhoods where mini-bus operates for the transportation of pupils in this school. As a consequence of this situation, these pupils cannot attend classes regularly; therefore they have a large number of absences in school.

The Ombudsperson considers that delaying of the response to the complainant's request, which besides the problem of pupils' transport, includes, first of all, the right to education which is at the same time compulsory under the law, therefore the MED should address the requests within the legal deadline, due to the weight of the problem and special

importance. In this case the Ombudsperson recommended that MED should find a solution urgently regarding the complainant's request of 23 September 2016 for public transportation (of its children) in direction home-school and vice versa, addressing it in accordance with the legal provisions dealing with this issue.

### **12.7 Recommendation letter - Ex officio no. 87/2017**

On 26<sup>th</sup> of January 2017, representatives of the Ombudsperson Institution (OI) visited the villages of Gurrakoc and Srbobran in the municipality of Istog, whereby they were informed about the condition of several families of the Albanian and Egyptian communities. Initially, were visited the families residing in the facilities of the former prison since the end of war, whereby most of them are of Egyptian ethnicity, and other families are Albanian nationality.

There are a total of 32 residents, and the majority of them are children, elderly people, unemployed and some suffer from different diseases. The residential building does not meet even the most basic living conditions since the entrance and other parts of the building are exposed to the risk of collapsing, while there are unpleasant odours everywhere in the corridors due to lack of proper infrastructure and lack of potable water. In the yard of this building there is a large leak of sewage, posing a risk of the outbreak of an epidemic disease. According to some of the residents of this building, this building long time ago has served as a prison.

Therefore, the OP ascertains that, given the miserable situation of residents living in this building located in village of Gurrakoc, further residency in this building threatens the lives of residents from a possible collapse of the building and lack of convenient living conditions, in particular sanitary conditions which poses a risk for outbreak of an epidemic disease that may endanger the lives and the health of residents, especially that of children and the elderly.

The right to housing is one of the most important issues. Housing is a social right of citizens in most developed countries. The right to residence has broad effects, such as social, cultural, financial effects, etc. Therefore, social housing projects are very important for the well-being of homeless citizens. In the light of international instruments and in civil and political rights as well, the right to housing is considered as an integral part of economic, social and cultural rights.

The Ombudsperson, in this sense, ascertains that provision of housing is the responsibility of the municipalities based on the Law No.03/L-164 on Housing Financing Specific Programs, of the Republic of Kosovo, namely Article 25 [Responsibilities of Municipalities] paragraph 1, *“Identify the housing needs for the population under their territorial jurisdiction programs, according to this Law”*, paragraph 2, *“draft three (3) year programs and projects for housing based on the financial sources”* and paragraph 3, *“provide construction sites and develop infrastructure land for implementation of housing programs”*.



Under these circumstances, the Ombudsperson recommends the Municipalities of Istog and Klina take immediate action to relocate the families of the municipalities of Istog and the municipality of Klina, from the building of the former prison in the village of Gurrakoc and place them in a suitable housing space in accordance with Law No.03/L-164 on Housing Financing Specific Programs of the Republic of Kosovo or through other defined forms according to the laws in force, and recommends that the Municipality of Istog undertake actions to regulate sewerage in the neighbourhood inhabited by the Egyptian community in Srbobran Village.

## **12.8 Recommendation letter – Complaint no. 497/2016**

The Ombudsperson, pursuant to Law no. 05 / L-019 on Ombudsperson, has received a complaint against the Ministry of Education, Science and Technology (MEST) regarding the non-response to the complaint. According to the complainant's allegations, he was a professor at the University of Prizren (UPZ) “Ukshin Hoti”, whose employment relationship has been terminated by a decision of the UPZ Board of Directors (No. 231/2016, Protocol No. 01-95, dated 7 March 2017) on the grounds that his contract has expired. The complainant, while being dissatisfied with this decision, has filed a complaint at MEST on 11 March 2016, but the same has not yet been reviewed by the relevant MEST authorities. Since the complainant did not receive a response, he has again addressed MEST with complaint on 10 June 2016, but still did not receive a response to his request.

Article 11 of the Law No.02/L-28 on the Administrative Procedure (hereinafter the Law on the Administrative Procedure) expressly determines the obligation for decision-making, *“The public administration bodies, within the scope of their competences, shall decide on any request, submitted by natural and legal persons”*. Also, Article 38 of this law clearly defines the obligation of an administrative body for action upon receiving the requests of the parties and for their written notification regarding the decision of the body. In the present case, the body did not comply with Article 38 of the Law on Administrative Procedure; the party did not receive a written response. Whereas, Article 90 in paragraph 1 of this law expressly regulates the manner of announcing administrative acts, *“Individual and collective administrative acts are serviced to interested parties no later than 30 days”*. In the complainant's case, we note that, although several months have passed, the same has not received a response to his request.

The Ombudsperson Institution, based on the evidence and submissions provided by the complainant, ascertains that MEST has failed to implement the law since the complainant did not receive a response from MEST to his two submissions dated 13 September 2016 and 11 November 2016 despite the legal obligation to review the complainant's submissions under the applicable law.

The Ombudsperson, based on these findings, and in accordance with Article 135, par. 3 of the Constitution of the Republic of Kosovo and Article 25 of the Law on Ombudsperson, recommended MEST to urgently decide on the complainant's

submissions of 13 September 2016 and 11 November 2016 addressing it in conformity with the legal provisions.

### **12.9 Recommendation letter – Complaint no. 24/2016**

On 14 January 2016, the Ombudsperson has, pursuant to Article 16.1 of the Law on Ombudsperson No.05/L-019, received the complaint filed against the Municipality of Prishtina on the failure to act in protecting the right of privacy and environment. Based on the complainant's statement and other evidence available to the Ombudsperson, the residents of the building No.9 and 7 of the “Rexhep Luci” neighbourhood have filed a complaint before the Finance and Property Directorate (FPD) because of the problems caused by the parking lot built as a result of occupation of the socially-owned property. The FPD of the Municipality of Prishtina, with the minutes 10.No. 466-93524 ascertained that the party has exceeded the boundaries of his parcel and placed the fence to the detriment of the socially owned parcel and the same obliged him to remove the fence from the socially owned parcel within 2 days. Whereas, on July 30, 2013, the FPD - Property Sector of the Municipality of Prishtina issued a decision whereby “*A. Latifi, with residence in Str. “Rexhep Luci” n.n. Prishtina, is ordered to release the arbitrarily occupied surface where the same has built a fence of not strong material in an area of 85 m<sup>2</sup>, parcel No.6220-0 Cadastral Zone Prishtina, a socially owned property in Prishtina.*”

Since the complainant has not receive a response regarding the request submitted and the situation regarding the occupation of the property remained the same, the Ombudsperson, through a letter addressed to the Director of the Directorate of Inspection of the Municipality of Prishtina, has requested information regarding the stage of the procedure of the complainant's case and actions taken by this directorate to proceed the case within the reasonable timeframe, in accordance with the law. The Ombudsperson received a reply to the above-mentioned letter with the following content: “[...] *during the execution of the case, the officials of the Directorate of Inspection have encountered physical obstacles and attacks, which was also reported to the police [...]*”.

The Ombudsperson finds that the Municipality of Prishtina, FPD and DI failed to fulfil its positive obligations in terms of deciding on the issue of the party regarding the removal of the parking constructed on the socially-owned property with an area of 85m<sup>2</sup>. This parcel, which for a number of years has been held in possession and actual use by the occupier, against who, as seen from the chronology of the actions, the municipality is not taking any action, namely legal remedies for the return to possession of that property although obstruction of possession, disturbance of peace, violation of privacy; (car horn, noise, fuel smoke cars parked even under the building's terrace) has affected a considerable number of citizens, of different ages and with different various health conditions. Based on the factual situation of the case in question, regarding the obligation to undertake positive obligations, the Ombudsperson reminds that the European Court of Human Rights, regarding analogous situations, ascertained that; “*not only should public*

*authorities be restrained from the non-interference in the individuals rights, but they should also undertake concrete steps in the protection of their rights”<sup>244</sup>*

Therefore, the delays and ineffectiveness of the procedures lead to situations that are contrary to the rule of law principle, a principle sanctioned by the highest legal acts and international legal instruments that Kosovo authorities are obliged to respect without exception. For this reason the Ombudsman recommends the Municipality of Prishtina to execute as soon as possible the decision to release the socially-owned property arbitrarily usurped; to guarantee the review of complaints to all parties within a reasonable timeframe and in accordance with applicable laws.

### **12.10 Recommendation letter – Complaint no. 312/2017**

The Ombudsperson has received a complaint against the Municipality of Podujeva due to the lack of housing conditions of a family of eighteen (18) members living in the former Podujeva Railway Station. On 25 July 2017, the Ombudsperson representatives accompanied by journalists from the “Zeri i Ashkalinjeve” Broadcasting Program on Radio Television of Kosovo visited the family in question belonging to the Ashkali community. This family lives in extremely difficult socio-economic conditions, starting from a house that is at risk of collapsing, then the lack of potable water, the shortage of electricity due to financial inability to pay. However, even more difficult the living makes the large number of family members, eighteen (18) family members, living in this house that does not meet even the most basic living conditions. Of this number of members of this family, seven (7) of them are children, three (3) of them are beneficiaries of social assistance.

According to the complainant, the difficulties of living in this house do not appear only during the winter season, but throughout the year and early this year, one of the children passed away because of the cold. The complainant also claims that he was never helped by the Municipality of Podujeva or by any other institution, despite continuous promises that were given to him. Like most of their children, both the complainant and his wife suffer from different kinds of diseases. This family has lived in this house for thirteen (13) years, and the property in which the house is located is not theirs. Before settling into this property, they were renting a facility from the income they could get from working from time to time.

The Ombudsperson considers that further staying in this place puts at risk the lives of the members of this family from due to the possibility of the house being collapsed. While the lack of adequate living conditions poses a serious risk for the occurrence of an outbreak of epidemic disease that could endanger the life and health of family members, especially children but also other surrounding residents.

The right to housing is one of the most important issues for social stability, health and quality development of human well-being. In most developed countries, housing is a

---

<sup>244</sup> ECtHR, the case of *Hatton and Others v. the United Kingdom*, Application no. 36022/97, 8 July 2003

social right of the citizens. The right to housing has broad effects, such as social, cultural, financial, etc. Therefore, social housing projects are very important for the well-being of homeless people. The right to housing in international human rights instruments is considered as an integral part of economic, social and cultural rights, same as civil and political rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in Article 8, paragraph 1 stipulates: “*Everyone has the right to respect for his private and family life, his home and his correspondence [...]*”<sup>245</sup>, “*although Article 8 does not guarantee the right to have one’s housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such refusal on the private life of the individual..., this provision does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private life. A State has obligations of this type where there is a direct and immediate link between the measures sought by an applicant and the latter’s private life.*”

The Ombudsperson recommended the Municipality of Podujeva to take immediate actions to relocate this family from the house that is located in the former Podujeva Railway Station and place them in a suitable housing premise.

### **12.11 Recommendation letter – Complaint no. 619/2017**

The Ombudsperson has received a complaint through the postal address regarding the criteria of the competition Ref.No.01/1066/, dated 05.09.2017, for the admission of new students in the first year of basic-bachelor and master studies in the second term for the academic year 2017/2018. The complainant, on 6 September 2017, through the web site has filed a complaint to the University “Kadri Zeka” in Gjilan (UKZ), through which he opposed the criterion envisaged under paragraph 2 of the competition for master studies, but despite this, the complainant claims that he has not received a response to the complaint filed.

On 29 September 2017, the representative of the OI, regarding the competition criterion which foresees that: “*Candidates who have completed bachelor studies with a minimum average grade 7.50 may apply for Master's degree [...]*”, discussed with the General Secretary of UKZ, who said he would talk to the Rector on the matter and let us know about further actions.

On 17 October 2017, after the UKZ’s announcement regarding the postponement of the competition deadline, the OI representative again visited the UKZ and spoke with the Secretary General, who informed him that they have discussed the postponement of the deadline and the removal of grade criterion at the Collegium of Deans, but it was decided only to postpone the competition deadline until 20.10.2017, while the removal of the

---

<sup>245</sup> Marzari v. Italy (1999) 28 EHRR CD 175. at 179

criterion which envisages that in the master studies can apply only the candidates who have completed the bachelor's degree with a minimum average 7.50 has remained the same. Based on the Law on Higher Education, Article 2, paragraph 1, point 1.3, stipulates that "equal opportunities for all students [...]", while according to Article 29, paragraph 4, it is defined that *"Students are admitted to Master studies on the basis of competition, according to the results of their preliminary equivalence studies, as defined in this law."*

Based on the Law on Higher Education and the Statute of the UKZ, the Senate of this University on 16.02.2017 has issued the Regulation for Post-Graduate ( Master) Studies, according to paragraphs 1 and 2 of Article 10, it is envisaged that all students who have completed basic studies are entitled to register in one year and two years postgraduate studies, furthermore, paragraph 3 of Article 10 stipulates that: *"Students who, during basic studies (Bachelor), have reached the average grade of 7.5 and above, may be admitted directly to master studies, according to the ranking to the limit of the number foreseen by the competition."*, whereas paragraph 4, provides that: *"In cases where the number of candidates interested to register is less than the number announced by competition, then students with an average grade below 7.5 may also be admitted, but they will be subject to the qualification exam, based on the criteria determined by the faculty."*

Based on the information that the Ombudsman possesses, although the competition was announced twice and now the deadline for the competition is postponed until 20 October 2017, only in the program of Economics has been exceeded by the number of interested candidates, whereas in the field of Computer Science and Law the number of candidates has not yet been filled. Such limitation of the average grade is not foreseen by the competitions of other public universities in the Republic of Kosovo, it can be concluded that candidates who are interested to apply for Master studies at "Kadri Zeka" University did not have equal opportunities with the candidates who have competed according to the competitions to other public universities and were denied from the right of competition. Therefore, the Ombudsperson recommended that the criterion that in "Master's studies may compete candidates who have finished bachelor studies with an average grade of at least 7.50 [...]", envisaged by competition with Ref. No.01/1066/, announced on 05.09.2017, is suspended.

### **12.12 Recommendation letter – Complaint no. 742/2015**

The Ombudsperson has, pursuant to Article 16.1 of the Law No. 05/L-019 on Ombudsperson, on 17 December 2017 has received the complaint against the Directorate of Urbanism and Environment (DUE) of the Municipality of Ferizaj for not adhering the proper procedures upon naming streets in the village of Kosina, Municipality of Ferizaj. Based on the complainant's statement and other evidences available, the Ombudsperson Institution (OI) addressed the DUE of the Municipality of Ferizaj, on 17 December 2015, with a complaint against the manner of naming the streets of the village of Kosinë, as the

competent road naming committee has not respected the legal procedures for naming streets.

Since the competent authorities did not undertake any clear action nor provided any written response to the complainant's case for about 11 months, on 10 November 2016, the Ombudsperson requested through a letter, to be informed by the Director of the DUE on the stage at which is the procedure in the complainant's case. On 25 November 2016, the Ombudsperson received a response from the Director of DUE, which states: *“Mr. Maluku addressed a complaint to the Commission for the Review of Complaints, which complaint is in the process, but the commission has not completed its work due to the large number of complaints. Upon completion of the work, the Commission shall present the proposals to the Assembly where they become final”*.

