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Ex officio

No. 214/2018

REPORT WITH RECOMMENDATIONS
OF THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO

Related to the

Arrest and forcible removal of six Turkish citizens from the territory of Republic of Kosovo

**For: Mr. Bejtush Gashi, Minister
Ministry of Internal Affairs**

**Mr. Abelard Tahiri, Minister
Ministry of Justice**

**Copy for: Mr. Hashim Thaqi, President of the Republic of Kosovo
Mr. Kadi Veseli, President of the Assembly of Republic of Kosovo
Mr. Ramush Haradinaj, Prime Minister of Republic of Kosovo
Mrs. Duda Balje, President of the Parliamentary Commission on Human Rights, Missing Persons and Petitions**

Prishtinë, 27 April 2018

PURPOSE OF THE REPORT

1. The main purpose of this Report is drawing attention of the competent authorities of the Republic of Kosovo on respect of the rights of the arrested persons and persons who were the subject of forcible removal or extradition from the territory of the Republic of Kosovo, in accordance with the Constitution of the Republic of Kosovo, applicable laws in the Republic of Kosovo, as well as international human rights standards.

CONSTITUTIONAL AND LEGAL BASE

2. According to Article 135, par. 3 of the Constitution of Republic of Kosovo (hereinafter: “Constitution”), “the Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed”.
3. According to the Law No. 05/L-019 on Ombudsperson, Article 16, par. 4, “The Ombudsperson has the power to investigate, ... 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”.
4. Further the Law No. 05/L-019 on Ombudsperson, Article 18, par. 1 stipulates that Ombudsperson among others , has the following responsibilities:
 - “to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases” (point 2);
 - “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;” (point 5);
 - “to publish notifications, opinions, recommendations, proposals and his/her own reports” (point 6);
 - “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;” (point 7);
 - “to prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo” (point 8); and

- “To recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation” (point 9).

By delivering this Report with Recommendations to the responsible authorities, the Ombudsperson aims to accomplish the following constitutional and legal responsibilities.

THE FACTS OF THE CASE

5. The Ombudsperson, pursuant to Article 16.4 of the Law on Ombudsperson no. 05 / L-019, according to information published by the public media RTK, TV 21 as well as other media, of 29 March 2018, has decided to initiate *ex officio* investigations, related to the arrest and forcible removal of six Turkish citizens from the territory of Republic of Kosovo.

Mr. Mustafa Erdem, Department of Citizenship, Asylum and Migration (hereafter “DCAM”) on 23 March 2018 revoked the residence permit based on the Article 91 paragraph 1, sub-paragraph 1.4, paragraph 2, 3 and 4 of the Law No. 04/L-219 on Foreigners and Article 26 of the Administrative Instruction (MIA) No. 01/2014 On the Procedure of Issuance of Residence Permit for Foreigners and the Certificate for Notification of Work. Residence permit in the case of Mr. Erdem was valid until 31 February 2021. On 29 March, Department for Migration and Foreigners within the Kosovo Police, based on Article 6, 97 and 99, paragraph 2 of the Law No. 04/L219 and the Article 8, paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 on Returning of Foreigners with Illegal Residence in the Republic Of Kosovo, issued an Order on forcible removal of Mr. Erden, which was enforced the same day.

Mr. Hasan Huseyin Demir, on 23 of March 2018, DCAM revoked the residence permit based on the Article 66, paragraph 1, sub-paragraph 1.1 and Article 48, paragraph 1, sub-paragraph 1.6 of the Law No. 04/L-219 on Foreigners, Article 23 of the Administrative Instruction (MIA) No. 01/2014 on the Procedure of Issuance of Residence Permit for Foreigners and the Certificate for Notification of Work. Residence permit in the case of Mr. Demir was valid until 21 June 2018. On 29 March, Department for Migration and Foreigners within the Kosovo Police, based on Article 6, 97 and 99, paragraph 2 of the Law No. 04/L219 and the Article 8, paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 on Returning of Foreigners with Illegal Residence in the Republic Of Kosovo, issued an Order on forcible removal of Mr. Demir, enforced the same day.

Mr. Yusuf Karabina, on 23 March, the DCAM revoked the residence permit based on the Article 91, paragraph 1, sub-paragraph 1.4, paragraph 2, 3 and 4 of the Law No. 04/L-219 on Foreigners and the Article 26 Administrative Instruction (MIA) No. 01/2014 on the Procedure of Issuance of Residence Permit for Foreigners and the Certificate for Notification of Work. Residence permit in the case of Mr. Karabina was valid until 3 August 2022. On 29 March, Department for Migration and Foreigners within the Kosovo Police, based on Article 6, 97 and 99, paragraph 2 of the Law No. 04/L219 and the Article 8, paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 on Returning of Foreigners with Illegal Residence in the Republic Of Kosovo, issued an Order on

forcible removal of Mr. Karabina, enforced the same day.

In the case of Mr. **Cihan Özkan**, on 23 March 2018, DCAM revoked the residence permit based on the Article 66, paragraph 1, sub-paragraph 1.1 and Article 48, paragraph 1 sub-paragraph 1.6 of the Law No. 04/L-219 on Foreigners and the Article 23 of the Administrative Instruction (MIA) No. 01/2014 On the Procedure of Issuance of Residence Permit for Foreigners and the Certificate for Notification of Work. Residence permit in the case of Mr. Özkan was valid up to 21 September 2018. On 29 March, Department for Migration and Foreigners within the Kosovo Police, based on Article 6, 97 and 99, paragraph 2 of the Law No. 04/L219 and the Article 8, paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 on Returning of Foreigners with Illegal Residence in the Republic Of Kosovo, issued an Order on forcible removal of Mr. **Özkan**, enforced the same day.

