



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

---

**REPORT WITH RECOMMENDATIONS**

**OF THE OMBUDSPERSON OF REPUBLIC OF KOSOVO**

**Ex-officio**  
**Case No.514/2016**

Related to the issue of children in street situation

**For:** Mr. Skender Reçica, Minister  
Ministry of Labour and Social Welfare

Mr. Shyqiri Bytyçi, Minister  
Ministry of Education, Science and Technology

Mr. Rashit Qalaj, General Director  
Kosovo Police

**Copy:** Ms. Duda Balje, President  
Committee on Human Rights, Gender Equality, Missing Persons and Petitions

Mr. Habit Hajredini, Director,  
Office of Good Governance / Office of Prime Minister of Republic of Kosovo

Prishtinë, 22 May 2019

## PURPOSE OF THE REPORT

1. This report aims to (a) analyze the phenomenon of children in street situation, (b) to identify violation of children's rights, as well as (c) to draw attention of responsible institutions to take appropriate action in order to protect children in street situation.

## LEGAL BASES

2. The Ombudsperson, among others, pursuant to the Constitution of Republic of Kosovo (henceforth: Constitution) and the Law No. 05/L-019, on Ombudsperson, Official Gazette of Republic of Kosovo / No. 16 / 26 June 2015, Prishtinë (hereinafter: Law on Ombudsperson) has the following powers and responsibilities:
  - 2.1 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; (Article 135 paragraph 3 of the Constitution );
  - 2.2 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; (Article 18, paragraph 1, sub-paragraph 1.2 of the Law on Ombudsperson );
  - 2.3 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; (Article 18, paragraph 1, sub-paragraph 1.5 of the Law on Ombudsperson);
  - 2.4 to publish notifications, opinions, recommendations, proposals and his/her own reports; (Article 18, paragraph 1, sub-paragraph 1.6 of the Law on Ombudsperson);
  - 2.5 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; (Article 18, paragraph 1, sub-paragraph 1.7 of the Law on Ombudsperson);
  - 2.6 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; (Article 18, paragraph 1, sub-paragraph 1.8 of the Law on Ombudsperson)t).
3. The Ombudsperson delivers this Report to responsible institutions as well as publishes it on its official webpage in order to evade violations of human rights as well as to respect laws at effect in accordance with the rule of law principle.

## SUMMARY OF FACTS

### APPLICABLE PROVISIONS RELATED TO THE SUBJECT MATTER

4. According to Article 21 (2) of the Constitution: *“The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.”*. Article 28 stipulates: *“1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced labor. (...) 3. Trafficking in persons is forbidden”*. Additionally, according to Article 50: *“1. Children enjoy the right to protection and care necessary for their wellbeing. (...) 3. Every child enjoys the right to be protected from violence, maltreatment and exploitation. 4. All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.”*
5. While Article 22 of the Constitution stipulates that *“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are 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: “(1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (...) (7) Convention on the Rights of the Child; (...)”* and Article 53 *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*
6. Convention on the Rights of the Child (henceforth: CRC) in Article 19 determines: *“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.. (...)”*.
7. CRC, in Article 20 stipulates: *“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.(...).*
8. CRC, in Article 24 stipulates: *“1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. (...) . (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;(..)”*.
9. CRC, in Article 27 stipulates: *“1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.(..)”*.

10. CRC, in Article 28 reads: *“1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:....)”*.
11. CRC, in Article 29 reads: *“ States Parties agree that the education of the child shall be directed to:(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.*
12. Further, CRC, in Article 32 stipulates: *“1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (...)”*.
13. CRC, in Article 34 stipulates: *“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.(...)”*.
14. CRC, in Article 35 determines: *“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”*
15. CRC, in Article 39 stipulates: *“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”*
16. Code No. 06/L-074 Criminal Code of the Republic of Kosovo<sup>1</sup>, Official Gazette of Republic of Kosovo / No. 2 / 14 January 2019, Prishtinë (henceforward: Code), Article 113 paragraph 39, has determined: *“Vulnerable victim - is a victim of a crime who is a child, a physically or mentally handicapped person, a person suffering from diminished capacity, a pregnant woman, the elderly or a person whose relationship to and dependence on the offender make them particularly vulnerable to repeat victimization, intimidation or retaliation.”*
17. Code, Article 163 (Slavery, slavery-like conditions and forced labour) defines as follows: *“1. Whoever, in violation of international law holds, maintains, places, purchases, or sells another person in slavery, slavery-like conditions, servitude or forced or compulsory labour,*