From the Ombudsman's findings on this case, it results that concerning the complainant's request, there is unreasonable procedural delay. This is first of all in conflict with the Law no. 05/L-031 on General Administrative Procedure (LGAP), where Article 10, paragraph 2 explicitly defines the obligation for time-efficient of decision-making. *“The public authority shall carry out the administrative procedure as soon as possible and with as little expenditure for the party, without prejudice to what is necessary for a legitimate and appropriate result of the administrative procedure”*.

The Ombudsperson recommended to the Municipality of Ferizaj to address, as soon as possible, the complaint no. 04-16-117968 of 17 December 2015, and respond to the complainant with a written reply in accordance with the provisions of the Law on General Administrative Procedure.

### **12.13 Recommendation letter – Complaint no. 692/2017**

The Ombudsperson has received a complaint against the Rectorate of the University of Prishtina “Hasan Prishtina”. According to the complainant's claim and the documentation it submitted to the Office of the Ombudsperson, it is noted that on 21 February 2017 the complainant was in the archive office of the Rectorate to file a submission with the accompanying documentation, but the archive officer refused to accept her submission. Unable to submit the documents to the archive office of the Rectorate, the complainant sent it by registered mail, on 23 February 2017. However, on that same day, the letter was returned to the complainant with the return receipt.

Such actions are first of all in conflict with the principles of Law no. 02/L-28 on Administrative Procedure <sup>246</sup> (a law which was in force at the time the complainant submitted a request to the Rectorate), namely with the principle of objectivity and impartiality, from which derives the obligation for public administration bodies to act

---

<sup>246</sup> Law no. 05/L -031 on the Genral Administrative Procedure, entered into force on 21 June 2017.

objectively and impartially, and that the activity of the public administration bodies should not be affected by any personal, family, friendly or political interest.<sup>247</sup>

Consequently, based on the above, the competent body of the public institution is obliged to accept the request submitted by the party. In order to create a more effective, accountable, transparent and ethical administration, it would be necessary that, regardless of whether the party requires the certificate or the evidence for the submission, namely the receipt of the request, the public administration body to practice the issuance of written evidence for the submission of the application.<sup>248</sup> Furthermore, the aim of good administration of public administration bodies, inter alia, should be to create a good practice by promoting a harmonized and citizen-focused administrative culture, which learns by interacting with citizens<sup>249</sup>

Based on this, the Ombudsperson recommended that the Rectorate's office of the University of Prishtina "Hasan Prishtina" responsible for accepting the requests, to review the request of Ms. Shala and other potential requests in accordance with the provisions of the Law on General Administrative Procedure.

#### **12.14 Recommendation letter – Complaint no. 315/2016**

The Ombudsperson has received a complaint on behalf of the Strike Council of Steel Pipe Factory (IMK) for non-enforcement of the judgment of the Constitutional Court KI 08/09, dated 17 December 2010. The case of the Pipe Factory in Ferizaj is a well-known case to the public, for which factory workers had filed a complaint with the Office of the Ombudsperson Institution. The Ombudsperson has met several times with the complainants and heard their concerns. Later, the complainants submitted to the OI the viewpoint of PAK's Board regarding the issue of the former employees of Steel Pipe Factory in Ferizaj, dated 21 June 2016 (which is attached here for your convenience). From the PAK board's viewpoint, payments to former employees of the Steel Pipe Factory cannot be made due to the judicial review of appeals at the Special Chamber of the Supreme Court of Kosovo (SCSC) for the Steel Pipe Factory. The PAK's Board instructed to request from the SCSC to address with priority the complaints filed in the Liquidation Procedure of the Steel Pipe Factory.

Given the fact that the Constitutional Court of Kosovo has already found that there has been a violation of the right to a fair and impartial trial due to the non-execution of the final judgment of the Municipal Court in Ferizaj, the Ombudsperson recommended to the SCSC to give priority to complaints relating to the liquidation process of the Steel Pipe Factory, in order for the former factory workers to be able to exercise their rights.

---

<sup>247</sup> Law no.02/L-28 on Administrative Procedure, Article 7

<sup>248</sup> M. Baraliu & E. Stavileci, *Comentary, Law on Administrative Procedure*, First Edition, pg. 126 -127.

<sup>249</sup> European Code of Good Administrative Conduct, adopted by the European Parliament on 2001.

## **13.Amicus Curiae**

### **13.1 Ombudsperson's Legal opinion in the capacity as a Friend of the Court (Amicus Curiae), concerning the state of homophobia and transphobia**

The Ombudsperson in this Amicus curiae will be focused on last developments in the territory of Republic of Kosovo which comprise violation of provisions, which ban discrimination at any ground including sex, sexual orientation and gender identity. It will be focused on the situation that links with homophobia issue by providing an inclusive legal analyses, with the purpose to disclose potential shortcomings, within legal structure at the state level, which in one form hinder implementation of the European Convention on Protection of Fundamental Human Rights and Freedoms and its Protocols (hereafter referred to as: ECHR).

The Ombudsperson is appearing in this amicus curiae after investigations conducted on cases A.451/2016, Ex-officio 379/2016 and A. 72/2017 according to which the complainants belong to LGBTI community and because of this they have been victims of physical abuse and subject to discrimination.

LGBT community as part of Kosovo society is considered to be a marginalized category despite the fact that there is a legal base which protects their rights. Taking in consideration the current approach of the society towards this problem, it is of great importance to re-emphasize that the human rights are inviolable and indivisible and thus they form the basis for a legal order. Human rights are conceived in this way in the Constitution of the Republic of Kosovo, a legal instrument that guarantees the rights of all its citizens, by guaranteeing and protecting their civil rights and equality of all before the law. The Ombudsperson emphasizes that human rights and fundamental freedoms guaranteed by the Constitution should be interpreted in accordance with the judicial decisions of European Court of Human Rights, as set forth in Article 53 of the Constitution of the Republic of Kosovo. The legal analysis of the case, regardless of the provisions of the abovementioned legal instruments, should start from the practice of the European Court of Human Rights (hereafter referred to as: ECtHR) and their perception of homosexuality, discrimination based on sex and sexual orientation.

The Ombudsperson draws attention to the so-called “Cinderella” clause, Article 14 of the ECHR which prohibits discrimination on any ground, including but not limited only to sex, without mentioning in particular prohibition of discrimination based on sexual orientation. Article 14 guarantees protection against discrimination only for the rights given in the Convention, implying that we may refer to it only if a particular situation falls within the scope of a right of the Convention.<sup>250</sup>

---

<sup>250</sup> Rory O’Connell, “Cinderella comes to ball”: Article 14 and the right to non-discrimination in the ECHR, (2009) 29 (2) Legal Studies: Journal of the Association of Legal Researchers, 211-229, p.5



Article 14 does not refer to discrimination based on sexual orientation as the bases for protection according to ECHR but questions whether the bases for prohibition of discrimination based on sexual orientation falls within the concept of “sex” or “any ground” as mentioned in the Convention. The Ombudsperson states that ECtHR has clarified this issue in the case *Salgueiro da Silva Mouta case against Portugal*. In the decision rend from this Court, prohibition of discrimination based on sexual orientation is a concept undoubtedly covered by Article 14, which in its provision contains an *illustrative and endless list, which clearly derives from the notion “any ground”*.<sup>251</sup> Based on what has been given above, it derives that Kosovo Constitution, by guaranteeing implementation of the ECHR as well as of ECtHR decisions, bans any kind of discrimination based on sexual orientation.

Moreover, the Ombudsperson states that the provision encompassed in Article 14 of the ECHR is further defined in the Law on Protection from Discrimination, Article 1 of this Law predicts an indefinite list of grounds for which discrimination is forbidden, among which sexual orientation is close to the ground of “sex”, including in general term and on “any other ground”.

Beyond any doubt that the domestic legal framework applies the standards set by international instruments as per implementation and protection of human rights in relation to the prohibition of discrimination based on sex and sexual orientation, which implies the implementation of the ECHR and the case law of the ECtHR, with further concretization of the provision of Article 14 of the ECHR in the Law on Protection from Discrimination.

The Ombudsperson, based on all evidence presented and the facts collected, as well as the Laws at effect, finds that the complaints of the complainants concerning violation of *the rights and freedoms set forth* by domestic laws and international instruments are reasonable and lawful. The Ombudsperson determines that violation of human rights and fundamental freedoms have occurred in the current case, since from the beginning treatment of violent cases at Kosovo Police are not recording as cases to be treated as “*violence exercised due to sexual orientation and identity gender*”.

There is a sufficient legal basis for protecting the LGBT community but not applicable in concrete cases. Given the sensitivity of the case, the Basic Prosecutions in these cases should address the criminal charges with priority to argue legal protection for the LGBT community. In labor disputes where the parties to the proceedings claim to be the victims on the basis of sexual orientation, the Court should deal with and decide on these cases in accordance with Law no. 05/L-021, for Protection from Discrimination and Article 5, paragraph 1 of the Labor Law no. 03/L-212, since only in this form an equal treatment before the law for all would be guaranteed.

---

<sup>251</sup> ECtHR *Salgueiro da Siva Muta against Portugal*, Request no. 33290/96, Ruling of 21 December 1999, para.28

### **13.2 Ombudsperson’s legal opinion as Amicus Curiae in relation to the claims against the Liquidation Authority that are being dealt with in this Court by former employees of the Socially-Owned Enterprise “Sharr Salloniti” from Hani i Elezit**

This legal opinion in the capacity of Amicus Curiae is intended to provide legal aid to enable the effective resolution of case A.no.595/2016 relating to the legitimate right to compensation for former employees of the Socially Owned Enterprise “Sharr Salloniti” from Hani i Elezit.

On October 11, 2016, Ombudsperson received the complaint of the legal representative of former employees of the Socially-owned Enterprise “Sharr Salloniti” from Hani i Elezit, who complains about the delay in the execution of the decisions of the Privatization Agency of Kosovo (PAK) due to the lack of information regarding the claims filed with the Special Chamber of the Supreme Court of Kosovo (Special Chamber), against PAK's decisions. Based on the information and documentation available to Ombudsperson's Institution, it results that former employees of the Socially Owned Enterprise “Sharr Salloniti” which entered the liquidation procedure in 2011, they filed their claims with the PAK for compensation for health damage, obtained as a result of exposure to asbestos during work. The enterprise in which these workers have been engaged, as its primary activity was the work with dangerous material called *asbestos*, to which the workers were exposed and without protection, such exposure in the workplace is alleged to have resulted in a occupational diseases.

The Liquidation Authority of PAK has completed its decision-making regarding this enterprise, and based on Article 41 of the Annex to the Law on PAK (No. 04/L-034), has decided on all the claims in liquidation and has sent the decisions to the Applicants. According to this article, the distribution of liquidation funds to meet creditors' requirements is permitted only in the case when there are sufficient funds since the value of claims that are still undecided in court reduces. Decisions of the Liquidation Authority regarding these claims have been issued to each applicant individually. Since the liquidation procedure for this enterprise has not yet been completed, and according to the abovementioned article, paragraphs 3 and 4<sup>252</sup>, PAK has the right to make a partial distribution of funds. The claims in question have not yet been met by the PAK, which means that funds for creditors have not yet been distributed since the latter needs

---

<sup>252</sup> Article 41 of the Annex to the Law on PAK (No. 04/L-034) paragraph 3 and 4:” Where resources are sufficient to fully satisfy all claims of a given class, including providing cover for the reservations made by the Liquidation Authority for the disputed claims of a given class or order, interim distribution to these classes of creditors may be proposed to the Board by the Liquidation Authority. 4. If resources are insufficient to fully satisfy all Claims or interests of a given class or order, including to provide cover for the reservations made by the Liquidation Authority for the disputed claims of a given class or order, the Claims of that class or order shall be satisfied in proportion to the amount of each Claim, including the claims for which the Liquidation Authority made reservation”.

information from the Special Chamber on the number and the weight of appeals against the decisions of the Liquidation Authority.

On September 28, 2016, the complainant received notification from the PAK that the latter had more than one year that formally requested information from the Special Chamber on the number and weight of appeals against the decision of the Liquidation Authority, but have not yet received an answer.

Asbestos is now universally known as a harmful element to health. The World Health Organization has estimated that exposure to this substance is one of the key elements for causing occupational diseases.<sup>253</sup> Following this finding, significant steps have been taken at the global level to protect employees from exposure to it, also care has been added, and rules for its use in the industry have been established. A large number of states have adopted special legislation to prevent the cause of health damages from this substance, including the criteria for compensation of harmed employees in this area. This problem is not regulated by specific legislation in Kosovo, nor is the way of compensation for those affected by this phenomenon.

On July 24, 2014, the ECtHR rendered its ruling in the case of Brincat and others against Malta (Brincat case).<sup>254</sup> This case was the result of 21 applications of former seaport workers' exposed to asbestos during the repair of public ships. The Government of Malta was responsible for violating the positive obligations to protect the right to life and the right to respect for private life. A violation of the right to life was found when the employee's death was as a result of exposure to asbestos. In cases where the employees had suffered from various diseases, the Court found a violation of the right to respect for private and family life.

The Socially Owned Enterprise "Sharr Salloniti" from Hani i Elezit, part of the "SHARR" company, which has been operating since 1974, working with asbestos material was its main activity. The environmental study on pollution from Asbestos, funded by the European Agency for Reconstruction on 29 March 2001, has determined the presence of asbestos particles on the premises of the factory, recommending protective measures for the protection of employees to its exposure. Former employees of this enterprise have been working for years in this company. The Liquidation Authority, based on evidence related to this matter, has ascertained that the exposure to asbestos of former employees occurred.<sup>255</sup> The Enterprise, for the above mentioned reasons with a special decision, was closed by UNMIK, and since 2011 it has entered into a liquidation procedure. Since then, it has been found that about 100 former employees of the

---

<sup>253</sup>Health World Organization, "Asbestos: elimination of asbestos-related diseases", <http://www.who.int/mediacentre/factsheets/fs343/en/>.

<sup>254</sup> ECtHR, Brincat and others v. Malta (60908/11, 62110/11, 62129/11, 62312/11, 62338/11), 24 July 2014.

<sup>255</sup> Privatization Agency of Kosovo, Decision, 27.10.2014, related to the claim of S.D. for compensation due occupational disease from exposure to asbestos.

enterprise Sharr Salloniti have died, and others are suffering the health consequences caused by unprotected exposure to it.<sup>256</sup>

Based on the analysis of the present case process, the Ombudsperson considers that there is stagnation in the administrative procedures for the fulfilment of legitimate rights for the parties. According to the available information, this procedure has been stopped because the Special Chamber did not provide the PAK with the number and weight of complaints against its decisions, which would open the way for a possible resolution of the problem. According to a general formula of the ECtHR that applies both for positive and negative obligations, “*a real (factual) obstacle may constitute a violation of the Convention as much as a legal obstacle*”.<sup>257</sup>

The Ombudsperson expresses his concern, that since the two cases are of the same nature, they will be treated individually by the Special Chamber. This would cause unreasonable procedural prolongation until their solution. The Annex to the Law on Special Chamber, No.04/L-33, Article 33, paragraph 1, defines: “*The Special Chamber at any time during the proceedings may order the merger of two or more claims/complaints relating to the same matter for the purpose of written or oral proceedings or of the Judgment. Before rendering a Judgment for all claims/complaints to be merged, any claim/complaint can be divided for which a Judgment has not been rendered*”. In 2006, the Special Chamber rendered a Judgment RE: SCEL-05-009, the case of Radomir Milutinovic (Lamko's Employees) against KTA. In dealing with this case, the Special Chamber has merged all the complaints of the same nature, and has decided on all in a single judgment. Since the complaints of former Sharr Salloniti employees are of the same nature, we conclude that the Special Chamber should follow the same practice as in the abovementioned judgment. Authorities have a positive obligation “*to organize their justice systems in such a way that their courts can fulfil all their conditions, including the obligation to hear cases within a reasonable time*”.<sup>258</sup> This obligation exists regardless of the costs.<sup>259</sup>

Human rights standards are intended to guarantee non-theoretical and unreachable rights, but rights that are “practical and effective”.<sup>260</sup> As far as international courts are concerned, the mere assertion of the existence of rights or laws that protect the rights in theory or only formally is not enough to fulfil the test of the “practicability and effectiveness” of these rights.