Mr. Kahraman Demirez, on 23 March 2018, the DCAM revoked the residence permit based on the Article 91, paragraph 1, sub-paragraph 2, 3 and 4 of the Law No. 04/L-219 on Foreigners and the Article 26 Administrative Instruction (MIA) No. 01/2014 On the Procedure of Issuance of Residence Permit for Foreigners and the Certificate for Notification of Work. Residence permit in the case of Mr. Demirez was valid up to 23 February 2021. On 29 March, Department for Migration and Foreigners within the Kosovo Police, based on Article 6, 97 and 99, paragraph 2 of the Law No. 04/L219 and the Article 8, paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 on Returning of Foreigners with Illegal Residence in the Republic Of Kosovo, issued an Order on forcible removal of Mr. **Demirez**, which was enforced the same day.

Mr. Osman Karakaya, according to DCAM, his residence permit had expired two month ago and his request for its extension has not been approved due to the assessment conducted by responsible body and their reasoning that this person poses a risk for national security. On 29 March 2018, Department for Migration and Foreigners within the Kosovo Police, based on Article 6, 97 and 99, paragraph 2 of the Law No. 04/L219 and the Article 8, paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 on Returning of Foreigners with Illegal Residence in the Republic Of Kosovo, issued an Order on forcible removal of Mr. **Karakaya**, which was enforced the same day.

6. On 29 of March 2018, written and electronic media broadcasted the news that Kosovo Police has arrested and expelled from the territory of the Republic of Kosovo six Turkish citizens who were staying in the Republic of Kosovo on the basis of permanent and temporary residence permits issued by the Department of Citizenship, Asylum and Migration (hereafter “DCAM”).
7. The very same day, the media published a statement issued by DCAM which stated: *“...we as a competent body, during evidence administration have ascertained that, as per persons in question, there is sufficient legal basis to undertake measures for revocation of their residence permit in the territory of the Republic of Kosovo for the reasons determined by the Law on Foreigners, specifically by Article 6 of the law on rejection or revocation of residence permit for national security circumstances”* was stated in the

MIA statement".¹

8. On 30 March 2018, Department for International Legal Cooperation in Penal Matters of the Ministry of Justice informed the Ombudsperson that no procedures have been developed in this Department for extradition of arrested persons and forcible removal of the same from the territory of Republic of Kosovo.
9. On 29 March 2018, National Preventive Mechanism on Torture (hereinafter "NPM") of the Ombudsperson requested from the Detention Centre for Foreigners (hereinafter "DCF") to be informed whether the arrested persons were located there. In charge DCF official informed the NPM that the persons, subject of this concern, were not been brought to the "DCF"² at all.
10. On 29 March 2018 the Ombudsperson through e-mail requested from the Police of Kosovo and from DCAM to be informed about the case subject of this report. At the very same day, Ombudsperson's National Preventive Mechanism of Torture visited the Regional Detention Center in Prishtine (RDC)³ and obtained the information that the arrested persons were not there.
11. On 29 March 2018, the Journalists and Writers Foundation, through official e-mail, expressed to the Ombudsperson their deep concern and requested his assistance related to the arrest and expulsion of the six Turkish nationals from the territory of the Republic of Kosovo.
12. On 29 March 2018, Kosovo media published an article referring to the newspaper "Hurriyet" which revealed the fact that, Kosovo Intelligence Agency, in cooperation with the Turkish Intelligence Agency, have successfully carried out the arrest operation referring to the apprehension and expelling of persons from the territory of the Republic of Kosovo. The same media also published photographs of arrested persons.⁴
13. On March 30, 2018, the NPM visited the Regional Detention Center in Prishtine (RDC), in the course of which the monitoring team conducted a detailed inspection to verify whether the persons in question are located in this center or have been located there a day before. The monitoring team also reviewed all official records at the Detention Center and found that the apprehended persons were not in the center and have not even been brought there.
14. On 30 March 2018, the NPM held an official meeting with the Director of DCAM and from this department the NPM received the copies of DCAM's decisions for the revocation of residence permits in the Republic of Kosovo to the persons in question. During the meeting, the NMP requested submission of copies of the files for each

¹ See at: <http://www.gazetaexpress.com/lajme/keta-jane-6-shtetasit-qe-u-deportuan-me-kerkese-te-erdoganit-517803/>, (29 March 2018).

² Detention Centre for Foreigners (DCF) according to the Law on Foreigners, persons who are subject of forcible removal from the territory of Republic of Kosovo, ought to be accommodated in this Centre.

³ In Regional Detention Center, persons arrested by Kosovo Police are kept 48 hours and within this time limit they should be brought in front of the judge of the pre-trial procedure.

⁴ See at: <http://www.gazetaexpress.com/lajme/keta-jane-6-shtetasit-qe-u-deportuan-me-kerkese-te-erdoganit-517803/> (29.3.2018)

arrested person from DCAM.