---

<sup>1</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

*which includes, but is not limited to, holding a person in ownership, denying a person the fruits of his or her labour, coercing a person to provide their labour or denying a person the freedom to change his or her status or work conditions, shall be punished by fine and imprisonment of two (2) to ten (10) years. 2. Whoever, in violation of international law including the European Convention of Human Rights, for the purpose of committing the offenses provided for in paragraph 1. of this Article incites another person to renounce his or her freedom or brokers in the buying or selling of another person, shall be punished as provided for in paragraph 1. of this Article 3. When the offense provided for in paragraph 1. or 2. of this Article is committed against a person with whom the perpetrator has a domestic relationship, the perpetrator shall be punished by imprisonment of three (3) to ten (10) years. 4. .When the offense provided for in paragraph 1. or 2. of this Article is committed against a child, the perpetrator shall be punished by imprisonment of three (3) to fifteen (15) years.”*

18. Code, Article 165 (Trafficking in persons) defines: *“1. Whoever engages in trafficking in persons shall be punished by a fine and imprisonment of five (5) to twelve (12) years.(...)”*
19. Code, Article 243 (Mistreating or abandoning a child) determines: *“1. A parent, adoptive parent, guardian or another person exercising parental authority over a child who mistreats such child using physical or mental measures or violates his or her obligation to care for and educate the child shall be punished (....) 4. A parent, adoptive parent, guardian or another person exercising parental authority over a child who compels such child to work excessively or to perform work that is not suitable for the age of the child or compels such child to beg for money or other material gain, or compels such child to engage in other activities that endanger or damage the child’s development shall be punished (....).”*
20. Code, Article 244 (Violating family obligations) stipulate as follows: *“1. . Whoever violates his or her legal family obligations leaving a family member who is incapable taking care of himself or herself shall be punished (...) 2. When the offense provided for in paragraph 1. of this Article involves a child, the perpetrator shall be punished (...).”*
21. Code, Article 247 (Failure to report child abuse) stipulate as follows: *“1. Notwithstanding other provisions of law, whoever has reason to suspect that a child has suffered an incident of child abuse, mistreatment, abandonment or neglect, and fails to immediately report the abuse or neglect shall be punished (...) 3. Whoever while engaged in a professional capacity related to the child, has reason to suspect that a child has suffered an incident of child abuse, mistreatment, abandonment or neglect or has been subjected to violence or a threat of violence and fails to immediately report it, shall be punished (...).”*
22. The Law no. 04/l-218 on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking foresees specific provisions where children are victims.
23. Law No.03/L-212 on Labour in Article 7 defines: *An employment relationship may be concluded by any person of eighteen (18) years of age or above. 2. An employment relationship may also be established with a person between fifteen (15) and eighteen (18) years of age, who may be employed for easy labour that do not represent a risk to their health or development and if such a labour is not prohibited by any Law or sub-legal act”*.

## CHILDREN IN STREET SITUATION

24. For the purpose of this Report the term “**children in street situation**” is used in conformity with recommendations of the CRC Committee on the Rights of the Child and includes: “(a) children who depend on the streets to live and/or work, whether alone, with peers or with family; and (b) a wider population of children who have formed strong connections with public spaces and for whom the street plays a vital role in their everyday lives and identities. This wider population includes children who periodically, but not always, live and/or work on the streets and children who do not live or work on the streets but who regularly accompany their peers, siblings or family in the streets. Concerning children in street situations, “being in public spaces” is understood to include spending a significant amount of time on streets or in street markets, public parks, public community spaces, squares and bus and train stations. It does not include public buildings such as schools, hospitals or other comparable institutions.”<sup>2</sup> While the term “**child labour**” includes: “all activities that deprive children of their childhood, their potentials and dignity and impair their education, health, physical and mental development. It refers to the works: hazardous and dangerous for health physical and mental health, social or mental development of children; hindering their education by depriving them of any education; forcing them to give up school prematurely; asking them to try to combine attending school with difficult jobs and long hours.”<sup>3</sup>
25. In Kosovo, as well as in many countries of the world, a part of children’s community comprises children in street situation. We see them alone in street or in groups, among other things, cleaning windscreens, selling small things, begging or looking for different things in garbage containers. Their involvement in these activities harms their health, development and well-being, places them on risk to be exposed towards violence, sexual abuse, exploitation and trafficking.
26. The exact number of such children is unknown. On national level there are no official, inclusive information for children in street situation, which would provide a clear and complete picture of their number and status. Identification of such cases by state bodies is not easy, many of them are on move, some of them cannot be identified due to lack of personal documents and the fact that they are not registered in birth registers. Failure of their identification, lack of data about them, on one hand, makes them “invisible” before the law, deprives them from enjoyment of the rights guaranteed by the applicable legislation, including health care, education and social services. On the other hand, lack of above stated facts makes difficult and hinders the work of state institutions in the development of adequate and effective policies for the protection and realization of rights of such children.
27. According to the Kosovo Police, “although there are no accurate evidences of children and persons in street situation, statistics show approximately the number of persons generally involved in begging phenomenon, even though in many cases same persons have been identified.” According to them, during 2016, Kosovo Police has identified and removed 215