---

<sup>256</sup> Ibidem.

<sup>257</sup> ECHR, Airey c. Ireland, 11 September 1979.

<sup>258</sup> Süssmann v. Germany, ECtHR, judgment 16 September 1996, paragraph 55. Moreover, the authorities may be held responsible not only for any delay in dealing with a particular case in operating a generally fast justice management system, but as well as the failure to increase resources in response to overload with the subject and structural deficiencies in its justice system that cause delays. See Harris, O'Boyle & Warbrick. Law of the European Convention on Human Rights, second edition, Oxford University Press, 2009, pages 278-284.

<sup>259</sup> Airey v. Ireland, ECHR, judgment 9 October 1979, para. 20.

<sup>260</sup> This principle has been approved by UN Human Rights Committee, Doc.CCPR/C/21/Rev.1/Add/13 (2004).

In these cases, the Ombudsperson considers that it would be suitable for the Special Chamber of the Supreme Court to demonstrate effective practicability for solving the case of former employees of the Enterprise Sharr Salloniti by sending specific information to the PAK related to the number and weight of complaints filed against the decisions of the Liquidation Authority. That is in order to prevent further delays in the handling of cases brought by these former employees before the Special Chamber, the latter should practice merging of cases of the same nature, addressing them jointly in a single judgment. Due to the sensitivity of the case, and taking into account the moral and human aspect, to prioritize the handling of these cases by removing structural obstacles that would cause delays, and also pay special attention to the ECHR's practice for finding an effective solution for them.

### **13.3 Ombudsperson's legal opinion, as Amicus Curiae, related to the claim of the Municipality of Ferizaj, against the Ministry of Labour and Social Welfare,**

This legal opinion in the capacity of a friend of the court (*amicus curiae*) will focus on clarifying legal procedures regarding the educational staff recruitment process, according to vacancies announced by the Municipal Education Directorates in the Republic of Kosovo. Considering the fact that Municipality of Ferizaj has filed a claim before the Basic Court in Prishtina against the Ministry of Labour and Social Welfare, related to the employment of educational staff from the Education Department of the Municipality of Ferizaj, Case A.no.398/15. Given the fact that Ombudsperson has opened ex officio investigations, Case No. 499/2016, regarding the disrespect of legal procedures during the staff recruitment process, according to vacancies announced by the Municipal Education Directorates in the Republic of Kosovo (MEDRK) and has drafted a report with recommendations for MEDRK. Considering the fact during the investigation of the case, Ombudsperson received information that a claim was filed before the Basic Court in Prishtina regarding the topic addressed by the OIK related to the case at hand at the national level (recruitment of educational staff). Therefore, for this purpose, the Ombudsperson, submits this legal opinion in the capacity of Amicus Curiae to the Basic Court in Prishtina to notify it about his findings and ascertainment.

It is undisputed that the majority of MEDs in the Republic of Kosovo, according to the announced vacancies for teachers positions, apply the Labour Law, the selection of candidates in some municipalities is done according to specific legal provisions, whereas in some is done according to the provisions of the Labour Law, specifically based on the Administrative Instruction No. 14/2011 on the Regulation of Procedures for Establishing Employment Relations in Public Sector, therefore, public institutions that apply the laws should apply them equally to all and provide equal protection for each and every one.

Undoubtedly, such an example contributes to citizens' mistrust in justice, and therefore, based on these facts, the application of different legal provisions by the municipalities leads to situations that are contrary to the rule of law principle, the principle which is

sanctioned with the highest legal acts as well as the international legal instruments that the Kosovo authorities have an obligation to respect without exception.

Based on Article 2, paragraph 2, of the Labour Law, MEDs in Kosovo should apply the special legal provisions governing the employment of educational staff in pre-university education institutions, such as: Article 35, Law on Pre-University Education, Article 4, Law on Education in the Municipalities of the Republic of Kosovo, Administrative Instruction No.17/2009, Selection Procedure of educational staff at school,<sup>261</sup> and Administrative Instruction No.26/2013, Selection of employees for provision of professional services in Pre-University Education Institutions.<sup>262</sup>

The selection of educational staff for all subjects/courses is done on the basis of the Administrative Instruction No. 05/2015, the Normative for Teachers of Vocational Education,<sup>263</sup> and the Administrative Instruction No. 06/2015 on Normative on the Professional Framework for General Education,<sup>264</sup> all these provisions mentioned above, provide solutions to certain issues from the employment relationship in educational institutions and constitute a sufficient legal ground which is required under Article 2.2 of the Labour Law.

Recruitment of educational staff in educational institutions should be done in compliance with the guidelines, procedures and general standards promulgated by MEST.<sup>265</sup>

---

<sup>261</sup> <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=7744> dhe në <http://masht.rks-gov.net/>

<sup>262</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10072> dhe në <http://masht.rks-gov.net/>

<sup>263</sup> [http://masht.rks-gov.net/uploads/2015/07/ua-05-2015-normativi-per-mesimdhesisit-e-arsimit-profesional-final-ilovepdf-compressed\\_1.pdf](http://masht.rks-gov.net/uploads/2015/07/ua-05-2015-normativi-per-mesimdhesisit-e-arsimit-profesional-final-ilovepdf-compressed_1.pdf)

<sup>264</sup> <http://masht.rks-gov.net/uploads/2015/07/convert-jpg-to-pdfnet-2015-07-30-16-32-24.pdf>

<sup>265</sup> Article 5, of the Law No.03/L-068 on Education in the Municipalities of the Republic of Kosovo

## 14. Requests for interim measures

### 14.1 Request for the Repeal of Article 55, paragraphs 4-5, and Articles 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of Law no. 05/L-087 on Minor Offenses and for the immediate abrogation of these provisions until the final decision of this Court

Law no. 05/L-087 on Minor Offenses delegates to the administrative and executive bodies the power to adjudicate and to impose sanctions in a wide range of minor offences. The decisions of these bodies are subject to only a limited form of judicial control. The question is:

Such delegation of judicial powers to the administrative and executive bodies, does it constitute a violation of the right to a fair trial by an independent tribunal as guaranteed by Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the European Convention on Human Rights?

In this request, the Ombudsperson of the Republic of Kosovo requires (1) the repeal of Article 55, paragraphs 4-5 and Articles 56-68 of Law no. 05/L-087 on Minor Offenses, and (2) interim measure for the immediate termination of these provisions until the final decision of this Court.

The Ombudsperson's request for the termination of the abovementioned provisions, as well as for an interim measure, is within the jurisdiction of the Constitutional Court. The Constitution of the Republic of Kosovo (hereinafter: the "Constitution") stipulates in the relevant part that "the Ombudsperson has the right to refer matters to the Constitutional Court, in accordance with the provisions of this Constitution" (*ibid.*, Article 135, para 4); and in particular, the Ombudsperson is "authorized to raise. . . the question of compliance of laws. . . with the Constitution" (*ibid.*, Article 113, paragraph 2, sub-paragraph 1).

Regarding the request for interim measure, Law no. 03 / L-121 on the Constitutional Court of the Republic of Kosovo, stipulates that the Court "may, upon the request of the party, may temporarily impose interim measures on a matter subject to proceedings, if such measures are necessary to avoid irreparable risks or damage, or whether the taking of such interim measures is in the public interest" (*ibid.*, Article 27, para.1).

The Ombudsperson's request is also within the time-limit of the Court: "The Referral filed pursuant to Article 113 paragraph 2 of the Constitution shall be filed. . . by the Ombudsperson. . . within six (6) months after the entry into force of the challenged act" (Law on Constitutional Court, Article 29, paragraphs 1 and 30). The law that is being challenged in this claim came into force in January 2017 (*see* the Law on Minor Offenses, Article 171). Therefore, the Ombudsperson's request comes within the six-month deadline set by the Law on the Constitutional Court.

Before the entry into force of the Law no. 05/L-087 on Minor Offenses, cases of Minor offenses in generally were dealt with under a law from the time of the former Yugoslavia: Law no. 011/15-79 (of the Autonomous Socialist Province of Kosovo) on Minor Offenses. According to this law, cases of minor offenses were tried by municipal offense courts, located in each municipality (*see ibid* Article 30, paragraph 1). This procedure was slightly changed in 2013, when Law no. 03/L-199 (of the Republic of Kosovo) for the Courts, entered into force. This new law defined that cases of minor offenses shall be adjudicated by “Basic Courts” in seven regional branches, rather than individual courts of the individual municipalities (*see ibid* paragraph 9, paragraph 2 and article 39, paragraph 2). However, despite this slight change, both laws reflected the same fundamental principle: cases of minor offenses are exclusively dealt with in the jurisdictions of the courts.

This principle, known for a long time, was overwhelmed by the adoption of the last Law on Minor offense, which is contested in this Request. This law delegates to “minor offense bodies” the power to adjudicate and to impose sanctions on some cases of minor offenses.<sup>266</sup> As is clear in the law, minor offense bodies are not courts. Rather, they are administrative or executive bodies charged with the task of enforcing laws: “For some minor offenses determined by law or by the regulations of the Municipal Assembly, the proceedings of minor offense may be conducted, and the sanction for the minor offense may be imposed by *the state administration body or the authority performing public supervision authorizations (hereinafter: the minor offense body) for the implementation of the law*, providing for misdemeanours“(ibid., article 55, para 4, emphasis added). In the constitutional structure of the Republic of Kosovo, such bodies, charged with the implementation of laws, are in general the *executive* bodies of the Government. *See* the Constitution, Article 4, par. 4 (“The Government of the Republic of Kosovo is responsible for the implementation of laws”).<sup>267</sup> By delegating the judicial powers to such administrative and executive bodies, the Law on Minor Offenses represents a deviation from the traditional division between adjudicatory and executive powers.

In addition to delegating the judicial powers to the minor offense bodies, the Law on Minor Offenses also defines their case jurisdiction by providing that the minor offense body is “competent to act on all minor offenses for which a fine sanction is imposed on the determined amount; for which a fine for a natural person is prescribed, a fine up to five hundred (500) euros; for which a sanction is foreseen for a legal person, a fine of up to one thousand (1.000) euro; and for which a fine on the spot has been foreseen” (*ibid*, Article 56, par. 2). In addition to these cases, minor offense bodies may also be given jurisdiction over other cases of minor offenses—regardless of the sanction provided—if “the law provides for exclusive competence for its action” (*ibid.*, Article 56, paragraph

---

<sup>266</sup> The Law provides for this delegation of adjudicatory powers to BMOs in Article 55, paragraphs. 4–5 and Articles 56–63.

<sup>267</sup> Most importantly is that the road traffic minor offenses, which constitute the majority of cases of minor offenses, are handled by the Kosovo Police, which “is a public service within the scope of the Ministry of Internal Affairs” (Law No. 04/L-076 for Police, Article 4, par 1, emphasis added) and is therefore part of the executive branch.



1). This way, the Law on Minor Offenses makes it clear that minor offense bodies have jurisdiction over a wide range of cases of minor offense. All other minor offense cases, which remain outside the jurisdictions of minor offense bodies, will continue to be tried by the first instance courts (*see ibid* Article 55, paragraphs 1-3)

Regarding the manner in which minor offense bodies will appoint responsible persons for adjudicating the minor offense cases, the Law on Minor Offenses shows very little. The law makes an effort to ensure that these persons are professionally competent, stipulating that “he proceeding before a body on minor offence shall be conducted by the committee for deciding composed of at least three (3) members” and that these members shall be “officials bearing an authorization with a respective grade of professional preparation and necessary work experience, whereby at least one of the members shall be a graduated lawyer who passed the bar exam “(*ibid.*, Article 60, para.1 and 2). However, the Law does not provide any protection from external pressure against these committee members.

This represents a definite distinction between the situation of these members and the situation of regular court judges. A long line of ECtHR judgements indicates that, even when minor offenses are not classified as “criminal offenses” *within the national legal system*, they may be called “criminal offenses” *in the context of the Convention*, if the minor offense penalties serve to preventive and punitive purposes. This principle was clearly demonstrated in *Öztürk v. Germany*, Application no. 8544/79, ECtHR (1984). In this case, the Applicant was charged with a violation of traffic rules and then sanctioned with a low fine (*see ibid.* § 10-11). Dissatisfied with handling his case at the national level, he filed a complaint with the ECtHR, claiming the violation of Article 6. The German Government replied that Article 6 “does not apply in these circumstances because Mr. Öztürk is not “*charged with a criminal offense*,” but only for a minor offense (*ibid.* § 46). According to German Laws, these two categories are legally separate.

The ECtHR dismissed the Government's argument entirely. The Court found that, among other factors, “the purpose of sanction, being both preventive and punitive, [is] sufficient enough to prove that the offense in question was, *in the terms of Article 6. . . of the Convention*, of the criminal nature “(*id.*, § 53; emphasis added). Therefore, even though the Applicant was not charged with a “criminal offense” under German domestic legal classifications, he was, however, facing a “criminal charge” within the meaning of the Convention and was therefore entitled to enjoy the safeguards of Article 6.

Based on the abovementioned arguments, the Ombudsperson of the Republic of Kosovo, together with the main request for the abrogation of the above mentioned Articles, addressed to the Court a request that this Court to impose an interim measure for the immediate suspension of the disputed provisions, respectively, Article 55, paragraphs 4-5 and Articles 56-68 of Law no. 05 / L-087 on Minor Offenses.

The Rules of Procedure of the Constitutional Court, Rule 55 paragraph 4, stipulates three conditions to be met in order for the interim measure to be recommended: (a) the party

applying for the provisional measure has shown prima facie on the merits of the claim and, if no admissibility has yet been decided, the prima facie case for the admissibility of the application; (b) the party seeking an interim measure has proven to suffer irreparable damage if no interim measure is allowed; and (c) the interim measure is of public interest. All these three conditions have been met in this concrete case. First, the arguments filed in this application provide basis more than prima facie, for the abrogation of the contested provisions. Secondly, in the absence of an interim measure, there is a substantial risk that, until this Court concludes its final decision, the functioning of “minor offense bodies” imposes sanctions on accused persons without giving these persons access to an independent tribunal. In order to avoid the constitutionally suspicious functioning of the “minor offense bodies” it is imperative that this Court immediately suspend the disputed provisions. Thirdly, it is in the public interest to adopt the interim measure. The court must provide, at least during the period in which its decision is pending, that the accused persons are not subject to the proceedings of “minor offense bodies”, which are constitutionally suspicious.

Due to these reasons, the Ombudsperson considers that Articles 55, paragraphs 4-5, and Articles 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of Law no. 05/L-087 on Minor Offenses should be abrogated and should be immediately terminated until the final decision of the Constitutional Court.