15. On 30 March 2018, the NMP, by e-mail has requested from the Directorate for Migration and Foreigners within the Kosovo Police submission of relevant documents regarding the arrest and forcible removal of six Turkish nationals from the territory of the Republic of Kosovo.
16. On the same day, the NMP requested from General Directorate of Police an official meeting with the relevant Kosovo Police Officers in order to obtain relevant documents and to be informed with the applied procedures during the apprehension, forcible removal as well as location of these persons. The meeting did not take place but NPM was asked to set a meeting through a written request.
17. On 30 March 2018, at 14:00, the Directorate for Migration and Foreigners, through an official e-mail delivered to the NPMT "Forced removal decisions" from the territory of Republic of Kosovo for six Turkish citizens. In this occasion NPMT was also notified that the persons, subject of this concern, were escorted immediately by this Directory and the same day have been deported in the place of their origin.
18. On 30 March 2018, the Ombudsperson published the media statement, where among others have been pointed out: *"The Ombudsperson is deeply concerned with the situation created from the moment he obtained the information on apprehension of six Turkish citizens, who were legally residing in our country. Ongoing efforts have been made to ensure official information on their location and situation, the way how they have been arrested and the manner of their deportation to Turkey, but obtaining such information was not possible during yesterday and today's morning. Following the ongoing persistence of the Ombudsperson, the Kosovo Police (KP), actually the Directorate for Migration and Foreign National (DMF), today, on 30 March, 2018, at 14:00, has notified that DMF of KP, on 29 March 2018, has issued six orders for forced deportation of given citizens from the territory of the Republic of Kosovo to Turkey. Issuance of these force deportation orders was applied based on the Decisions of the Department for Citizenship, Asylum and Migration (DCAM) of MIA, which hold the date 23 March 2018, forwarded to the DMF on 28 March 2018. According to the KP's announcement, the citizens were apprehended on 29 March 2018 and were accompanied to the Pristina International Airport at the same day, from where they have been deported to their country of origin. During yesterday the Ombudsperson also contacted DCAM at the Ministry of Internal Affairs and requested to be informed whether the persons in question were briefly detained at the Detention Centre for foreigners but was informed that they were not brought there. While, during the day, from the same Department he has been notified on the fact that there were Decisions for the revocation of the residence permit for each person separately and copies of these Decisions were forwarded to him. Given the sensitivity and complexity of the case and the confusion of the authorities over responsibility line, the Ombudsperson has decided to initiate Ex officio case, to investigate thoroughly actions undertaken by public authorities. However, at this phase, the Ombudsperson claims that actions undertaken by public authorities are opposite with the international standards on human rights and fundamental freedoms, applicable in the*

national legal system of the Republic of Kosovo. The European Convention on Human Rights and Fundamental Freedoms and its Protocols explicitly stipulates procedural guarantees regarding the deportation of foreign citizens. Within the meaning of Article 3, Article 6, Article 8 and Article 13 of the ECHR, the same as well as the Basic Non-Refoulement Principle under the Refugee Convention of 1951, the responsibility rests with the competent state authorities regarding the situation created. Supremely, the guarantees of Article 3 (prohibition of torture and inhuman and degrading treatment) and Article 6 (right to a fair and regular trial) of the ECHR in democratic societies cannot be derogated even in extraordinary circumstances.

19. On 30 March 2018 the Ombudsperson, via an official e-mail, requested from Kosovo Intelligence Agency (KIA) submission of the evaluation report and recommendations of this Agency related to the given persons.
20. After the meeting with KIA representatives, the Ombudsperson was informed that the requested information is qualified as classified, stipulated in Article 4, paragraph 1.3.1 of the Law No. 03/L-178 Law on Classification of Information and Security Clearances.
21. According to Article 22, paragraph 2 of this Law, it is stipulated: *“Only the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Prime Minister are authorized to access classified information ...”*
22. Nevertheless, according to Article 7 of this Law, it’s stipulated that the competency for classification rests only with public institution which has produced the information. Paragraph 2 of this Article determines that the original competency for classification has the President of Republic of Kosovo, President of the Assembly, Prime, Minister, the Chair of the Kosovo Security Council, the Director of the Kosovo Intelligence Agency, the Director General of the Kosovo Police; the Commander of the Kosovo Security Force;
23. On 30 March 2018, after defense attorney’s request and the suspect of family members of those arrested that they are apprehended somewhere within the airport facilities, NPM monitoring team undertook a visit to the International Airport Prishtina in order to verify in case the arrested persons were kept there. Regardless persistence of the monitoring team to grant an access to all premises and documentations, the team was entirely denied the access and was unable to accomplish the task entrusted to it in compliance with the Constitution of Republic of Kosovo and the Law on Ombudsperson.
24. On 31 March 2018, the newspaper *Express* published an Article which referred to the statement of Prosecutor Reshat Millaku from the Special Prosecution, where he stated that several days ago the request for extradition from the Ministry of Justice of Kosovo has been served to them.⁵
25. Further in the newspaper article this prosecutor pointed out: *“We did not initiate investigations regarding this case. There was a request for extradition but we did not do*

⁵ Newspaper Express, 31 March 2018, for more info, see: <http://www.gazetaexpress.com/lajme/prokuroria-speciale-ne-refuzuam-ekstradimin-e-turqve-s-kemi-nisur-hetimet-518559/>, (5.4.2018)

as it has been requested from us. The request went through the Ministry of Justice of Turkey and the Ministry of Justice of our country. We did not undertake any action since, according to us, was not reasonable to act”.