---

<sup>2</sup> United Nations, Committee on the Rights of the Child, General comment No.21 (2017) on children in street situations.

<sup>3</sup> The International Labour Organization (ILO), 138 Minimum Age Convention, Geneva,1973.

children from street, 200 children has been removed from the street during 2017, while 50 of them during the period January-April 2018. In the response provided to OI, it is stated that the activities accomplished for their identification and removal have been undertaken in cooperation with Centers for Social Work (CSWs), Non-Governmental Organizations (NGOs) and the Ministry of Internal Affairs. Also, according to information provided by Kosovo Police, the Directorate for Investigation of Trafficking in Human Beings in Kosovo Police, from January 2016 till March 3, 2018, has addressed 51 cases to the prosecution and to the CSW, four of them for criminal offense of trafficking in human beings, misuse for begging and 47 cases of child mistreatment or abandonment. While in the letter sent by the Police to the community is noted that 205 children have been identified for begging during 2018. It is also noted that "Children in many cases are attended by parents, relatives or other persons, and in few cases they may be alone coming from area such as: Fushe Kosova, Lipjan, Ferizaj but a number of them comes from the Republic of Albania ... "and that challenging for them remains the fact that people who leave the territory of Republic of Kosovo for the country of their origin returned to Kosovo again by using alternative roads. In this respect, children who beg and are unattended are hardly identified because they do not possess any document of identification.

28. Whereas, according to the organization Terre des hommes (Tdh), more than 175 children in street situation have been identified in Prishtina and Prizren from June 2018 to December 2018 by this organization. It has been stated that this number includes also children who are siblings of children in street situations, but who have been supported to work on prevention.<sup>4</sup>
29. CSWs representatives point out that despite the fact that guidelines are at place, where minimal standards for providing services to children in street situations are defined, it is impossible to recognize them due to lack of human, professional and financial capacities.<sup>5</sup> Children in street situation do not receive the necessary assistance in accordance with national and international standards, including those related to rehabilitation and social reintegration. However, from the data given above, it derives that a number of children in street situations have faced such situations in which they may have been, among others, victims of criminal offenses such as trafficking in human beings, misuse and neglect.
30. Therefore, children in street situations are unprotected in many aspects ant that their physical, mental, emotional, health and social wellbeing is been put on danger.<sup>6</sup> The process of violation of rights of children and putting them in risk starts from the moment they go in the street and this is not always done with the consent of their parents or custodians. But the situation is even more concerning in cases when parents/custodians are those who push /decide that the children go and stay in street situation.
31. Notwithstanding this, in accordance with the Law, firstly, state institutions must undertake all necessary actions and measures to prevent, protect and assist every child who, because of

---

<sup>4</sup>Information ensured by Tdh on 12 February 2019.

<sup>5</sup> An interview with representatives of the CSWs in Prishtinë and Fushë Kosovë as well as information obtained from CSWs in Ferizaj, Prizren, Suharekë , Kamenicë , Klinë, Deçan , Mitrovicë, Lipjan 2018/2019.

<sup>6</sup> Committee on the Rights of the Child, on one of paragraphs of the General comment no. 21

whatever reasons is in street situation, is in dangerous situation and simultaneously request and take appropriate measures against those who breach the Law.