#### **14.2 Claim and the request for postponement of the execution of the decision**

The Ombudsperson based on Article 16.4, of the Law on Ombudsperson, no. 05/L-019, on 7 April 2017, has initiated ex-officio investigations based on article published by daily press “Zëri”, of 7 April 2017, with the title: “KEDS charges us with 8 million euros per year for the electricity consumed by Serbs in northern part of Kosovo.” the Ombudsperson addressed a letter to the Energy Regulatory Office (ERO) through which he has requested the following information: 1) If the value of consumed energy in the northern part of Kosovo is 8 million euros per year and that this amount is disseminated on invoices of citizens Kosovo wide, as has been disclosed in newspapers article “Zëri”; 2) Which are legal provisions that determine which are “reasonable losses that are beyond operators influence” and if these provisions permit billing of electricity to other customers who are regular customers; and) If apart laws at effect, any decision of ERO, Ministry of Economic Development or of the Government of Republic of Kosovo is at place, through which the issue of invoicing of the electricity consumed in the northern part of Kosovo, has been regulated.

On 18 May 2017, ERO informed the Ombudsperson that according to licensed operators the energy which has not been invoiced in 2016 in the northern part of Kosovo- 252 GWh, which comprises approximately 5.24% of the distribution request, and that total value of the invoiced consumed energy in the northern part of the country, is approximately 8 million euros. Additionally, ERO claimed that having in consideration

that this amount is not covered by Kosovo institutions and having no other alternative left to keep fully functional the electro-energetic system, ERO has been coerced to disseminate to all customers costs to cover the losses, including the losses endured in the northern part of Kosovo.

As per the second question raised, ERO refers to Article 48 [Approval of Tariffs], para 3, point 3.3, of the Law on Energy Regulator no.05/L-084 and the Article 28 [Responsibilities and Rights of the Distribution System Operation], para 1, point from 1.21 up to 1.25 of the Law no. 05/L-085 on Energy. According to ERO, Article 48, para 3, point 3.3 determines that ERO, in the course of approval or fixing tariffs, will ensure that licensees are permitted to recover all reasonable costs, including apart others costs of reasonable levels of energy losses in the transmission and distribution system. Further, ERO has pointed out that supplying all customers with the electricity is a legal obligation; therefore, during the approval of tariffs, ERO takes in consideration a reasonable level of losses, which are treated equally throughout the territory of Kosovo. ERO stressed also that the Distribution System Operator (DSO) has no access in the northern part of the country and that the losses occurred there by DSO are considered as “political losses” which are out of DSO control and that DSO cannot accomplish its functions due to the high cost of these losses, which would imperil regular supply with electricity across the whole country.

In the third question raised by the Ombudsperson, ERO replied that it is in a possession of Decision of 6 February 2012, no. V\_399\_2012 through which the reduction level of losses in distribution is determined. According to ERO this Decision for reduction of losses determines the reduction level of all losses in electro-energetic system including losses occurred in the north of Kosovo.

The Ombudsperson, after reviewing the case and the legal analysis, on 13 June 2017, has issued a Report with Recommendations identifying violations and providing recommendations as follows: a) ERO urgently to terminate unlawful practice of billing of the consumed electricity in the northern part of the Republic of Kosovo to customers of other parts of the country; b) The Government of Republic of Kosovo, in cooperation with ERO and KEDS to find alternative way to evade losses in the north of the country, by treating all customers equally according to constitutional and legal norms against discrimination; c) ERO, in compliance with the Law No. 05/L-084 on Energy Regulator, to promulgate a decision through which it will approve tariffs“ reduction up to that level which will enable customers” reimbursement that unjustly have been invoiced, and continue to be invoiced for the energy consumed in four northern municipalities of the country.

ERO challenged the Ombudsperson's findings regarding the billing of electricity in the north of the country and did not express any interest in implementing the recommendations.

The Ombudsperson pursuant to Article 10, paragraph 2, of the Law on Administrative Conflicts No.03 / L-202 “*The Administration Authority, the Ombudsperson, associations and other organizations acting in the defence of public interests may initiate the administrative conflict.* “; Article 17 of the Law on Administrative Conflicts No. 03 / L-202 “*In the procedure of administrative conflict can also be required the returning of taken things, and compensation of the damage caused to the plaintiff from the executed contested act.*”; Article 18 of the Law on Administrative Conflicts No.03/L-202 “*The plaintiff in the administrative conflict may be a natural person, legal entity, Ombudsperson, other associations and organizations, which act to protect public interest, who considers that by an administrative act a direct or indirect interest according to the law, have been violated.*” Filed a lawsuit with the Basic Court in Prishtina - Department for Administrative Affairs- against Energy Regulatory Office (ERO), Prishtina, for repealing ERO Decision V\_399\_2012 of 6 February 2012; and that ERO is obliged to compensate consumers who are billed for electricity consumption in the four northern municipalities of the Republic of Kosovo.

In this case, the Ombudsperson deemed necessary that together with lawsuit should be required the application of the interim measure, respectively postponement of the execution of the decision V\_399\_2012, dated 6 February 2012, until a court decision regarding the filed lawsuit. The postponement of the execution of this decision was requested because: a) the continuation of the execution is to the detriment of the citizens of Kosovo, because it affects their legally recognized rights; b) postponement of the execution of the decision is not in the detriment of the public interest; on the contrary, the execution of the decision itself is contrary to the public interest; and c) The postponement of the execution does not cause major detriment to ERO, because according to ERO, during the approval of tariffs, it takes into account a reasonable level of losses, which it treats equally throughout the territory Kosovo. While talking about a reasonable level of losses, it cannot be said that we are dealing with the major detriment that could be caused to ERO.

### **14.3 Request for suspension of enforcement of the decision - Ex officio case 551/2017**

The Ombudsperson, pursuant to Article 16.4 of the Law on Ombudsperson no. 05/L-019, has initiated *ex officio* investigations case no. 551/2017, respectively the amendments made to the Law on Kosovo Property Comparison and Verification Agency no. 05/L-010 and Administrative Instruction no. 07/2017 on procedures, conditions and criteria for the end of administration of properties under administration and those included in the rental scheme of the Kosovo Property Comparison and Verification Agency.

Suspension of the enforcement of the Decision no. 06/149 of 17 July 2017, issued by the Government of the Republic of Kosovo, by which was approved the Administrative Instruction no. 07/2017 on procedures, conditions and criteria for the end of administration of properties under administration and those included in the rental scheme

of the Kosovo Property Comparison and Verification Agency was requested due to: a) the continuation of the execution of the decision is to the detriment of displaced persons from the Republic of Kosovo because it may violate their legally recognized rights and by internationally recognized standards; c) the end of property administration scheme of displaced persons from the Kosovo Property Comparison and Verification Agency after the expiration of the eighteen (18) month period stipulated by Article 21, paragraph 7 of the Law on KPCVA may have a negative impact on the properties of displaced persons currently administered by the Agency. ç) in the first eight months, almost half of the deadline set by law (18 months), the Agency was not operational and was unable to be engaged in any task related to the notification of property owners currently administered by the Agency. d) given the challenging and difficult process of informing displaced persons, the Ombudsperson considers that the 18-month time-limit may be generally too short. The proper notification is very difficult and cannot be guaranteed even for the full 18-month period, and even the notification provision within the “optimal timeframe” as defined by AI no. 07/2017. Consequently, this violates the general right to repossession.

The Ombudsperson sought that the request for suspension of the execution of the decision should remain in force until a decision is taken by the government on the issue of legal adjustment of the administration scheme of properties of displaced persons by the Kosovo Property Comparison and Verification Agency.

## 15. Activities of the Ombudsperson Institution in the field of promotion for 2017

In the following tables are elaborated the statistical data of OIK activities that were implemented during 2017. The first table presents activities in numerical data in the capacity of one statistical yearbook, which the OIK has organized aiming at promoting education and awareness raising on human rights. Whereas, the second table shows numerically the OIK participation in activities organized by different institutions and organizations within the country.

*Table 1*

Activity type	Objective of activity	Ombudsperson Offices	Number of activities
<b>Roundtables, Conferences, Trainings organized by the Ombudsperson Institution during 2017</b>	Promotion of human rights and fundamental freedoms; Promotion of the OIK mandate; Education and awareness-raising on human rights in responsible institutions for the implementation of constitutional and legal standards in the country.	Head Office in Prishtina	55
		Regional Office in Prizren	1
		Regional Office in Gjilan	5
		Regional Office in Peja	2
		Regional Office in Mitrovica	8
		Regional Office in Ferizaj	8
		Regional Office in Gjakova	16
		Regional Office in Graçanica	4

*Table 2*

Activity type	Objective of activity	Ombudsperson Offices	Number of activities
<b>OIK participation in Roundtables, Conferences, Trainings and other Activities organized by various institutions and organizations in the country during 2017</b>	Promotion of human rights and fundamental freedoms; Promotion of the OIK mandate; Education and awareness-raising on human rights in responsible institutions for the implementation of constitutional and legal standards in the country.	Head Office in Prishtina	160
		Regional Office in Prizren	6
		Regional Office in Gjilan	7
		Regional Office in Peja	
		Regional Office in Mitrovica	5
		Regional Office in Ferizaj	5
		Regional Office in Gjakova	16
		Regional Office in Graçanica	12

## 16. International cooperation

The Ombudsperson, by highly praising the importance of international cooperation, in the Strategy and Development Plan of the Ombudsperson Institution, for the period 2017 - 2019, has clearly defined that one of the important priorities of the Ombudsperson is the “advancement of international cooperation and the exchange of best practices for the protection and promotion of human rights”<sup>268</sup>.

As a single national mechanism for the protection of human rights in the Republic of Kosovo, in cooperation with international institutions and organizations in the country and through international cooperation, has consistently sought to mobilize all the important factors to jointly implement activities and impose human rights as a priority in the social context and as one of the prerequisites for the development of a democratic society.

However, Since the Republic of Kosovo is still not a member of the United Nations, the possibility of Ombudsperson Institution to contribute to the international system on human rights is limited, due to political barriers, however, as an independent constitutional institution it is committed to act as a connecting bridge for the exchange of best international practices in the area of human rights and contribute where they can, but also to prepare its capacities in a future, whenever membership happens, to be able to assume its obligations within the international system of human rights.

Despite this, the Ombudsperson does not see OIK operating isolated from the rest of the world. However, considering that international human rights standards and requirements made improvements to Kosovo's internal legal framework for human rights protection, he believes that by intensifying cooperation between the National Human Rights Institutions (NHRI) we can achieve more together for our citizens and for the cause of human rights in general, rather than being on our own.

In this context, on 14 November 2017, the Ombudsperson delivered a letter to the Ombudspersons and Human Rights Institutions' networks, by requiring and proposing that jointly to take concrete steps towards developing a number of unified standards and best practices for NHRIs around the world, which can serve as a source of useful and non-mandatory advice on governing the work of the NHRIs.

In this letter it was proposed to the NHRIs to address the issue of international standards for refugees, considering the current crisis that many countries have or will cope soon with a massive flux of migrants seeking refugee status. There are already international standards defined in the 1951 Convention on the Status of Refugees and the 1967 Protocol, although these standards may be essential, it should be further specified to bring them updated with the current global refugee crisis. Also, given that refugees are among

---

<sup>268</sup> [http://www.ombudspersonkosovo.org/repository/docs/296-2017,\\_Strategjia\\_finale\\_shqip\\_272523.pdf](http://www.ombudspersonkosovo.org/repository/docs/296-2017,_Strategjia_finale_shqip_272523.pdf)

the most vulnerable populations in the world and considering that the actions and policies of each country are likely to have meaningful implications for neighbouring countries, it is of great importance that NHRIs develop consistent standards for appropriate treatment of refugees. In this case, NHRIs can work towards the development of specific standards for the implementation of the “non-refoulement” principle stipulated in Article 33, paragraph 1 of the Convention. We can also work towards development of standards based on concepts and principles that are not explicitly mentioned in the 1951 or 1967 Protocol, but that have become more important and widespread in the human rights discourse since from the time of ratification of the Convention and of the Protocol. Along these lines, the proposal was that NHRIs jointly to develop easily applicable rules and monitorable which can ensure that, to the extent possible, refugees are treated with *dignity* throughout the application process for asylum. The development of unified human rights standards, agreed by the NHRIs around the world, would provide clear and public standards through which government actions in this area could be assessed and, if necessary, criticized due to human rights.

NHRIs also play an important role in the oversight of other state institutions regarding their administrative practices, enjoying a specific mandate to combat “maladministration”. However, there is no unified standard on defining what exactly constitutes maladministration. Similarly, there are no guidelines on how to effectively combat maladministration. Therefore, in addition to co-operation on a number of unified standards for these issues, the NHRIs can also take steps toward creating a “database” of opinions and reports issued by the NHRIs around the world. These opinions and reports can include models of how to respond on certain types of cases, but may also include *ad hoc* thoughts compiled for key topics. Venice Commission opinion can be used as a useful model in this regard.

These proposals were welcomed by the NHRIs, being considered as proposals of interest. Meanwhile, it was confirmed that the Association of Mediterranean Ombudspersons (AOM)<sup>269</sup> has planned to discuss these proposals in a more detailed manner at the General Assembly which will take place in Macedonia in May 2018.

In addition, OIK contributed through meetings in which it participated and has had excellent cooperation with peer institutions, networks and other international organisations for the protection and promotion of human rights.

These meetings, presented in the table below served to the advancement of international cooperation of the Ombudsperson Institution and its networking in the international arena in the area of human rights.

---

<sup>269</sup> For more information regarding the Association of Mediterranean Ombudsmen, visit this website: [www.ombudsman-med.org](http://www.ombudsman-med.org)



No.	Description of activities	Date
1.	First International Conference titled “Sexuality and Youth in Albania - Cultural Context, Behaviours and Media” Tirana, Albania	11 - 12 February 2017
2.	Meeting of Ombudspersons and Commissioners on Freedom of Expression Berlin, Germany	22 - 24 February 2017
3.	Fourth International Symposium on Ombudsman Institutions on “Migrations and Refugees” Ankara, Turkey	2 - 3 March 2017
4.	Annual meeting of Global Alliance for National Human Rights Institutions (GANHRI) Geneva, Switzerland	6 - 8 March 2017
5.	Annual Symposium Robert L. Bernstein on International Human Rights Law themed “Religion and Human Rights” Connecticut, USA	23-24 March 2017
6.	Academy of National Institutions for Human Rights Poznan, Poland	29 May – 2 June 2017
7.	Conference themed “Protection of Human Rights - Challenges and Opportunities of Multiple Mandate Mechanisms” Zagreb, Croatia	11 – 12 May 2017
8.	Workshop on capacity building of new institutions with a mandate for the protection of children's rights Sofia, Bulgaria	16 - 17 May 2017
9.	Meeting of Torture Preventive Mechanisms in the Southeast network themed “Treatment of Persons with Disabilities in” “Belgrade, Serbia	25 – 26 May 2017
10.	Meeting themed “Human Rights and Migration Crisis Management in 2015-2016” Athens, Greece	29 – 30 May 2017
11.	Meeting of Torture Preventive Mechanisms (TPM) to discuss the drafting of the European Regulation on Emigrants in Ban and the Meeting with the Young Observatories of TMPs Strasbourg, France	31 May – 1 June 2017
12.	Training course on human rights education Sarajevo, Bosnia and Hercegovina	12 – 14 June 2017
13.	Joint Conference of the Council of Europe and UNHCR on Economic and Social Rights of Displaced Persons Sarajevo, Bosnia and Herzegovina	27 - 28 June 2017
14.	ENNHRI- Working Group on Communication Paris, France	4 – 5 July 2017