26. On 3 April 2018, defense attorney of arrested persons and removed forcible from the territory of Republic of Kosovo informed the Ombudsperson that the Forced removal decisions of the Kosovo Police and the Decision for revocation of residential permit of the DCAM were not submitted to the defense attorney neither to the clients themselves.
27. On 4th of April 2018, the Ombudsperson had a meeting with officials of "Mehmet Akif" College who exposed their concerns regarding the destiny of their expelled colleagues in Turkey but also about their safety and of their family members, expressing their fear from deportation and handing over to Turkish authorities.
28. On 4 April 2018, the Ombudsperson again requested from DCAM submission of relevant documents regarding the extension of the residence permit of the expelled persons, the same request which has been asked during the meeting on 30 March 2018. On the same day, approximately at 15:00, DCAM submitted to the Ombudsperson's representative the requested documents.
29. On 5 April 2018, Ombudsperson's representatives had a meeting with the Special Prosecution of the Republic of Kosovo related to the allegations that on the address of this Prosecution a request for extradition has been served.
30. Mr. Millaku (Chief prosecutor) informed the Ombudsperson that on 27, actually 28 February 2018, Special Prosecution received from the Basic Court in Prishtina two requests from the Ministry of Justice of Turkey for extradition of two persons, who have been escorted by the Ministry of Justice of Republic of Kosovo, with an accompanying letter, initially, mistakenly – according to Mr. Millaku, to the Basic Court in Prishtina, on 26 February 2018.
31. According to Mr. Millaku, from the case files, it can be seen that the Ministry of Justice of Turkey, through its Embassy in Prishtina, has forwarded to the Ministry of Justice of Kosovo the request for extradition of two Turkish citizens (Mr. Kahraman Demirez and Mr. Yusuf Karabina) residing in Kosovo, related to the suspicions of committing criminal offence on terrorism. Always based on what was told by Mr. Millaku, each request was accompanied by accompanying documents of the Ministry of Justice of Kosovo, which were delivered to the Special Prosecution Office and no other requests existed.
32. According to Mr. Millaku, in the certain cases they act based on the Law on International Legal Co-operation in Criminal Matters. They have seen the requests, but used the legal provisions of this Law as the bases, which foresees cases when extradition proceedings are initiated and cases where extradition is not allowed. According to Mr. Millaku, being well informed and acquainted with the human rights situation in Turkey, as well as legal description that in which cases the extradition of foreigners is not allowed, they did not undertake any action.
33. On 6 April 2018, Ombudsperson representative, jointly with officials of the Office of United Nations High Commissioner for Human Rights met with the family members of

Turkish citizens forcibly removed from the territory of Republic of Kosovo.

Procedure within the Kosovo Police

34. The Ombudsperson from documents submitted observes that the General Directorate of Kosovo Police on 29 of March 2018 has issued the Forced Removal Order based on Article 6, 97 and 99, paragraph 2 of the Law on Foreigners 04/L-2019 and Article 8 paragraph 1 of the Administrative Instruction (MIA) No. 09/2014 On Returning of Foreigners With Illegal Residence in the Republic of Kosovo.
35. In the reasoning for each Forced Removal Order, the same reasons are given. Each decision stipulates that: *[further stay of this person in the Republic of Kosovo poses threat for security and public order of the state...]*.
36. In the same decisions it is emphasized that this act can be challenged by appeal to the Commission for Reviewing Complaints for Foreigners within 8 (eight) days from the day of its admission. The complaint is filed in person or through legal representative. The decision also states expressly that the complaint does not hinder execution of this decision.

LEGAL INSTRUMENTS APPLICABLE IN THE REPUBLIC OF KOSOVO

CONSTITUTION OF REPUBLIC OF KOSOVO

37. Human rights and fundamental freedoms are guaranteed by the Constitution of Republic of Kosovo as highest legal and political act. A number of international Conventions relevant to the protection of human rights are incorporated in Article 22 of the Constitution of the Republic of Kosovo and in case of conflict prevail over provisions of laws and other acts of public institutions in the Republic of Kosovo.⁶
38. Constitution of Republic of Kosovo in Article 27 explicitly stipulates:
*“No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment”.*⁷

39. While Article 29 (Right to Liberty and Security), stipulates as follows:

Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:

1.

- (1) pursuant to a sentence of imprisonment for committing a criminal act;;*
- (2) for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law;*
- (3) for the purpose of educational supervision of a minor or for the purpose of bringing the minor before a competent institution in accordance with a lawful order;*
- (4) for the purpose of medical supervision of a person who because of disease represents a danger to society;*

⁶ Constitution of Republic of Kosovo, Article 22.

⁷ Constitution of Republic of Kosovo, Article 27.

(5) for illegal entry into the Republic of Kosovo or pursuant to a lawful order of expulsion or extradition.

40. Article 29, paragraph 2 of the Constitution of Republic of Kosovo explicitly determines:
“Everyone who is deprived of liberty shall be promptly informed, in a language he/she understands, of the reasons of deprivation. The written notice on the reasons of deprivation shall be provided as soon as possible. Everyone who is deprived of liberty without a court order shall be brought within forty-eight (48) hours before a judge who decides on her/his detention or release not later than forty-eight (48) hours from the moment the detained person is brought before the court. Everyone who is arrested shall be entitled to trial within a reasonable time and to release pending trial, unless the judge concludes that the person is a danger to the community or presents a substantial risk of fleeing before trial”.
41. Article 29 paragraph 3: *“Everyone who is deprived of liberty shall be promptly informed of his/her right not to make any statements, right to defense counsel of her/his choosing, and the right to promptly communicate with a person of his/her choosing.”.*
42. Article 29, paragraph 4: *“Everyone who is deprived of liberty by arrest or detention enjoys the right to use legal remedies to challenge the lawfulness of the arrest or detention. The case shall be speedily decided by a court and release shall be ordered if the arrest or detention is determined to be unlawful”.*
43. Article 29, paragraph 5: *“Everyone who has been detained or arrested in contradiction with the provisions of this article has a right to compensation in a manner provided by law”.*
44. Article 29, paragraph 6: *“An individual who is sentenced has the right to challenge the conditions of detention in a manner provided by law”.*
45. Article 30 of the Constitution of Republic of Kosovo guarantees the Rights of Accused. According to this Article everyone charged with a criminal offense shall enjoy the following minimum rights:
- (1) to be promptly informed, in a language that she/he understands, of the nature and cause of the accusation against him/her;*
 - (2) to be promptly informed of her/his rights according to law;*
 - (3) to have adequate time, facilities and remedies for the preparation of his/her defense;*
 - (4) to have free assistance of an interpreter if she/he cannot understand or speak the language used in court;*
 - (5) to have assistance of legal counsel of his/her choosing, to freely communicate with counsel and if she/he does not have sufficient means, to be provided free counsel;*
 - (6) to not be forced to testify against oneself or admit one’s guilt.*
46. Additionally, the Constitution of Republic of Kosovo protects the Right to Fair and