### **ACTIONS UNDERTAKEN BY THE OMBUDSPERSON INSTITUTION (OI) REGARDING THE CASE**

32. On 31 August 2016, the Ombudsperson initiated an Ex officio investigation based on Article 16 paragraph 4 of the Law on Ombudsperson.
33. On 15 November 2016, the Ombudsperson, in the opinion delivered regarding the impact of violence on the health and social life of children, among other things, requested from the MLSW, that in cooperation with other responsible authorities, take appropriate actions for protection and support of the children in street situation.
34. During 2017, the OI representative met with representatives of the CSWs in order to be informed about the issue of children in street situation.
35. In 2017<sup>7</sup> Annual Report, the Ombudsperson, as per the rights of children, as one of many concerns mentioned the fact that the issue of children in street situation remains to be unaddressed and that more persistent efforts needs to be taken in addressing this issue by public institutions.
36. On April 17, 2018, the Ombudsperson through a letter requested from Kosovo Police to be informed regarding actions undertaken or planned to be undertaken within Police's legal responsibilities and powers as per treatment of this group of children.
37. On April 17, 2018, the Ombudsperson through the letter has requested from MLSW to be informed regarding actions undertaken or planned to be undertaken within legal responsibilities and powers that the Ministry has as per treatment of the issue of children baggers and their engagement at work.
38. On May 4, 2018, a response from the Kosovo Police has been served to the Ombudsperson, stating that: *“Kosovo Police in full cooperation and coordination with the Centers for Social Work, the Non-Governmental Organizations dealing with this issue in Kosovo, as well as with the support of the Ministry of Internal Affairs have continuously undertaken joint initiatives on access to children in street situation.... Even though there is no accurate data of children and persons in street situation, approximate statistics show the number of persons generally involved in begging phenomenon, even though in many cases the same persons were registered. The number of children identified by Kosovo Police and removed from the street, are exposed according to the following data: 215 children during 2016; 200 children during 2017; and 51 children between January and April 2018”*.
39. Additionally, on 4<sup>th</sup> of May 2018, a response from Kosovo Police has been provided to the Ombudsperson stating that: *“...Within time period from January 1, 2016 till present the*

---

<sup>7</sup> <https://www.oik-rks.org/2018/04/17/raporti-vjetor-2017/>



*Directorate for Investigation of Trafficking in Human Beings in Kosovo Police has addressed 51 cases (criminal reports) in respective institutions, precisely to the prosecution and CSW. From them four (4) cases were Trafficking in Human Beings, Article 171 of Criminal Code of Republic of Kosovo, their misuse for begging, while 47 were cases of criminal offence of mistreatment or abandonment of a child according to Criminal Code of Republic of Kosovo, Article 250 paragraph 4....”.*

40. On June 5, 2018, the Ombudsperson, through a reminding letter, requested MLSW response to the letter of 17 April 2018. Additionally, he also drew attention to Article 132, paragraph 3, of the Constitution of the Republic of Kosovo and Articles 18 and 25 of Law no. 05 / L-019 on Ombudsperson where calls upon public authorities to respond to requests of the Ombudsperson Institution to provide information, documents and files within a reasonable time.
41. On October 8, 2018, the Ombudsperson, through the reminding letter, requested from the MLSW response on the letter delivered on April 17, 2018. Additionally, he also drew attention to Article 132, paragraph 3, of the Constitution of the Republic of Kosovo and Articles 18 and 25 of Law no. 05 / L-019 on Ombudsperson where calls upon public authorities to respond to requests of the Ombudsperson Institution to provide information, documents and files within a reasonable time. But until publication of this Recommendation Report, no response has been served regarding this issue. MLSW in this case has failed to respond to the Ombudsperson's requests regarding the matter at issue which constitutes a violation of the provisions of the Constitution and the Law on the Ombudsperson. However, this does not prevent the Ombudsperson to provide conclusions and recommendations regarding the issue of children in street situation.<sup>8</sup>
42. From December 17, 2018 up to January 14, 2019, OI requested information from CSWs in Prishtinë, Fushë Kosovë, Prizren, Lipjan, Gjakovë, Ferizaj, Pejë, Mitrovicë and Obiliq regarding actions undertaken for treatment of children in street situation. Specifically was requested to be informed whether CSWs keep records regarding children in street situation, including data related to their age, ethnicity, economical situation, reasons that have pushed them as well as other circumstances related to the issue. Information regarding the number of children who have been treated by CSW officials was requested also as well as services provided for protection, including services provided also for identification. On 20 till 26 of March 2019, OI repeated its request for gaining information related to the issue from CSWs of Kosovo regions. Until publication of this Report, a response has been delivered to the OI from CSWs in Ferizaj, Lipjan, Fushë Kosovë, Skenderaj, Dragash, Suharekë, Viti, Kamenicë, Gjiilan, Klinë, Istog, Junik, Deçan, Rahovec, Malishevë, Gjakovë, Vushtrri, Mitrovicë, Llapllasellë, Hani i Elezit, Shtime, Kaçanik, Shtërpçë dhe Prizren.
43. On January 22, 2019, the Ombudsperson through a letter requested from Kosovo Judicial Council (KJC) to be informed about the number of persons convicted by a court decision from 1 January 2016 to December 31, 2018 for criminal offenses under Articles 171, 250, 251 and 252 of the Criminal Code of the Republic of Kosovo, in which children beggars are involved, whether as victims of trafficking, maltreatment or neglect. But until publication of