15.	Conference themed “Health Care Protection in Prison and Psychiatric Institutions” Podgorica, Montenegro	5 - 6 July 2017
16.	Official visit to the People's Advocate in Albania Tirana, Albania	11 July 2017
17.	10-day training on human rights and the protection of minorities Hague, Kingdom of the Netherlands	13 – 22 September 2017
18.	Fourth Conference on Environment and Human Rights: Public Participation in Environmental Issues Ljubljana, Slovenia	15 September 2017
19.	International Conference of Information Commissioners 2017 Manchester, UK	19 – 21 September 2017
20.	Istanbul International Ombudsman Conference Istanbul, Turkey	25 – 26 September 2017
21.	Combined training on economic, social and cultural rights Riga, Latvia	25 – 29 September 2017
22.	Study Visit to Austrian Ombudsman Vienna, Austria	4 – 6 October 2017
23.	Ninth Annual Conference of Ombudsman Institutions for Armed Forces themed “The Moral Compass of the Armed Forces: How Ombuds Institutions Can Break Down Barriers to Achieve Change” London, United Kingdom	8 – 10 October 2017
24.	ENNHRI Meeting of the Working Group on Asylum and Migration	17 – 18 October 2017
25.	AOM Training on the topic “Deontology of the Security Force and the Rights of Emigrants: The Role of Ombudsman Institutions”	18 – 19 October 2017
26.	Workshop on the Implementation of the European Convention on Human Rights and Legal Provisions on Protection against Discrimination Tirana, Albania	26 – 28 October 2017
27.	Workshop on supporting the development of a joint action plan for civil society action against discrimination in Kosovo; Budva, Montenegro.	30 October – 1 November 2017
28.	The NPM Regional Conference of countries affected by the Kosovo refugee crisis: Albania, Kosovo, Serbia and Montenegro; Topic: “Integration of Kosovo Refugees, sustainable resolutions and voluntary return” Skopje, Macedonia	20 – 21 November 2017

29.	The Annual General Assembly of the European Network of National Institutions of Human Rights Bruksel, Belgium	29 – 30 November 2017
30.	Regional Conference in Measuring Gender Equality in Western Balkans Danilograd, Montenegro	1 December 2017
31.	Terre des Hommes Annual Conference in the framework of the project “Regional Resource Centre for Child Protection in South East Europe (www.childhub.org)“; Topic: ‘Quality mechanisms to child protection’, Tirana, Albania	5 – 6 December 2017
32.	The NPM Network Meeting in Southeast Europe, “Methodology of preventive visits to places of detention “, Belgrade, Serbia	12 – 13 December 2017

**Table: Participation in international training**

### **16.1 Cooperation with counterparts and other international organisations**

Cooperation with counterparts and other international organisations in Kosovo is very important for the work of Ombudsperson Institution (OIK). We have the pleasure to report that cooperation with counterparts from different places, with network and international organisations abroad and those which are with mission in Kosovo, is extremely well. Within this cooperation, a number of activities were realised which are elaborated below.

In the previous session it was reported, that OIK during 2016 participated in 32 different international activities. Participation in these activities was also a good opportunity to exchange information and best practices in order to start to implement the same in Kosovo.

It is worth mentioning that the Ombudsperson participated in the IV International Conference on Environment and Human Rights “Public Participation in Environmental Issues”, which was held in Ljubljana, Slovenia. The conference was held under the patronage of the President of the Republic of Slovenia, aiming at identifying the commitment of states to respect the right to live in a healthy environment, with particular emphasis on public participation in drafting and adopting environmental regulations, as well as that how much they fulfil the principles of transparency, accuracy and accessibility.

At this conference, Ombudsmen's from Bosnia and Herzegovina, Croatia, Montenegro, Kosovo, Macedonia, Slovenia and Serbia signed the Declaration on Ombudsman cooperation in the field of environment and human rights, pointing out that the right to live in a healthy environment is a fundamental right and countries should try to ensure that the measures taken are in the function of respecting this right.

Also, considering the role of Ombudsperson in receiving and addressing environmental issues that affect not only the respective states, but also the neighbouring countries and beyond, in the global context, as well as stressing that the participation of public on environmental issues is below the desirable level, signed the establishment of the Network of Ombudspersons for Environment and Human Rights. This network will aim at the close cooperation, exchange of knowledge, practices and experiences, the development of forms in which Ombudsperson would respond to environmental challenges, in the fulfilment of their mandate.

Also, the Ombudsperson participated in the International Conference themed “Reclaiming Human Rights in Europe: How to Enhance Democratic Space”, which was held on 11 and 12 May 2017 in Zagreb, on the occasion of the 25th anniversary of the establishment of the Croatian Ombudsman Institution. During two days Conference core of the discussions issues currently concerning Europe, such as combating terrorism, integration and respect for differences, combating discrimination, preserving democracy in Europe, etc. In the conclusion of the Conference, was signed the Zagreb Declaration in order to commemorate the role and commitment of Ombudsmen institutions at the national level, as well as through IOI, ENNHRI and Equinet networks.

During this year, a study visit to the Austrian Ombudsman focusing on the exchange of good international practices, referring to the additional mandate of the Ombudsperson as a National Preventive Mechanism against Torture. Also, an official visit was made to the People's Advocate of Albania on the occasion of the new mandate of the People's Advocate of Albania, Erinda Ballanca, which also aimed to further deepen the cooperation between the two institutions and other issues interrelated to the mandate and human rights in general.

Good cooperation also exists with other counterpart institutions in the region and beyond, with which the Ombudsperson of the Republic of Kosovo is in permanent communication on issues of common interest.

## **16.2 Projects with the support of international organisations**

Even during 2017, the Ombudsperson Institution paid special attention to the coordination of activities with international organizations in the country with the purpose on strengthening the institution, promoting human rights and increasing the credibility of citizens to the Ombudsperson as the only national mechanism for the protection of human rights in the Republic of Kosovo.

In this context, the OIK continued cooperation with the European Commission, the Council of Europe, the OSCE, UNICEF, UNMIK and many other organizations operating in the country with the aim of implementing various projects in relation to human rights promotion, protection and education, who have provided unsparing support for empowering the institution, building its capacity and promoting mandates.

One of these organizations is certainly the Council of Europe, which for many years helped the institution on strengthening its role and mandate, as well as capacity building. This year assisted the institution with a project “Strengthening the National Preventive Mechanism in Kosovo”, supported by the Council of Europe, the Government of Switzerland and the Government of Norway. Through this project, is aimed to increase the capacity of the National Preventive Mechanism against Torture (NPM), established within the Ombudsperson Institution to enforce international and European standards in the field of the prevention of torture and ill-treatment, as well as to raise awareness of relevant stakeholders on the role and mandate of NPM. In the initial phase of the project, an expert of the Council of Europe with experience in the field of protection of the rights of persons deprived of their liberty was engaged in order to assess the further needs of the National Preventive Mechanism against Torture (NPM). As part of the project, was conducted a training on health care monitoring at the Dubrava Correctional Centre. Furthermore, there were implemented one-day roundtables such as: Prizren, Gjilan and Peja with the purpose to inform the Institutions about the mandate and duties of the National Preventive Mechanism against Torture. Four external legal advisers were also recruited. All these activities have had a steady impact on improving performance and achieving the mandate of the Ombudsperson Institution.

It is worth noting that as a result of the very good cooperation with the European Commission, the successful achievement of the OIK for this year is also postponement of the process in order to increase the level of implementation of the recommendations of the Ombudsperson. This issue is included in the Financing Agreement between Kosovo and the European Commission Action Program for Kosovo for the year 2016, Part II, the Sector Support Budget under IPA II, for Public Administration Reform (PAR SBS) through Indicators no. 7, which envisages that by 2020, the implementation of Ombudsperson's recommendations by central level institutions should reach not less than 60%. This agreement entered into force on 15 December 2017.

While, even this year, the Organization for Security and Cooperation in Europe (OSCE), as in the past, supported the OIK with several activities. In the framework of this cooperation, several awareness-raising round tables were held, on the occasion of marking the International Youth Day, which assisted the institution in promoting new mandates resulting from the adoption of a package of human rights Laws, including the Law on the Ombudsperson, the Law on Gender Equality, and the Law on Protection from Discrimination, as well as the promotion of the “Know Your Rights” Platform and the possibility of using it by young people. These roundtables were held in these municipalities of the Republic of Kosovo: municipality of Prishtina (7th and 8th August), municipality of Prizren (8th August), municipality of Mitrovica (9th August), municipality of Gjakova (10th August), municipality of Ferizaj (11th August).

In addition, within this cooperation, OSCE realised one promotion campaign through a TV spot and posters, which intention was promotion of the Law on Ombudsperson, Law on Protection from Discrimination and Law on Gender Equality.

Moreover, the OSCE in the framework of the project “Promotion of Legal and Justice Sectors respecting the Right to Equality before the Law, regardless of Gender, Ethnicity, Religion or other Personal Characteristics” has supported IOK in the development of the OIK website and the “online” platform. The platform is designed in order to provide a comprehensive inter-institutional approach where will be presented reports and recommendations from civil society organizations working and contributing to human rights in Kosovo.

A very good cooperation continued with the UNICEF Office in Kosovo, which enabled the development of the “Know your rights” platform and also continued to support the OIK in promoting this platform. This is an online platform with which the Ombudsperson Institution aims to promote the rights of young people aged 16-29, according to the legislation in force in Kosovo. The Platform provides guidance on some of the rights in the fields of education, health, minority communities, employment, family, the justice system, community work, social benefits, and youth empowerment. Rights descriptions are accompanied by a mapping of responsible institutions for the implementation of rights, as well as those in which young people can address complaints in case of violation of their rights.

In the framework of the promotion and in order to re-enable the “Know your rights” platform, on 18 April 2017, OIK in cooperation with UNICEF organized the event, where participated the representatives of public institutions, NGOs and young people involved in promotional activities for human rights.

Also within this cooperation, UNICEF has also implemented a promotional campaign through a TV show aimed at promoting the “Know your rights” platform. This campaign was launched on 18 October 2017, and broadcasted on television during the fourth quarter of 2017.

While, even on this year, there was no lack of cooperation and support from UNMIK in promoting OIK by financing a media campaign through television debates (on televisions operating in northern Mitrovica), publishing and distributing brochures with the purpose of informing North Mitrovica citizens about human rights and the role and mandate of OIK. This support has positively impacted on informing citizens where it is noted an increase in the number of complaints to OIK from citizens of this part.

OIK wishes to thank the European Union Office in Kosovo, offices and other international organisations which supported OIK in the challenges and problems which it faced, but also helped each time the help was considered necessary. Ombudsperson is grateful and highly appreciates this cooperation.

### 16.3 Membership in international organisations

Membership in mechanisms dealing with human rights is known as a very important tool in the work of national human rights institutions, and it has extraordinary impact on the advancement of international cooperation and provides opportunities to exchange best practices in the area of human rights.

In addition to this, as was reported in the report of previous year, the OIK has also joined the following international mechanisms:

- International Ombudsmen Institute (IOI)<sup>270</sup>
- European Ombudsmen Institute (EOI)<sup>271</sup>
- European Network of National Human Rights Institutions (ENNHRI)<sup>272</sup>
- Children Rights Ombudsperson for South East Europe (CRONSEE)
- Association of Ombudsmen & Mediators of the Francophonie (AOMF)<sup>273</sup>
- Association of Mediterranean Ombudsmen (AOM)<sup>274</sup>
- Accession to the *Sarajevo Declaration for Cooperation*<sup>275</sup>

While, on 15 September 2017, the Ombudsperson's of the region (Bosnia and Herzegovina, Croatia, Montenegro, Kosovo, Macedonia, Slovenia and Serbia) signed in Ljubljana, Slovenia, the establishment of the Network of Ombudsmen for Environment and Human Rights, where from that moment IOK became a member of this network.

OIK is also invited and takes part in the activities of some mechanisms and other networks, in which due to political barriers is only an observer, such as:

- Global Alliance of National Human Rights Institutions - GANHRI (which reviews the compliance with NHRI with the Paris Principles)
- European Network of Ombudsmen for Children- ENOC
- South East European National Preventive Mechanisms against torture (SEE NPM) (with which OIK participates in different meetings whose purpose is

---

<sup>270</sup> For more information about the International Ombudsmen Institute, visit this website: [www.theioi.org](http://www.theioi.org)

<sup>271</sup> For more information about the European Ombudsman Institute, visit this website: [www.eoi.at](http://www.eoi.at)

<sup>272</sup> For more information about the European Network of National Institutions of Human Rights, visit this website: [www.ennhri.org](http://www.ennhri.org)

<sup>273</sup> For more information about the European Ombudsman Institute, visit this website: <http://www.aomf-ombudsmans-francophonie.org/>

<sup>274</sup> For more information on the Association of Mediterranean Ombudsmen, visit this website: [www.ombudsman-med.org](http://www.ombudsman-med.org)

<sup>275</sup> This declaration has formalised the cooperation and activities of all Ombudsmen Institutions in the region. The Ombudsperson Institution in Kosovo signed this Declaration on 4 April 2014.

cooperation, promotion and exchange of experiences, in the area of protection of the rights of persons deprived of liberty).

#### 16.4 Reporting to different international mechanisms

Every year, the OIK receives questionnaires on different topics from international organisations to report on the situation of human rights in Kosovo. Five questionnaires were sent this year and are listed in the following table.

Date	Report/research topic	Organisation/institution to which the report was sent
13 April 2017	National Preventive Mechanism against Torture	ENNHRI
2 May 2017	Children deprived of liberty	European Inter-University Centre for Human Rights and Democratisation
3 May 2017	Migration and Law Economic Migration in Kosovo	World Bank
15 May 2017	Detention alternatives in the context of migration	Council of Europe, Steering Committee for Human Rights
4 September 2017	The role, activities and experience of the NIHR for the promotion and protection of children's rights	GANHRI - UNICEF
8 August 2017	The role of Ombudspersons on empowering an open government	OECD – Organization for Economic Cooperation and Development
11 August 2017	OIK comments on Joan Barata's report on "How to strengthen soft powers for press freedom: National Human Rights Institutions"	Council of Europe

*Table: List of reports sent to international organisations*

#### 17. Media and public relations

The Media and Public Relations Office, in fulfilment of its responsibilities and obligations and in pursuit of the objectives set out in the Strategy of the Office for Public and Media Relations 2016 - 2018, has focused its work on increasing transparency; on continuously and proactively providing information in order to raise awareness regarding the guaranteed rights and freedoms in the Republic of Kosovo and on the role and mandate of the Ombudsperson within the institutional structure of the country.

In terms of transparency, the OIK has electronically distributed approximately 20,000 e-mails of officials to central and local level public authorities, as special publications:

- Annual Report 2016
- First report of the NMPT
- Summary of reports during 2016



- Summary of reports during 2015

The Ombudsperson, in the light of its work routine as well as the constitutional and legal responsibilities, published 46 reports, of which: 20 Case reports, 13 Ex Officio Reports, 1 Special Report and 12 Reports of the National Mechanism for Prevention of Torture (NMPT). Their placement, statistically distributed by month, looks like in Table 1:

**Table 1. 46 Reports/Opinions/Amicus Curiae published in the official web site, according to months**

2017	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
<b>Cases report</b>			1			3			1	3		12
<b>Ex-officio reports</b>	3				3	1		1	3	1	1	
<b>Special Reports</b>			1									
<b>NPM reports</b>		6	1			1		1		3		

These reports have been published on the OIK's official website followed by summarised information. Further, reports and information were submitted to media and were distributed also through the official page and the profile of the OIK in the social network Facebook.