Impartial Trial as well as the right to Legal Remedies.⁸

Law No. 04/L-219 on Foreigners

47. The purpose of this Law is to regulate the conditions of entry, movement, residence and employment of foreigners in the territory of the Republic of Kosovo.⁹ Turkish nationals expelled from the territory of the Republic of Kosovo were provided with a permanent and temporary residence permit.
48. Article 91 of the Law No. 04/L-219 on Foreigners foresees situations when the foreigners are revoked the residence permit. According to this Article the residence permit is revoked to the foreigner if: *has an entry and residence ban in the Republic of Kosovo, resides outside of Republic of Kosovo uninterruptedly for over one (1) year determined that consciously has given false information or consciously concealed his intentions and circumstances which were significant for his/her permanent residence; constitutes a threat to public order, state security or public health; such is requested upon his/her request.;*
49. Further, paragraph 2 of the Article 91 explicitly stipulates that a decision for revocation of residence permit shall issue DCAM. While according to paragraph 3 of this Article the decision for termination of a permanent residence permit can be issued without a hearing of the foreigner.
50. **Against a decision for revocation of permanent residence permit cannot be appealed, however an administrative dispute may be initiated at Basic court.**¹⁰
51. Article 98 of the Law No. 04/L-219 on Foreigners determines the manner and the institution to which the foreigner subject of this forced removal order can address his/her appeal. According to paragraph 1 of this Article: *“The foreigner has the right to appeal within eight (8) days after receipt of removal order by force at the Appeals Commission. Commission should resolve the issue within fifteen (15) days of the receipt of an appeal. The appeal against the decision on the removal by force, does not suspend the execution of the warrant removal by force”.*
52. Paragraph 2 of this Article explicitly stipulates *“In cases where the foreigner is dissatisfied with the decision of the Appeals Commission then may lodge an administrative dispute to the Basic Court within eight (8) days of the receipt of the decision. The court should resolve the issue referred to in this paragraph within sixty (60) days of the receipt of the appeal”.*

Procedures of removal order enforcement

53. Article 99 of the Law on Foreigners stipulates that DCAM is the competent department which issues the removal order, while this order is enforced by the Border Police which, in the meaning of this Article of the Law on Foreigners, undertakes the following

⁸ Constitution of Republic of Kosovo, Article 31 [Right to Fair and Impartial Trial]. Article 32 [The Right to Legal Remedies].

⁹ Law No. 04/L-219 on Foreigners, Article 1.

¹⁰ Law No. 04/L-219 on Foreigners, Article 91, paragraph 4.

measures: *undertakes measures to keep the foreigner in a detention center, or for the application of temporary measures specified in this law, until the removal order is enforced; takes fingerprints and palm of the hand of the foreigner, photograph and biometric data; registers the removal order in relevant data bases, stating the period of prohibition of entry into the Republic of Kosovo and the border crossing point of departure of the foreigner; initiates undertaking of measures for the supply with the travel paper and ensures the return to the country of origin and a travel ticket.*

54. While paragraph 2 of Article 99 of the Law on Foreigners explicitly stipulate that the Removal order shall be enforced immediately, in case the presence of the foreigner constitutes a threat to public order and state security.
55. **As pointed out in paragraph 9 of this Report, on the day when the Turkish citizens' were arrested and expelled, the Ombudsperson was informed that they were not brought to the Detention Center for Foreigners.**

Law No. 04/L-213 on International Legal Cooperation in Criminal Matters

56. Article 18 of the Law No. 04/L-213 on International Legal Cooperation in Criminal Matters foresees that the procedure for deportation is initiated based on the written requests addressed to the Ministry.
57. Article 1 of this Law explicitly determines the purpose of this Law: *“This law establishes the conditions and procedures for international legal cooperation in criminal matters between the Republic of Kosovo and other states, unless otherwise provided by international agreements”*.
58. Further, Articles 14, 15, 16 and 17 of this Law determines the cases when the extradition is not permitted. Article 14, paragraph 1 explicitly stipulates: *“Extradition shall not be permitted if the offence upon which the request is based is a political offence or an offence connected to a political offence”*.
59. Article 15: *“Extradition shall not be permitted for criminal offences under military law which are not criminal offences under ordinary criminal law”*.
60. Article 16 paragraph 1(Death penalty and lifelong imprisonment): *“Extradition is not permitted for criminal offences which under the law of the requesting state are punishable by the death penalty, unless the requesting state gives assurances which are considered sufficient that the death penalty will not be imposed or carried out.”*
61. Article 16 paragraph 2: *“Extradition may not be permitted if the offence upon which the request is based is, under the law of the requesting State, punishable by life imprisonment or other custodial sanction for life, or if the person sought was sentenced to such a punishment and there is no review of the punishment or sanction either upon request or proprio motu after a period of no longer than twenty (20) years”*.

62. Article 17 explicitly stipulates the cases when the extradition is not permitted based on

the non-discriminatory close and other human rights standards: *“Extradition shall not be permitted if there are reasonable grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person because of his/her race, religion, gender, nationality, political opinions, ethnicity, language, disability, sexual orientation, association in any social group, or if the person’s position in society may be prejudiced for any of these reasons”*.

63. Article 17 paragraph 2 bans the extradition: *“Extradition shall not be permitted if there are reasonable grounds to believe that the person sought for extradition may be subjected to torture or to cruel, inhuman, or degrading treatment or punishment”*.

64. Article 17 paragraph 3: *“Extradition shall not be permitted if there are reasons to believe that the person will not be provided with the minimum guarantees for a fair trial as provided for by the Constitution of the Republic of Kosovo, in the requesting state”*.