---

<sup>8</sup> Article 24, paragraph 4 of the Law on Ombudsperson.

this Report with Recommendations, no response has been submitted by the KJC. In this case, the KJC did not act in accordance with Article 24, paragraph 4 of the Law on Ombudsperson.

44. On February 6, 2019 OI representatives met with Tdh representatives in order to discuss for the issue of children in street situation.
45. On February 12, 2019, OI has been inform in writing from Tdh about actions undertaken by Tdh in order to assist children in street situation and their families.
46. On April 10, 2019 OI representative met with representatives of the Ministry of Education, Science and Technology (MEST) in order to be informed regarding actions that the MEST has undertaken on prevention of drop-out and not enrolment on compulsory education.
47. On April 11, 2019 OI representatives met with representative of Kosovo Police in community in order to gain information for actions undertaken regarding children in street situations.

## CASE ANALYSES

48. As far as children in street situation is concerned, the practice recognizes different approaches that address this phenomenon, such as child right approach, child welfare approach, repressive approach, but also their various combinations. The CRC Committee guides that attention should be given to child welfare approach that perceives children as objects or victims of the road to be "rescued" or repressive approaches in which case children are perceived as delinquent. These approaches do not take into account the child as a holder of rights and usually result in the forced removal of children from the street, by breaching further their rights. According to the Committee, to implement the Convention, it is essential to use a child rights approach. *"Uses child rights standards and principles from the Convention and other international human rights instruments to guide behaviour, actions, policies and programmes, particularly: non-discrimination; the best interests of the child; the right to life, survival and development; the right to be heard and taken seriously; and the child's right to be guided in the exercise of his or her rights by caregivers, parents and community members, in line with the child's evolving capacities"*.<sup>9</sup> Thus, child rights approach ensures: *respect for the dignity, life, survival, wellbeing, health, development, participation and non-discrimination of the child as a rights holder*".<sup>10</sup> OI aims using of such approach in the course of this analysis.
49. Additionally, it is important to take in consideration that children in street situations are not a homogenous group but differ in terms of age, sex, ethnicity, nationality, disability, sexual orientation and gender identity/expression, among others. This means that children in street situation imply different experiences, risks and needs, depending from the features which they own.<sup>11</sup>

---

<sup>9</sup> United Nations, Committee on the Rights of the Child, General comment No.21 (2017) on children in street situations, paragraph 11.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid. paragraph 6 and response received from CSWs of Fushë Kosovës, Ferizaj, Gjilani, Klinë, Rahoveci, Malishevë, Gjakovë, Vushtrri, Mitrovicë dhe Prizreni.