During the reporting period 1 January - 31 December 2017, through the OIK official web site as well as via the electronic mail and the OIK page on Facebook, information and other notifications related to activities and engagements of the Ombudsman were published. Their total number is 79. Broken down in numbers, according to months, they look like in the Table 2.

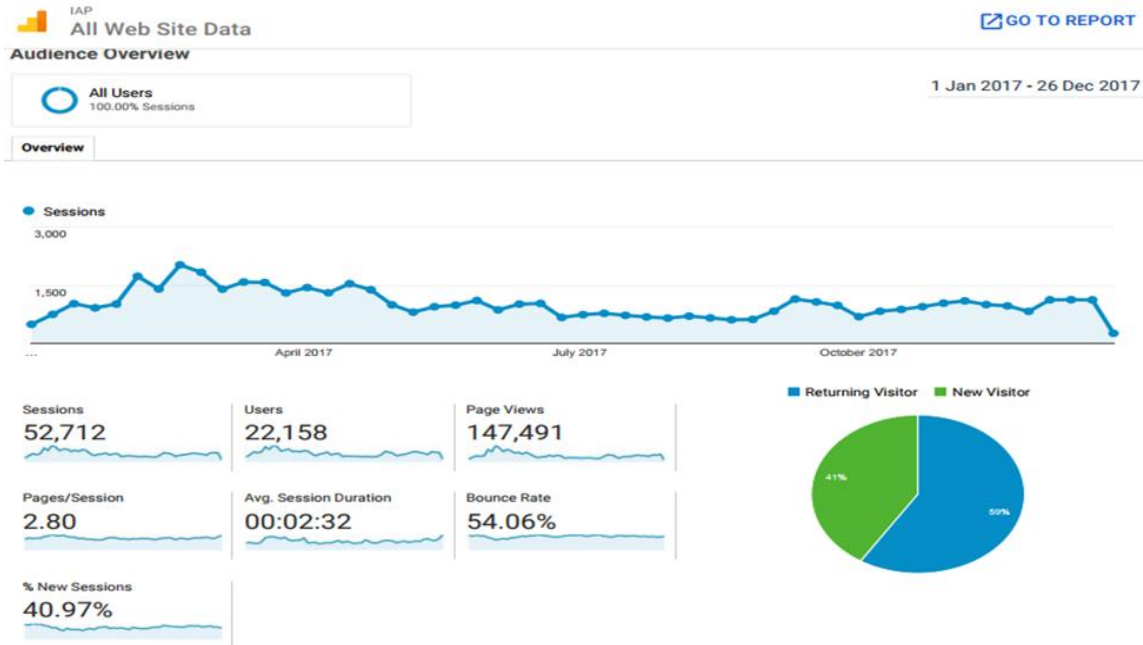
**Tabela 2. 79 information/statements/announcements published in the website, according to months**

2017	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	4	5	3	9	2	6	3	2	10	7	9	13
<b>Total</b>	<b>79/information/statements/announcements/news</b>											

Data regarding the audience of the website in the period January – December 2017 show that the website was accessed (visited) about 148 000 (one hundred forty-eight thousand) times, which, compared to the previous year, marks an increase of 45000 (forty-five thousand) more visits. The number of users (visitors) reached 22158 (twenty-two thousand, one hundred fifty-eight), which also marks an increase of 4000 (four thousand)

more visitors compared to the previous year. Out of the total number of visitors of the website, 41% clicked the OIK’s website for the first time, while the other 59% of visitors returned to the website (see table 3, in which data from the website are presented)

**Table 3. Data from the website on the number of visitors and users**



With the priority of accurate and timely information, the Ombudsperson made 189 media appearances, in radios and televisions, electronic portals and print media. This number of media appearances of the Ombudsperson and OIK staff does not include shares or displays of the same, as it does not include cases where the media have referred to the Ombudsperson's views and recommendations, either in the traditional media or in modern ones.

Table 4 lists distribution of media presentations according to mediums based on the requests of media and journalists for pronunciations, interviews, open programmes for questions from citizens, debates and others. It is worth emphasizing that the growing presence of the Ombudsperson in the media is mostly due to the proactive way in which the IAP interacts with the media and the effect that certain cases that were handled by the OIK had on the public interest, or activities where the Ombudsperson presented its own views.

**Table 4. 189 Media appearances, distributed according to media**

<b>MEDIA APPEARANCES, DISTRIBUTED PER MEDIA</b>			
News Agency Kosova Live	<b>4</b>	Online portal Gazeta e re	<b>3</b>
News Agency Kosova Press	<b>3</b>	Online portal Lajmi.net	<b>3</b>
Aljazeera Balkans	<b>1</b>	Radio Free Europe	<b>4</b>
Betimi për Drejtësi	<b>4</b>	Radio Gjakova	<b>1</b>
BIRN/Kallxo.com/Jeta në KS/Drejtësia në KS	<b>11</b>	German radio ARD	<b>1</b>
Newspaper Bota Sot	<b>2</b>	Radio Romano Avazo Prizren	<b>1</b>
Newspaper Fjala	<b>7</b>	RTV21	<b>7</b>
Newspaper INTRO	<b>1</b>	Radio/Television Dukagjini	<b>2</b>
Newspaper MONITOR	<b>1</b>	RTK (TV channels +Radio)	<b>41</b>
Newspaper OBSERVER	<b>5</b>	Radio Vala Rinore	<b>3</b>
Insajder	<b>2</b>	Telegrafi	<b>2</b>
Indeksonline	<b>6</b>	Television Rrokum	<b>2</b>
Klan Kosova	<b>13</b>	Tribuna Channel	<b>5</b>
Koha Ditore	<b>9</b>	TV MIR	<b>1</b>
Kosova Sot	<b>3</b>	TV Syri Vizion	<b>1</b>
KTV	<b>27</b>	Zëri	<b>4</b>
Online portal Arbresha.info	<b>5</b>	Voice of America	<b>1</b>
Online portal Ekonomia online	<b>3</b>	<b>TOTAL</b>	<b>189</b>

The theme of media requests for declarations/interviews by the Ombudsperson varied depending on the launch of the violations that reports published by the Ombudsperson have dealt with, but there was also an interconnection with the developments and the public discourse created for issues of public interest.

Throughout the first quarter of 2017, the focus of media requests was on the issues of people with disabilities; children (their protection from compulsory labour); lump sum water billing (following the publication of the Report on this issue); regarding the Preliminary Injunction of the Constitutional Court in relation to the Law on Minor Offenses at the request of the Ombudsperson; matters related to pensioners (including the Grudiq case); regarding the LGBT community; regarding the pardon of prisoners; regarding the delays at the Special Chamber of the Supreme Court; the health status of persons held in Kosovo prisons, etc.

In the second quarter, the topics for which the media addressed the OIK were diverse. During this period, OIK released a statement regarding the invoicing of electricity spent in municipalities in the north of the country, to residents in other parts of Kosovo (following the publication of the Ombudsperson's Report on this issue); regarding conditioning set by the Municipalities for registration of vehicles; rights of children; the state of Roma, Ashkali, Egyptian communities; regarding the concerns raised in relation

to the electoral process (gender equality, use of children during campaign etc.); access to public documents; etc.

The third quarter was also characterized by statements regarding the invoicing of electricity spent in the four northern municipalities of the country, as well as the Decision of the Basic Court at the request of the Ombudsperson regarding this matter; requests for statements on cases of parties claiming that they have cases under review at the Ombudsperson; retirement homes - monitoring, housing, treatment; etc..

During the fourth quarter the focus again remained on the issue of electricity billing, including the decision of the Court of Appeals to suspend the decision of ERO; statements have been sought regarding discrimination issues; related to gender-based violence, as well as other issues pertaining to the Law on Gender Equality; the state of Roma, Ashkali, Egyptian communities; rights of children etc.

In general, most of the statements were interviews and media appearances of the Ombudsperson himself, while the media expressed interest towards issues raised by the Ombudsperson through published Reports or carried out activities. Distributed according to months, media requests for the Ombudsperson’s declarations were as in Table 5.

**Table 5 Media requests for OIK declarations, distributed in numbers per month**

2017	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
<b>Media Requests</b>	<b>15</b>	<b>13</b>	<b>14</b>	<b>20</b>	<b>13</b>	<b>16</b>	<b>6</b>	<b>7</b>	<b>12</b>	<b>12</b>	<b>18</b>	<b>43</b>

In direct function of partnership with the media and for the purpose of joint discussion on issues that interconnect the nature of mutual work, three specific activities, initiated and organized by the Office for Communication with the Public and Media, and with the support of the sectors appropriate in order to ensure their well-being were carried out:

- In May 2017, marking the World Press Freedom Day - a Roundtable was held themed *“Reflections over the role of Media in the Dynamics of Social Processes”*. The participants were editors-in-chief, editors, journalists and officials of the Public Communication Offices at the central level institutions of the country.
- In September 2017, - marking the International Right to Know Day - a Discussion Forum was held themed *“Right to Know - Legislation and Practice in Kosovo”*. Participants were mainly journalists, liaison officers as well as those responsible for access to public documents and experts of the field.
- In December 2017, the OIK organized a seminar for human rights officials as well as communication officials of central level government authorities, themed *“The role of the Ombudsperson within the institutional structure of the country”*.

At the end of the year, the OIK, at a special press conference, held a media presentation on the preliminary data of statistics and the work done during 2017.

The Office of Public Communication and Media also manages the process of receiving as well as responding to requests addressed to OIK for access to public documents. OIK has received 11 requests during 2017. All applications received positive responses and the requested documents, in accordance with their requests, were submitted to the parties (in hard copies, electronically, and sometimes in both formats). Most requests are made for more than one document, and sometimes different searchers have requested the same documents.

## **18.Financing**

### **18.1 OIK Budget**

The OIK is an independent institution financed from the budget of the Republic of Kosovo. According to the Law on Ombudsperson “OIK prepares its annual budget proposal and submits it for approval to the Assembly of the Republic of Kosovo”.<sup>276</sup> According to this legal provision, the OIK is provided with the necessary additional budget even for the cases of obligations and competencies added pursuant to this law and other laws, respectively additional adequate and relevant financial and human resources.<sup>277</sup>

### **18.2 Financing of the OIK from the Budget of the Republic of Kosovo**

Based on the legal process of preparation and submission of the regular budget request, the Ombudsperson, submitted a budget request for 2017 to the Assembly of the Republic of Kosovo.

The Ombudsperson’s budget request for 2017 is based on the OIK work plan and activities planned. The budget in the beginning of fiscal year 2017 amounted to 1.336.218.99 €, and this OIK budget was not allocated not according to OIK budget request of 2017.

The reflection of the OIK budget for 2017, according to the budget request, initial budget, and budget savings and budget expenses will be presented in tabular form and with general data according to economic budget categories. While the report and detailed accounting of all flows in the OIK budget for 2017 according to special economic categories and subcategories is submitted to the Assembly of the Republic of Kosovo, according to a standard form for financial reporting by independent institutions, as is required every year by the Commission for Budget and Finances of the Assembly of the Republic of Kosovo.<sup>278</sup>

---

<sup>276</sup> Law on Ombudsperson, No. 05/L-019, Article 35, paragraph 3.

<sup>277</sup> Ibid.

<sup>278</sup> Detailed financial report for OIK budget will be submitted to the Assembly of the Republic of Kosovo according to the unique form on financial reporting.

The following table presents the OIK budget starting with the *budget request, allocated budget*, based on the Law on amending and supplementing Law, *declaration of budget savings from OIK, budget cuts with the decision of the Government of the Republic of Kosovo in December 2017 and final budget for 2017*.

*Table 1: The budget as per budget request, allocated budget, declaration of budget savings from OIK and budget cuts with the decision of the Government and final budget for 2017*

<i>Economic category</i>	<b>Budget request for 2017</b>	<b>Initial – allocated budget for 2017</b>	<b>Declaration of budget savings and budget cuts with the Government decision</b>	<b>Final budget for 2017</b>	<b>Final budget for 2016</b>
<b>Wages and Salaries</b>	1.034.002.00	920.365.99	100.000.00	<b>820.365.99</b>	<b>596.477.50</b>
<b>Goods and Services</b>	390.353.00	324.353.00	34.500.00	<b>289.853.00</b>	<b>326.720.26</b>
<b>Utilities</b>	25.500.00	25.500.00	0.00	<b>25.500.00</b>	<b>22.992.22</b>
<b>Capital Expenditures</b>	66.000.00	66.000.00	51.000.00	<b>15.000.00</b>	<b>50.200.00</b>
<b>Total budget</b>	1.515.855.00	1.336.218.99	185.500.00	<b>1.150.718.99</b>	<b>996.389.98</b>

Budget planning, budget expenditures and statement of budget savings for 2017 have been executed by OIK according to planned needs and assigned destination to meet the needs and work activities of the OIK, which were of interest to ensure the exercise of the mandate, the performance of the work and the functioning of the OIK, while monitoring and internal control in economic and efficient budget use was not lacking.

For clarification, in 2017 OIK has declared budget savings in the following budget categories:

- a) Wages and Salaries amounting to 230.000.00 €,
- b) Goods and Services amounting to 34.500.00 €, and
- c) Capital Expenditures amounting to 51.000.00 €.

However, the Ministry of Finance only partially administered the declaration of budget savings of OIK, respectively, MF fully administered the declaration of budget savings for two budget economic categories: Goods and Services and Capital Expenditures, while only partially administered the declaration of budgetary savings for Wages and Salaries in the amount of 100.000.00 €, and not for the stated amount of 230.000.00 € as stated by OIK.

One of the major constraints and main obstacles to the non-spending of the OIK budget for 2017 for the economic category of Capital Expenditures and for the budget amount of € 51,000.00 was the irresponsibility of the work of the Central Procurement Agency (CPA). The limitation and non-spending of OIK Budget occurred as a consequence of CPA not carrying out the centralized procurement activity for supplying OIK with two vehicles. Despite the responsibility and obligations of the CPA as a public authority responsible for development centralized public procurement activities of all budgetary organizations of the Republic of Kosovo, the same did not carry out this centralized procurement activity for OIK irrespective of the continuous requests of OIK to develop the activity themselves.

***Final budget and execution of budgetary expenditures for 2017***

The OIK final budget for 2016 was spent by **80.66 %**. The following table presents the final budget compared to budget expenditures for 2017. The tabular presentation of budget data has been organized according to economic categories and according to expenditures expressed in percentages.

*Table 2: Final budget and execution of budgetary expenditures for 2017*

No.	Economic categories	Final budget 2017	Budget used	Unused funds	Execution in %
1.	Wages and Salaries	820.365.99 €	653.807.19 €	166.558.80 €	79.70 %
2.	Goods and Services	289.853.00 €	235.219.34 €	54.633.66 €	81.15 %
3.	Utilities	25.500.00 €	24.525.01 €	974.99 €	96.18 %
4.	Capital Expenditures	15.000.00 €	14.647.50 €	352.50 €	97.65 %
Total		1.150.718.99 €	928.199.04 €	222.519.95 €	80.66 %

***OIK donor financing***

During 2017, the OIK received different donations from international organisations operating in Kosovo, such as; the Council of Europe, OSCE, UNDP, etc.

Specifically, the Council of Europe’s donations which helped OIK with four external legal advisors in relation to the drafting of special reports (ex officio) in 2017 should be highlighted. At the same time, many trainings and seminars were organized within the framework of this project in order for the staff of OIK to acquire new information in relation to international standards on human rights and the case law of the European Court of Human Rights.

Whereas, when it comes to OSCE, we should emphasize the support in redesigning the website of OIK in accordance with the needs and the most advanced information technology practices.