65. While Article 17, paragraph 6 explicitly stipulates: *“Extradition shall not be permitted for any other grounded reason which would account for a violation of the international law or other human rights standards”*.

Universal Declaration of Human Rights

66. The Universal Declaration of Human Rights, adopted by the Assembly of the United Nations in 1948, is one of the international instruments for the protection of human rights, which is encompassed in Article 22 of the Constitution of the Republic of Kosovo. Article 5 of this statement deliberately states: *“No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment”*.

67. Article 8 determines: *“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”*.

68. Article 9: *“No one shall be subjected to arbitrary arrest, detention or exile”*.

69. Article 10: *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”*.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

70. Article 3 paragraph 1: *“No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”*.

71. Article 3 paragraph 2: *“For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”*

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

72. The International Covenant on Civil and Political Rights is also one of core international instruments for human rights protection and is also enshrined in Article 22 of the Constitution of the Republic of Kosovo and is the part of the legal and constitutional system of country.
73. Article 7 of this Convent plainly points out that: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”*.
74. Article 9, paragraph 1: *“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”*.
75. Article 9, paragraph 2: *“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”*.
76. Article 13: *“An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority”*.

EUROPEAN CONVENTION ON HUMAN RIGHTS AND ITS PROTOCOLS

77. The European Convention on Human Rights (hereinafter "ECHR") as one of the most important international instruments on human rights protection is also the part of the constitutional and legal system in the Republic of Kosovo and prevails over the provisions of the laws and acts adopted by public institutions in the Republic of Kosovo.
78. Article 5, paragraph 2 of the ECHR explicitly stipulates: *“Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him”*.
79. Article 3 of the ECHR: *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”*.
80. Article 1 paragraph 1 of Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms expressly provides:
1. *An individual non-national lawfully resident in the territory of a State shall not be expelled except by a lawful decision and subject to a right:*
 - (a) *to submit reasons against his or her expulsion;*
 - (b) *to have his or her case reviewed;*
 - (c) *to be represented for this purpose before the competent authority.*

Assessment and findings of the Ombudsperson

81. The Ombudsperson observes that in the present case the competent authorities undertook actions of forcible removal of foreigners, subject of this Report, without the coordination between institutions on the basis of their entrusted mandates as well as lack of transparency, which is the main principle of good governance in one country.
82. From the information obtained so far it is obvious that the persons removed forcibly from the territory of the Republic of Kosovo were handed over to the Turkish police authorities, who immediately arrested them and charged with committing of criminal offence of terrorism.
83. Pursuant to Article 3.1.26 of the Law no. 04/L-219 on Foreigners, forceful removal is defined as follows: “the enforcement of the obligation to return, namely the physical transportation out of the Republic of Kosovo”.
84. Also, based on the meeting between the Ombudsperson`s representatives and Special Prosecution Chief, it transpires that the Special Prosecution received from the Basic Court in Prishtina two requests from the Ministry of Justice of Turkey for extradition of two persons which were removed together with others. Requests were forwarded through the Ministry of Justice of Kosovo through a cover letter on 26 February 2018.
85. Further, according to the Chief Prosecutor, the Ministry of Justice of Turkey through its embassy in Prishtina forwarded to the Ministry of Justice of Kosovo a request for extradition of two Turkish citizens (Mr. Kahraman Demirez and Mr. Yusuf Karabina), residing in Kosovo, in connection to commission of criminal offence of terrorism.
86. The Ombudsperson estimates that in such cases shall be applied extradition procedures stipulated by the Law No. 04/L-213 on International Legal Cooperation in Criminal Matters. This law stipulates clearly procedures, obligations and actions to be followed by the competent authorities until the final decision on extradition of a person upon the request of another State.
87. Thus, the foreigners which were removed are deprived of the rights to be heard and tried by competent public authority. This right safeguarded by the Constitution of the Republic of Kosovo, Universal Declaration on Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, Covenant on Civil and Political Rights, as well as with the ECHR (European Court of Human Rights). All these international instruments are part of constitutional and legal system of the Republic of Kosovo and have priority over provisions of laws and other acts of public institutions in the case of conflict.
88. On the day when the arrest occurred, Kosovo Police, as responsible body mandated for deprivation of people from liberty, was not in the position or plainly didn't want to provide concrete information on the location of persons deprived of liberty, for which media, written and electronic, were reporting on their apprehension. Moreover, such information was denied to the Ombudsperson whose mandate is protection of fundamental rights and freedoms, especially of arrested persons as they are considered as

vulnerable category, being completely under the control of the authorities and the freedom of movement is fully banned while in arrest.

89. Additionally, on the day of the arrest, fundamental rights guaranteed by the Constitution of the Republic of Kosovo, the Law on Police, and all international standards for the protection of the rights of the arrested persons were completely denied to the expelled persons. These rights are: the right to have an attorney, the right to have a doctor, as well as the right to notify the family or the person on their desire about the fact that they are deprived of their liberty. These rights are considered fundamental guarantees against ill-treatment.
90. European Committee for the Prevention of Torture as well, in standards set, considers these fundamental rights as the main guarantee versus physical ill-treatment of arrested persons.¹¹
91. Complete denial of these rights places the arrested person at risk to be ill-treated or physical abused. On the day of the arrest, neither attorneys nor the family members of the arrested were informed on the location of the arrested persons.
92. Decisions for forced removal from the territory of the Republic of Kosovo and the revocation of residence permits were not delivered to forcibly removed persons and their defense counsels. The Ombudsperson, as in other cases, reiterates that the denial of the right to exercise legal remedies is a serious violation of human rights guaranteed by the Constitution of the Republic of Kosovo, Laws at force and all international standards on protection of human rights and fundamental freedoms.