50. Further, the Kosovo legislation involves a great number of normative-legal acts, which aim to ensure special protection for children. Initially, the Constitution stipulates the obligation of all institutions to have due respect for human rights and freedoms,<sup>12</sup> and specifically guarantee of the right to protection and care necessary for their wellbeing.<sup>13</sup> Additionally, CRC is directly applicable in the country. The Constitution defines obligations of Republic of Kosovo institutions to take all necessary measures to ensure protection of children's lives, their protection from abuse, misuse and other forms of violence in all areas of life and in the best interests of children. This is also foreseen by above-mentioned Laws at force as well as the Criminal Code. However, it should be stated that none of the aforementioned acts (apart from the Commentary of the CRC) does not explicitly and specifically regulate the issue of children in street situation. These acts do not provide any specific service that the state should provide to children working on the streets, whether a sort of day care centers, shelters, mobile services or rehabilitation and reintegration services.
51. The CRC Committee stipulates that causes, prevalence and experiences of children in street situations differ not solely between States but within the country itself. The Committee also evaluates that inequalities based on economic status, race and gender are among the structural causes of the emergence and exclusion of children in street situations.<sup>14</sup> These inequalities are exacerbated by material poverty, inadequate social protection, poorly targeted investment, corruption and fiscal (tax and expenditure) policies that reduce or eliminate the ability of poorer people to move out of poverty, violence, abuse, exploitation and neglect at home or in care or educational institutions.<sup>15</sup> Since there is still no comprehensive nationwide survey in Kosovo that contains accurate statistics on the number of children in street situations or an analysis of the nature and development of this phenomenon and factors that contribute to this phenomenon from individual, family and social problem is difficult to have an accurate picture of the problem. However, based on OI long term experience in promotion and protection of children's rights, reporting of civil society organizations, Police reports and reporting of Civil Society Organizations, we can assess that the causes mentioned by the Committee are largely valid in Kosovo, although there are special differences regarding the Kosovo context.
52. Based on data, children in street situation in Kosovo many times are forced to do the work by their parents<sup>16</sup> or are gathered and transported in on organized structure from suspicious criminal groups.
53. Article 28 of the Constitution prohibits forced labour and evasion from respecting this right is not possible under any circumstances, even under extraordinary situations (Article 56 of the Constitution).<sup>17</sup> Forced labour is forbidden also with Article 4 of the ECHR. European Court on Human Rights (ECtHR), in case *Van der Musselle versus Belgium* has determined that the term “forced or compulsory work” shall mean “*all work or service which is exacted from any*

---

<sup>12</sup> Constitution of Republic of Kosovo, Article 21.

<sup>13</sup> Ibid, Article 50.

<sup>14</sup> Committee on the Rights of the Child, General comment No.21 (2017) on Children in Street Situations, paragraph 8.

<sup>15</sup> Ibid .

<sup>16</sup> Information provided from CSW in Prizren.

<sup>17</sup> Commentary of the Constitution of Republic of Kosovo, p. 91

person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Also, “children and other vulnerable persons, specifically have the right on protection from the state, in a form of effective prevention, versus such serious violations of personal integrity ”(see X and Y versus Netherland, p. 11-13, §§ 21-27).<sup>44</sup>. Further, according to ECtHR trafficking in human beings falls under the scope of Article 4 of the ECHR (see, Rantsev versus Cyprus and Russia).<sup>18</sup>

54. CRC, in Article 32 requires that the States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, thus, from this Article derives obligation for state institutions to undertake all the necessary actions in accordance with this Article and provide children in street situation with the opportunity for dignified living, development and education. Opposite to this they violate this right. The labour which exposes risk for child's health and development is prohibited by the Law on Labour (No.03/L-212)<sup>19</sup> as well, which should be respected by public and private institutions, with particular emphases on Inspectorate on Labour, which should undertake appropriate inspections to prevent violations of these legal provisions.
55. According to Kosovo Police, it comes that a number of children has been identified under the suspicion of trafficking for the purpose of begging. Trafficking in human beings is also prohibited by the Code. State institutions are obliged to take appropriate action to prevent trafficking in human beings and persecution of perpetrators, and naturally when it comes to trafficking of children for begging, among others, depending on their individual conditions and needs, to provide the necessary protection and “...*legal aid, medical assistance, psycho-social support, compensation and other rights..*” in conformity with Law No. 04/l-218 on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking.
56. Further, mistreating and abandoning of a child is qualified as a criminal deed. In the meaning of Article 243 of the Code among others, criminal sanctions have been foreseen towards a parent, adoptive parent, guardian or another person exercising parental authority over a child who mistreats such child using physical or mental measures or violates his or her obligation to care for and educate the child. In case the above mentioned person, compels such child to work excessively or to perform work that is not suitable for the age of the child or compels such child to beg for money or other material gain, or compels such child to engage in other activities that endanger or damage the child's development shall be punished. Such situations occur to some children in street situation and the relevant punishment should be provided by the responsible authorities, obviously by taking into consideration all the time existing circumstances of each case and the best interest of children. Consequently, the liability for providing guardianship and education for parents and those exercising parental authority over the child derives also from the relevant provisions of the Law No. 2004/32 on Family Law of Kosovo, which should be respected as well.