## 19. Statistics

### 19.1 Statistical summary of complaints and cases for 2017

From 1 January 2017 to 31 December 2017, 1863 complaints and requests for legal advice or legal aid were lodged by Kosovo citizens to OIK Head Office in Prishtina and in its Regional Offices.

Most cases investigated by the OIK during the reporting period dealt with the right to a fair and impartial trial, health and social protection, right to legal remedies, right to employment and right to exercise one's occupation, property protection etc.

In the following table, the total number of complaints lodged to OIK and cases investigated, cases resolved, reports and letters with recommendations for cases investigated, recommendations made in the reports and in letters with recommendations etc. have been presented in detail.

**Table 1: Complaints lodged by citizens to OIK during 2017**

	<b>Total number of complaints lodged to OIK</b>	1863
	<i>Number of persons involved in the complaints presented<sup>279</sup></i>	3246
<b><i>Complainants by ethnic background</i></b>		
	Albanian	1628
	Serb	101
	Bosnian	26
	Turkish	25
	Ashkali	25
	Egyptian	24
	Roma	22
	Other	12
<b><i>Complainants by gender</i></b>		
	Male	1381
	Female	482
<b><i>Responsible authorities against which the complaints are filed (one complaint may have more than one responsible party)</i></b>		

<sup>279</sup> One complaint may have several complainants, alleging that their rights were violated by public authorities



	Courts	521
	Ministries	509
	Municipalities	320
	Natural person	88
	Police	86
	State prosecutors	66
	Private companies	52
	Publicly Owned Enterprises	48
	Privatisation Agency of Kosovo	40
	Foreign authorities	27
	Other	233

**Table 2: Complaints declared inadmissible during 2017**

	<b>Number of complaints declared inadmissible</b>	992
<b><i>Legal grounds of the inadmissibility of complaints based on the Law on Ombudsperson</i></b>		
	No violation, maladministration - Article 22, paragraph 1.1	292
	Failure to exhaust legal remedies - Article 22, paragraph 1.4	264
	Using legal remedies - Article 22, paragraph 1.3	227
	Outside of jurisdiction - Article 21, paragraph 1.3.1	155
	Lack of interest, failure of the complainant - Article 22, paragraph 1.2	49
	Filed after the legal deadline - Article 21, paragraph 1.3.2	5

**Table 3: Cases initiated for investigation by OIK during 2016**

	<b>Cases initiated for investigation from the complaints lodged by citizens</b>	871
	<b>Cases initiated ex officio</b>	60
<b><i>Ethnic background of citizens based on the cases investigated</i></b>		
	Albanian	733
	Serb	71

	Bosnian	13
	Egyptian	13
	Turkish	12
	Roma	12
	Ashkali	10
	Others	7
<b><i>Complainants gender based on the cases investigated by the OIK</i></b>		
	Male	634
	Female	237
<b><i>Responsible authorities for cases investigated by the OIK (one complaint may have more than one responsible party)</i></b>		
	Courts	298
	Ministries	258
	Municipalities	178
	Police	39
	State prosecutors	37
	Publicly Owned Enterprise	21
	Private Companies	15
	Privatisation Agency of Kosovo	15
	Natural Person	8
	Foreign authorities	3
	Other	110

**Table 4: Cases investigated, based on the rights guaranteed by Constitution** *(one case may include more than one violation of the rights guaranteed)*

	Right to a fair and impartial trial	261
	Health and social protection	159
	Right to legal remedies	153
	Right to employment and exercise of profession	130
	Property protection	108

	Rights of the accused	56
	The rights of the child	37
	Equality before the law	36
	Right of access to public documents	25
	Right to education	17
	Responsibility for living environment	16
	Prohibition of torture, cruel, inhuman and degrading treatment	13
	Right to life	11
	Right to marriage and family	11
	Human dignity	8
	Judicial protection of rights	7
	Right to elect and participate	6
	Freedom of movement	4
	Right to freedom and security	4
	Other	11

**Table 5: Total number of cases closed by OIK during 2017** (not only cases of 2017, but also cases recorded earlier and closed during this year)

	<b>Total number of cases closed</b>	713
<b><i>Legal grounds for closing cases based on the Law on Ombudsperson</i></b>		
	Positively resolved, in accordance with the complainant's request – Article 21, paragraph 1.5.	329
	Inadmissible, no violation, maladministration - Article 22, paragraph 1.1	129
	Inadmissible, in the process of exhausting legal remedies - Article 22, paragraph 1.3	101
	Inadmissible, failure to exhaust legal remedies - Article 22, paragraph 1.4	59
	Closed with a report	52
	Closed due to lack of complainant's interest, failure of the complainant - Article 22, paragraph 1.2	29
	Inadmissible, outside of jurisdiction – Article 21, paragraph 1.3.1	14

**Table 6: Reports with recommendations from OIK**

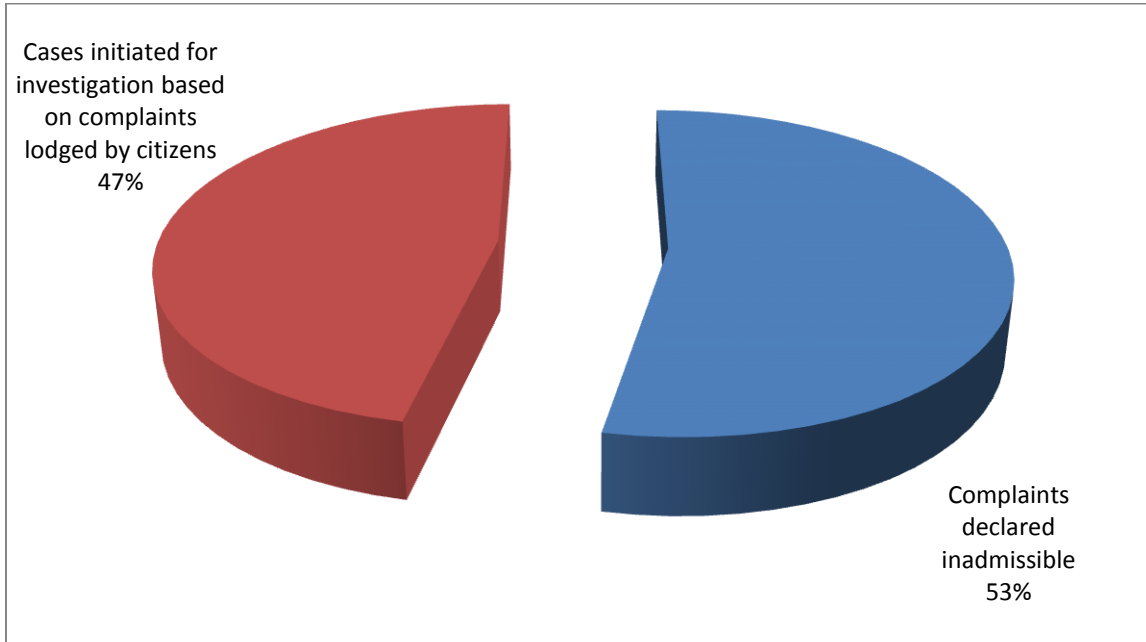
	Reports for cases investigated (from citizens' complaints)	20
	Reports for cases investigated <i>ex officio</i>	9
	Reports of NPM	11
	Letter with recommendations	14
	<i>Recommendations in the reports and letters with recommendation</i>	133
	Amicus Curiae	3
	Request for interim measure	3

**Table 7: Implementation of recommendations issued in the reports and letters with recommendation for cases investigated by OIK**

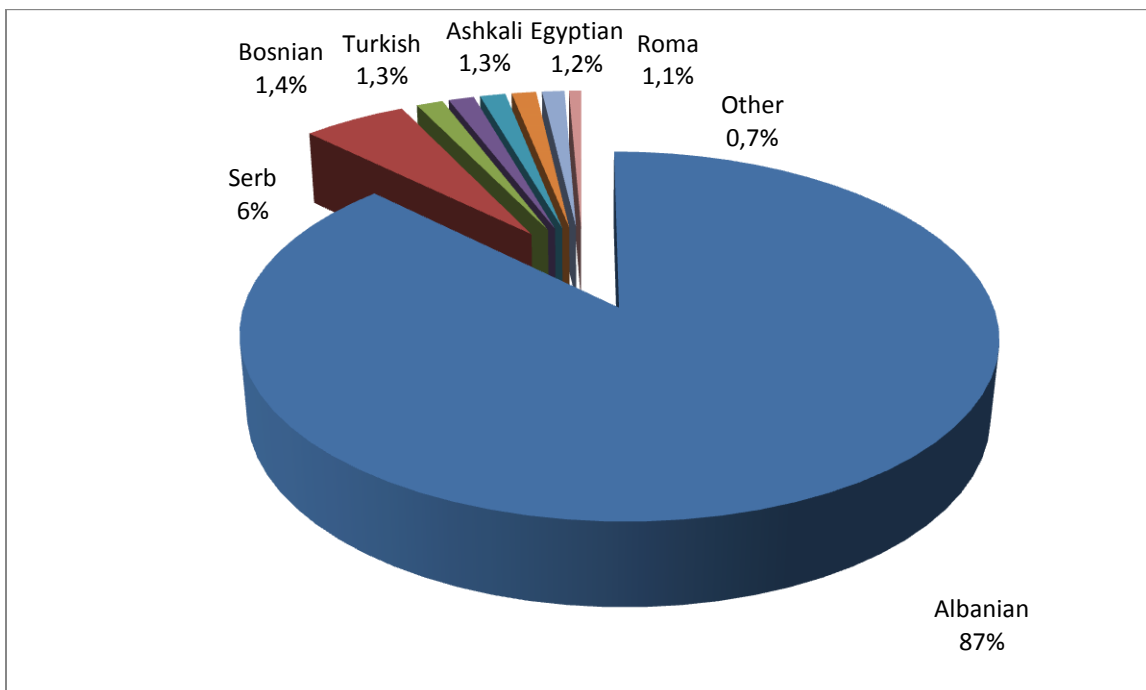
<b>Responsible authority</b>	<i>Implemented recommendations</i>	<i>Unimplemented recommendations</i>	<i>Pending implementation</i>
Ministry of Justice	3	7	17
Ministry of Health	7	4	5
Ministry of Labour and Social Welfare	0	3	3
Ministry of Internal Affairs	0	5	0
Ministry of Education	3	1	0
Ministry of Public Administration	1	2	0
Ministry of Finance	0	1	0
Government of Kosovo	4	0	4
Assembly of Kosovo	0	0	2
Municipality of Ferizaj	4	2	1
Municipality of Prishtina	4	2	0
Municipality of Shtime	2	0	2
Municipality of Istog	0	1	0
Municipality of Podujeva	0	1	0

Municipality of Shterpce	1	0	0
Municipality of Lipjan	0	0	1
Municipality of Klina	0	1	0
Court of Appeals	1	0	8
Basic Court in Prishtina	1	1	1
Basic Court in Ferizaj	1	1	0
Basic Court in Prizren	1	0	0
Basic Court in Mitrovica	1	0	0
Special Chamber of the Supreme Court	2	0	0
Supreme Court of Kosovo	0	1	0
Basic Prosecution in Prishtina	0	0	2
Kosovo Judicial Council	0	4	3
Kosovo Prosecutorial Council	0	2	0
Energy Regulatory Office	1	0	1
Kosovo Police	0	0	1
Academy of Justice	0	1	0
Water Services Regulatory Authority	1	0	1
University of Gjilan “Kadri Zeka”	1	0	0
University of Prishtina	1	0	0
Central Bank of Kosovo	1	0	0
<b>Total</b>	<b>41</b>	<b>40</b>	<b>52</b>

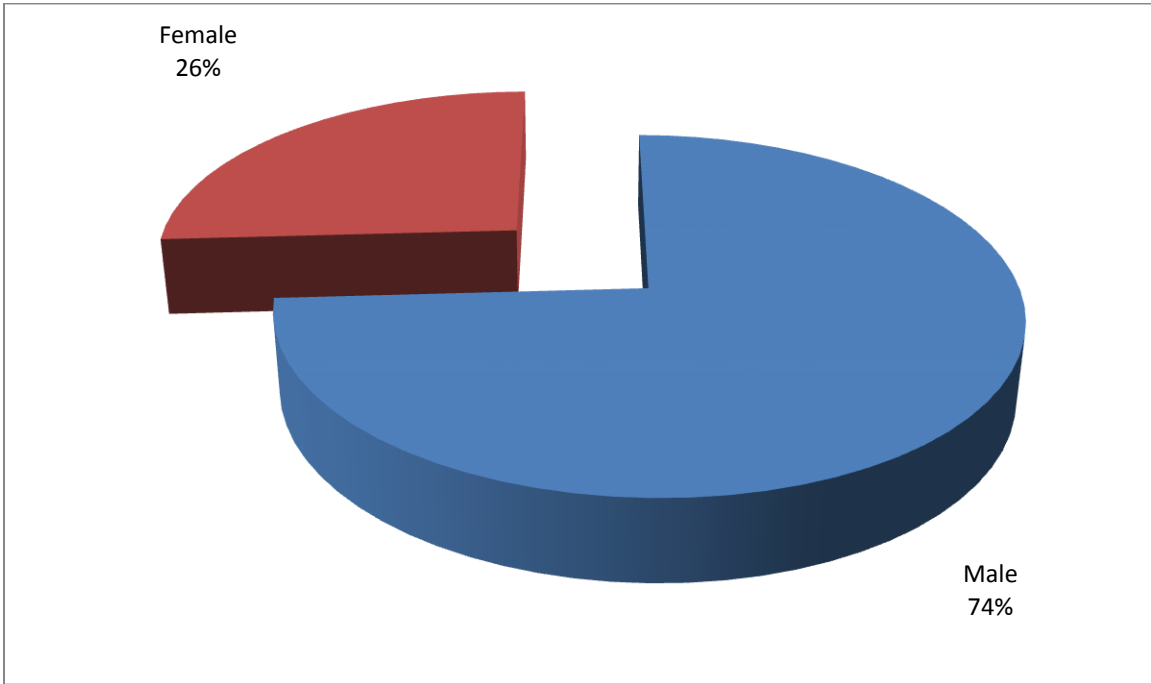
*Graphic presentation of statistics 1 January 2017 - 31 December 2017*