Case law of the European Court of Human Rights

93. Article 53 of the Constitution of the Republic of Kosovo stipulates as follows: “*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*”.
94. The ECHR particularly and plainly pointed out that States under no circumstances can expel a foreigner in the territory of a state where he/she may be exposed to the risk of being physically tortured and ill-treated. The Court emphasized that this prohibition in Article 3 of the Convention is of the absolute character and is also being applied in “*in time of war or other public emergency threatening the life of the nation*”.
95. Also, in the case of *Saadi versus Italy*, the Grand Chamber of the European Court of Human Rights unanimously reaffirms the absolute character of the prohibition of torture, inhuman or degrading treatment or punishment guaranteed by Article 3 of the ECHR. In the given case, the ECtHR ruled that the decision of the Italian government to deport a suspect for terrorism in Tunisia, where he would face the real risk of torture, would constitute a violation of Article 3 of the ECHR.¹²

¹¹ European Committee on Prevention of Torture, 2nd General Report published on 1992, at: <https://rm.coe.int/16806cea2f>, (5.4.2018)

¹² European Court of Human Rights, Grand Chamber, *Saadi v. Italy*, Application no. [37201/06](https://hudoc.echr.coe.int/eng#%7B%22respondent%22:%5B%22ITA%22%2C%22documentcollectionid%22:%5B%22GRA%22%2C%22applicationno%22:%5B%223720106%22%5D%7D), 28 February 2008, at: <https://hudoc.echr.coe.int/eng#%7B%22respondent%22:%5B%22ITA%22%2C%22documentcollectionid%22:%5B%22GRA%22%2C%22applicationno%22:%5B%223720106%22%5D%7D>

96. Notwithstanding the prohibition in Article 15 (2) of the ECHR of each derogation from Article 3, Court's decision is important in the meaning of allegations of some States that since events of September 2001, that as results of the efforts to ensure safer environment for citizens and to combat international terrorism, protection of some fundamental rights ought to be balanced in relation to concerns on national security.
97. The Court rejected the given allegations and strongly reaffirmed the principle that under no circumstances, including the threat of terrorism, exposing of one individual to a serious risk of grave human rights violations cannot be justified.
98. In the case of *Chahal v. The United Kingdom*, in which the deporting State claimed that the deported posed a threat to national security and that he had to be deported to India, the ECtHR assessed that the state's security interests could not be taken in consideration in determining whether the State signing party has violated the convention.¹³ The Court found that the prohibition in Article 3 against torture, inhuman or degrading treatment or punishment, compared with other articles, is of absolute character. Moreover, the prohibition in Article 3, according to ECHR, applies "*in time of war or other public emergency threatening the life of the nation*".
99. In the course of deciding in the given case, the ECtHR took into consideration International Reports for the situation of human rights in India, where the given person have to be deported. In the Report of Special Rapporteur against Torture for India for 1995 was emphasized: "*It is apparent that few incidents, in what is credibly alleged to be a widespread, if not endemic, phenomenon are prosecuted and even fewer lead to conviction of the perpetrators. It is to be noted that very many cases that come to the attention of the Special Rapporteur are those that result in death, in other words, those where torture may have been applied with the most extreme results.*"¹⁴
100. Also, the Court took into account the US State Department's Report on human rights in India, pointing out different violations and persecutions conducted to militants *Sikh*.¹⁵
101. Article 100 of the Law No. 04/L-219 on Foreigners foresees the cases when person shall not be forcibly removed from the territory of Republic of Kosovo. One among them is that reasonable doubt that the foreigner, in his/her country of origin or in another country,

[NDCHAMBER%22.%22CHAMBER%22.%22DECGRANDCHAMBER%22\],%22violation%22:\[%223%22\],%22itemid%22:\[%22001-85276%22\]}}](#), (4.4.2018)

¹³ European Court of Human Rights, *Chahal v. United Kingdom*, Application no. [22414/93](#), 15 November 1996, at:

¹⁴ ¹⁴ European Court of Human Rights, *Chahal v. United Kingdom*, Application no. [22414/93](#), 15 November 1996, paragraph 51, at:

¹⁵ ¹⁵ European Court of Human Rights, *Chahal v. United Kingdom*, Application no. [22414/93](#), 15 November 1996, paragraph 53, at:

shall be subject to torture, inhuman or degrading treatment or punishment for discriminatory reasons.

102. But, the Ombudsperson notes that the paragraph 2 of Article 100 of the Law No. 04/L-219 on Foreigners deprives the foreigner of the guarantee not to be expelled in a state where he may be subjected to torture, physical ill-treatment and serious restriction of other rights, calling upon national security reasons. This paragraph explicitly requires:

“Exceptionally, a foreigner may be removed, even though he meets the conditions referred to in paragraph 1. of this Article, if his/her residence threatens public order and security, and constitutes a threat to national security ”.

103. The Ombudsperson evaluates that this provision of the Law no. 04 / L-219 on Foreigners institutes enough space for State’s arbitrary actions and is not in harmony with the Constitution of the Republic of Kosovo and other international human rights instruments on human rights which are part of the legal and constitutional system in our country as well as with the ECtHR judicial practice of the.

104. The Ombudsperson is of the opinion that the authorities of the Republic of Kosovo, who expelled the given foreigners, fail to conduct an assessment on guarantees against physical ill-treatment and torture in the country of their origin, in this case Turkey.

International Organizations Reports related to human rights situation in Turkey

“Amnesty International” Report of 2017/2018¹⁶

105. The Ombudsperson observes that in its Report the *Amnesty International* reports that the ongoing state of emergency declared in 2016, following the failed coup attempt, has set a backdrop for violations of human rights. According to *Amnesty International*, the dissent was ruthlessly suppressed, with journalists, political activists and human rights defenders among those targeted. Instances of torture continued to be reported, but in lower numbers than in the weeks following the coup attempt of July 2016.

106. *Amnesty International* further points out that effective investigation of human rights violations was prevented due to widespread impunity. The state of emergency, imposed following an attempted coup paved the way for unlawful restrictions on human rights and allowed the government to pass laws beyond the effective scrutiny of Parliament and the courts.

107. According to this Report over 50,000 people were in pre-trial detention on charges linked to membership of the “Fethullahist Terrorist Organization” (FETÖ), which the Turkish authorities blamed for the 2016 coup attempt. The Report features serious violations of freedom of expression, pre-trial detention of over 100 journalists, imprisonment of 10 human rights defenders, violations of the right to freedom of public gatherings.

108. Under emergency decrees, public sector workers continued to face summary

¹⁶ Amnesty International Report 2017/2018, Turkey, at: <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>, (4.4.2018)

dismissal for alleged unspecified links to terrorist groups. Nearly 20,000 workers were dismissed during the course of the year, bringing the total number since July 2016 to 107,000.

109. Further, *Amnesty International* reveals its deep concern about the fact that Turkish authorities continued to deny permission for the European Committee for the Prevention of Torture to publish its report on the visit conducted to Turkey in 2016 and 2017.¹⁷
110. *Amnesty International* also stresses that there is no effective national preventive mechanism with a mandate for monitoring places where people deprived of liberty are placed. Based on the Report there were no available statistics regarding investigations into allegations of torture as well as there were no evidence that allegations of torture were being effectively investigated.

**Office of the United Nations High Commissioner for Human Rights
Report on the impact of the state of emergency on human rights in Turkey, for the period January- December 2017¹⁸**

111. Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) related to the impact of the state of emergency on human rights in Turkey for the period January- December 2017, in paragraph 2 of the executive summary is stated: “*OHCHR recognizes the complex situation that Turkey has been facing by addressing the 15 July 2016 attempted coup and dealing with a number of terrorist attacks. However, OHCHR is seriously concerned at the adverse effects on the enjoyment of human rights of numerous measures taken following the declaration of the state of emergency*”.
112. Further in paragraph 3 of the Report is pointed that on 21 July 2016, the Government of Turkey notified the United Nations Secretary-General of its derogation from several of its obligations under the International Covenant on Civil and Political Rights, actually Articles 2, 3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27.
113. According to this Report, on 21 July 2016, decrees for state of emergency were promulgated bypassing parliamentary scrutiny and circumventing the Constitutional Court’s appeal. Paragraph 7 of this Report reads: “*Credible information gathered by OHCHR indicates interference of the executive with the work of the judiciary and curtailment of parliamentary oversight over the executive branch of Government; arbitrary mass dismissals of civil servants and private sector employees; arbitrary closure of civil society organizations, including prominent human rights non-governmental organizations (NGOs) and media; arbitrary detention of people arrested under state of emergency measures; the use of torture and ill-treatment during pretrial detention; restrictions of the rights to freedoms of expression and of movement; arbitrary expropriation of private property; and methods of collective punishment targeting family members of individuals suspected of offences under the state of emergency.*”

¹⁷ For additional information, see the web page of the European Committee on the Prevention of Torture where is stated that Reports on the visits to Turkey in 2016 and 2017 have not yet been published: <https://www.coe.int/en/web/cpt/turkey>, (5.4.2018)

¹⁸ Office of the United Nations High Commissioner for Human Rights at: http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf, (5.4.2018)

114. **Therefore, the Ombudsperson estimates that authorities of the Republic of Kosovo by forcibly removing them have exposed them to a real risk to be tortured, physically ill-treated and real risk of serious violations of other rights guaranteed by international instruments for the protection of human rights.**

115. As a result, in the present case the Ombudsperson finds that the competent authorities have violated the following:

- Article 29 paragraph 2, 3 and 4 of the Constitution of Republic of Kosovo [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies]
- Article 14, paragraph 1, Article 15, Article 16 paragraph 1 and 2, Article 17, paragraph 2 and 6 Law No. 04/L-213 on International Legal Cooperation in Criminal Matters
- Article 8 and 10 of the Universal Declaration on Human Rights
- Article 9, paragraph 1 and 2, Article 13 of the International Convent on Civil and Political Rights
- Article 2 and 3 of the European Convention on Human Rights and Fundamental Freedoms
- Article 1 paragraph 1 of the Protocol No. 7 of the European Convention on Human Rights and Fundamental Freedoms
- Article 3 paragraph 1 and paragraph 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Based on these findings and pursuant to the Article 135 paragraph 3 of the Constitution of the Republic of Kosovo, and Article 18 paragraph 1, sub-paragraph 7 of Law No. 05 / L019 on Ombudsperson, the Ombudsperson recommends:

The Ministry of Internal Affairs and the Ministry of Justice

- In the course of assessment of the status of foreigners in our country, to carefully enforce all guarantees and procedures guaranteed by the Constitution of the Republic of Kosovo and the International Conventions, either for granting a residence permit, removal or extradition.

The Ministry of Internal Affairs

- To explicitly inform its staff as per constitutional and legal powers of the Ombudsperson concerning unannounced access to any place and at any time to the places where persons deprived of their liberty are kept or may be kept.
- The Government of the Republic of Kosovo to allocate appropriate non-material compensation, as a goodwill and recognition of human rights violations in the spirit of Article 41 of the ECHR.

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo (*“Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law”*) and Article 28 of the Law No.05/L-019 on Ombudsperson, (*“Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions,... must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question”*), You are kindly asked to inform us on steps to be undertaken in the future by You regarding this issue.

Respectfully submitted,

Hilmi Jashari
Ombudsperson