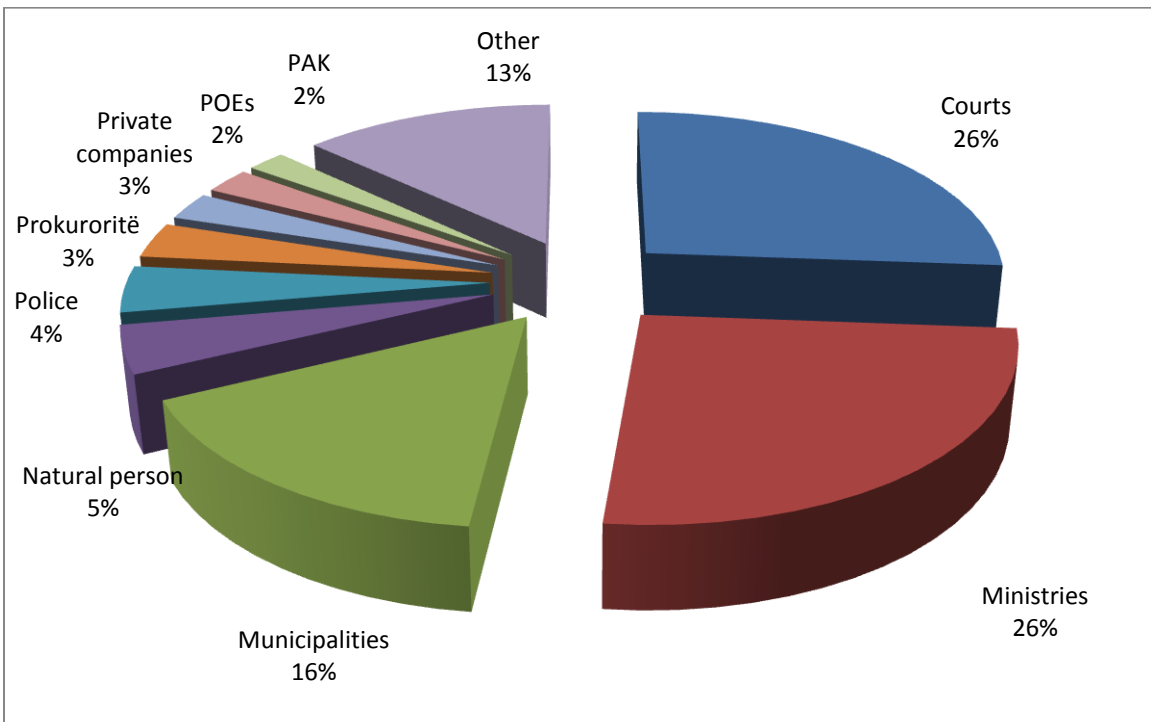
**Figure 1: Review of complaints lodged with OIK during 2017**



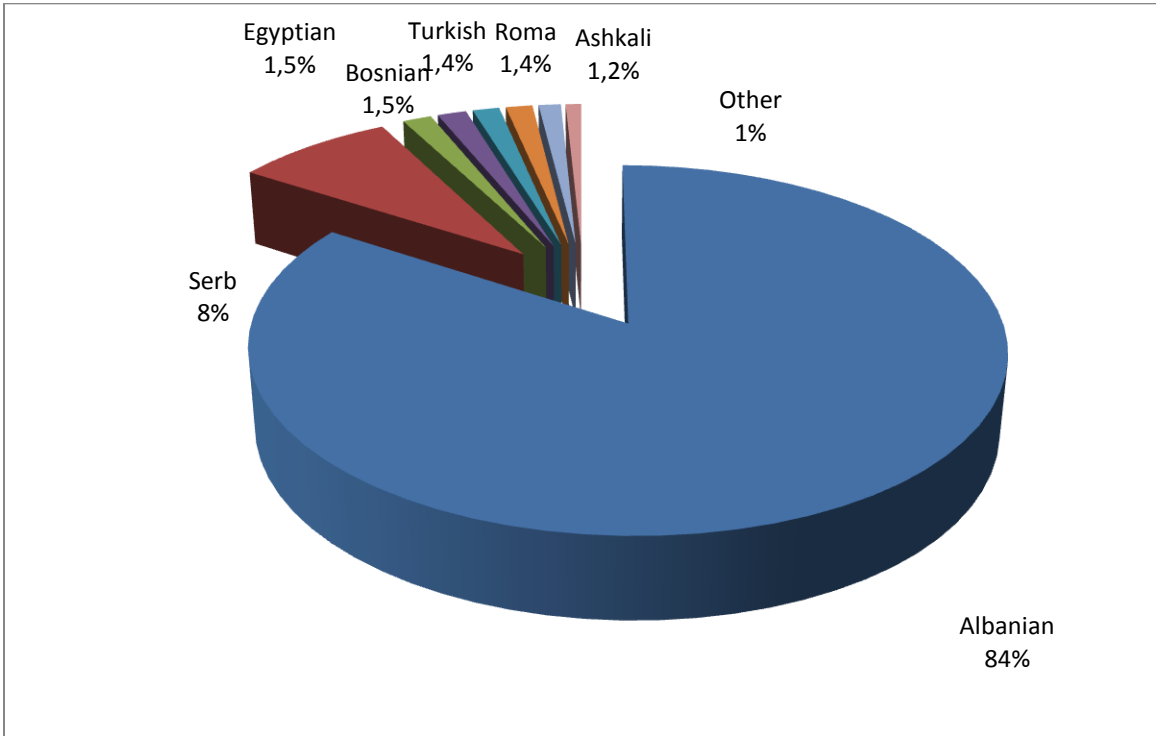
**Figure 2: Ethnic background of citizens per complaints lodged with OIK during 2017**



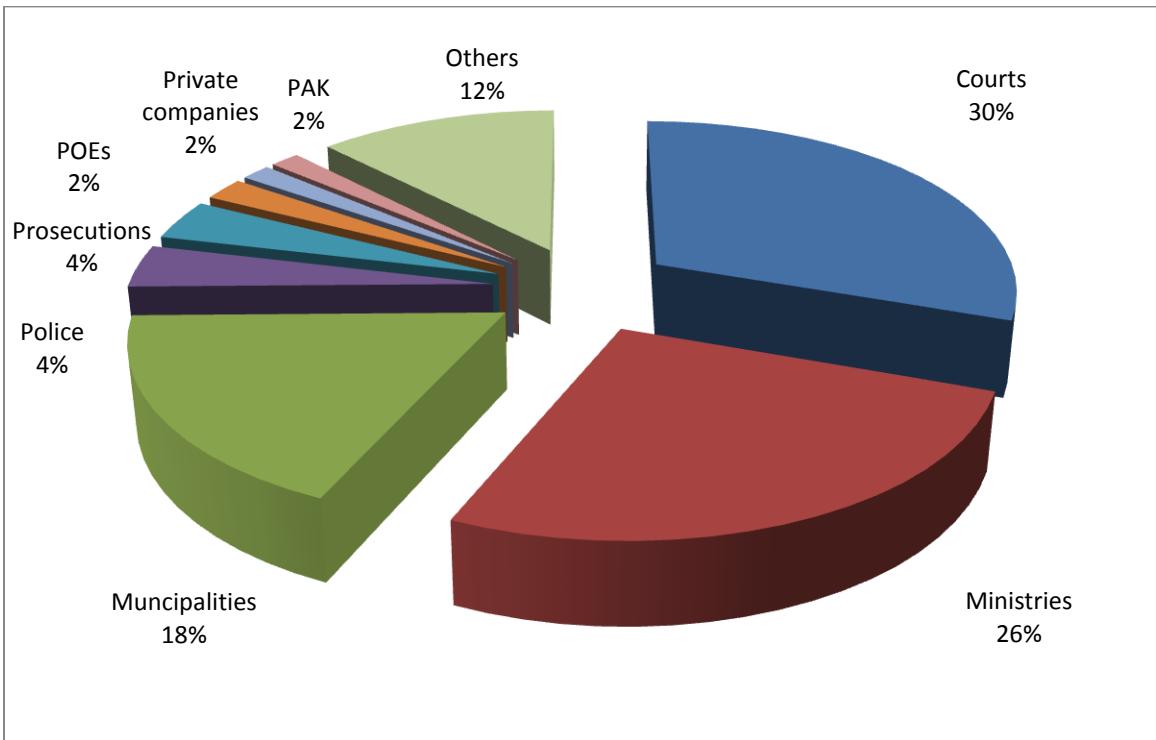
**Figure 3: Gender of citizens per complaints lodged with OIK during 2017**



**Figure 4: Responsible authorities for complaints lodged with OIK during 2017**

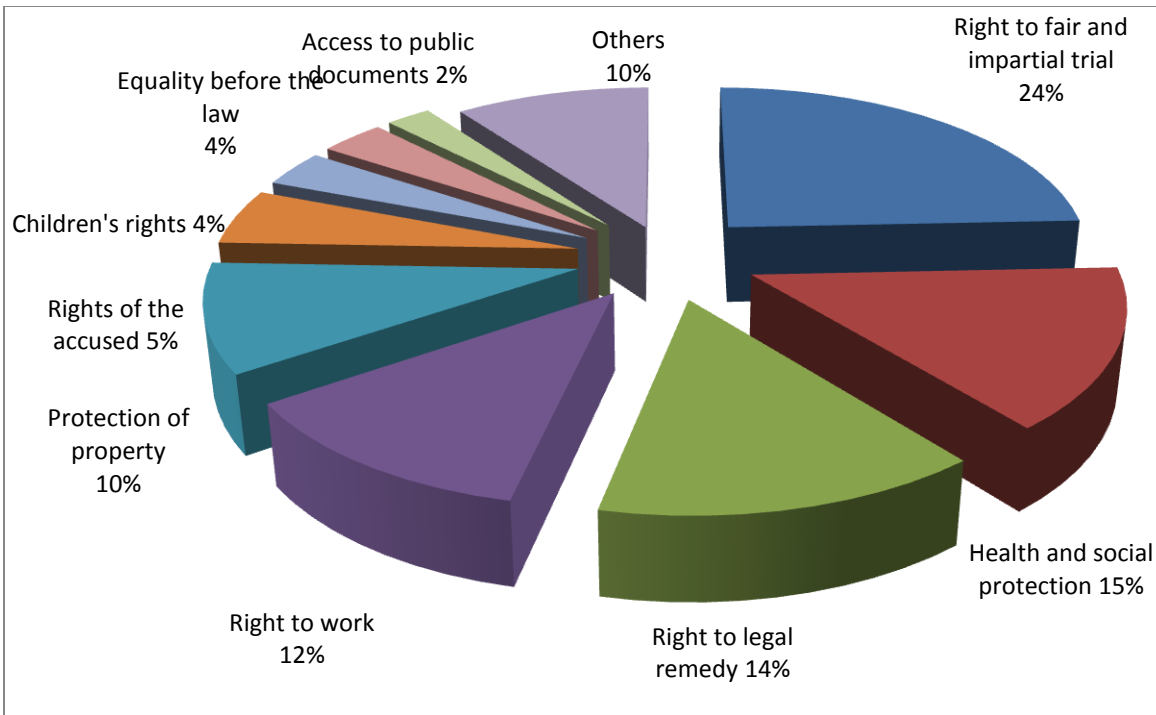


**Figure 5: Ethnic background of citizens per cases initiated for investigation during 2017**

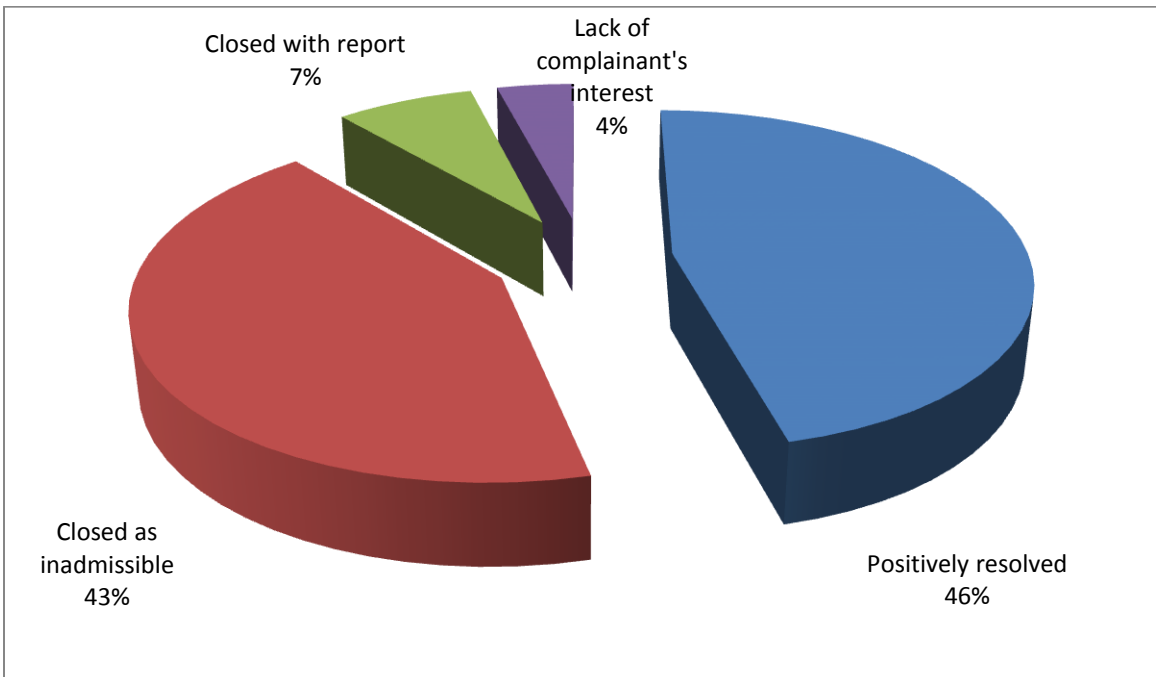


**Figure 6: Responsible authorities per cases investigated by OIK**

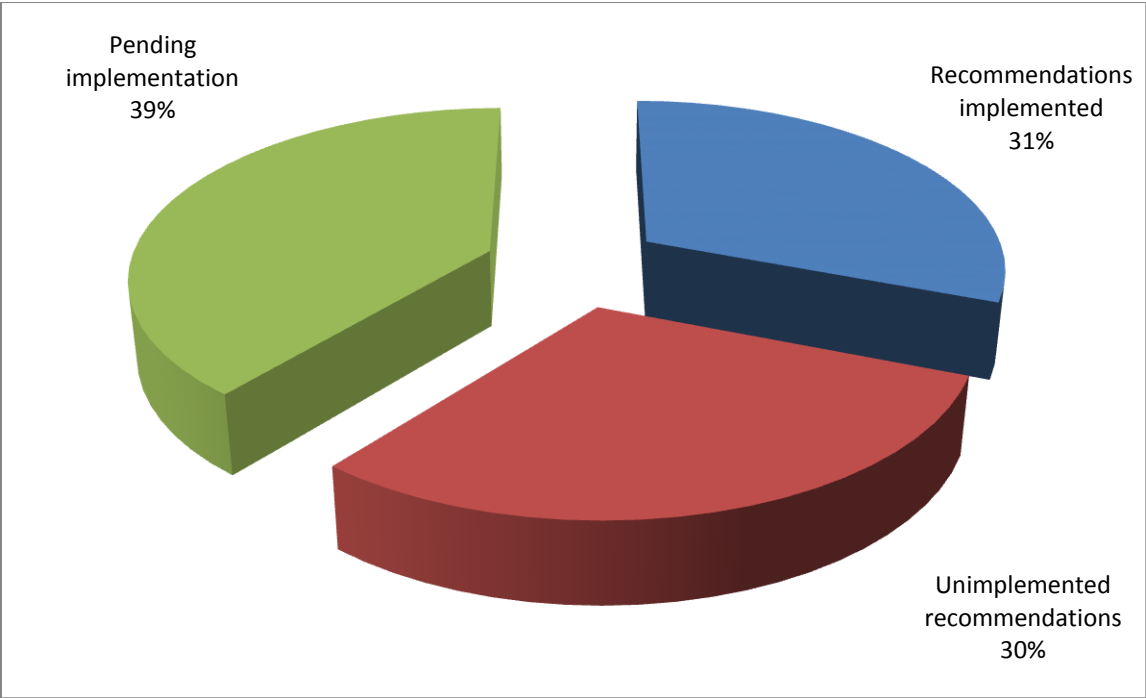




**Figure 7: Cases investigated based on rights guaranteed by the Constitution**



**Figure 8: Cases closed by OIK during 2016 (not only cases initiated in 2017, but also cases registered earlier and closed during this year)**



**Figure 9: Implementation of recommendations issued in reports for cases investigated by the Ombudsman Institution of Kosovo**