---

<sup>18</sup> Rantsev versus Cyprus and Russia, No. 25965/04, 2010

<sup>19</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2735>

57. Article 244 of the Code (Violating family obligations) determines as follows: *“Whoever violates his or her legal family obligations leaving a family member who is incapable taking care of himself or herself shall be punished (...).”* When this criminal offence involves a child, punishments are more severe rather than for adults and as such should be valued in general and in relation to circumstances and best interest of the child.
58. Additionally, according to Article 247 of the Code every person who have suspect that a child has suffered an incident of child abuse, mistreatment, abandonment or neglect, and fails to report immediately the abuse or neglect shall be punished. Therefore, this Article sets out obligations for individuals who have grounded information, to report such cases, so that children, in the given case, children in street situation provide with appropriate protection and assistance. As per this issue, organizing of different campaigns would raise awareness on the importance of reporting of such cases.
59. The Strategy on Children’s rights<sup>20</sup> has identified as main factors of involvement of children in work that is hazardous for their life: lack of efficient politics to address the poverty in compliance with needs of citizens, lack of child beneficiary scheme, discrimination of children for the age of 5-18 to benefit for social assistance scheme according to criteria set by the Law.
60. Regarding this the CRC points out *“Children’s upbringing in absolute poverty threatens their survival and health and imperils the quality of their lives. Children in street situations have no possibility to grow and develop as they should”*.<sup>21</sup> State institutions should assist parents or custodians to ensure, within their capacities and financial abilities, necessary living conditions needed for optimal development of children, in accordance with Article 27 of the CRC.
61. The Committee recommends the State Party to reform child protection system and to undertake structural changes with the aim to address children’s poverty, including access with priority to families and children at risk, as well as paying special attention to families of Roma community as well as families with disabled children. In this regard, the Committee recommends that the State party provides all families with incomes for children, as a form of universal benefit and that assistance provided in money for poor families are combined with measures enabling women and children’s employment after graduation, professional upbringing, shelter, transport and other benefits.
62. In this regard, apart development and implementation of relevant social policies amendment of the Law on Social Assistance Scheme should be made in order to ensure that all children living in poverty, including children in street situations, have equal rights to assistance, regardless of whether or not there are children under the age of five (5) in the family.<sup>22</sup>

---

<sup>20</sup> Republic of Kosovo, Office of Prime Minister, the Strategy for rights of children, p. 23.

<sup>21</sup> Here the term development should be understood in global and represents physical, mental, spiritual, moral, psychological, and social development of a child. <sup>21</sup>. Due to poverty they are coerced by their poor parents/custodians to beg for the money or to work.

<sup>22</sup> Ex-Officio case 385/2016, OI Report with Recommendations delivered to the Assembly of Republic of Kosovo on 13 July 2018.

63. When talking about children in street situation, it should be reiterated that CRC contains other provisions that are closely related to the Article in question, due consideration should always be given to them in order to provide the child with the necessary protection and better opportunities to live in a safe environment, health and wellbeing. Therefore, due consideration should be also given to Articles 19, 20, 24, 29 and 39 of the CRC cited above. Certainly, in their work with children in street situation, the relevant state institutions should also take into account the principles under which, the rights set forth in the convention should be recognized to every child, without discrimination on any ground, their best interest to be primary consideration in all actions pertaining to children, respect for the right to life, survival and development as well as views of children in all matters affecting children and giving them the opportunity to be heard in any judicial or administrative proceedings.
64. Living in a street and the work of child in street situation commonly are associated with drop-out of school for various reasons, depending on the circumstances and children's individual situations, so their return to school, education and support for learning at school should also be considered in accordance with Article 28 of the CRC. In order to prevent the drop-out and non-enrollment of children in compulsory education, MEST, through Administrative Instruction no. 08/2018 on the Establishment and Strengthening the Teams for Prevention and Response against Abandonment and Non-enrollment of Students in Pre-University Education, has envisaged establishment of Team for Prevention and Response Against Abandonment and Non-enrollment (TPRAAN) of children at school level, municipality and national level. From the information obtained from MEST, it derives that the MEST, among others, in cooperation with ECMI supported by UNICEF have accomplished activities in support of schools and Municipal Education Departments for establishment and functioning of the TPRAAN as well as have developed the Module of the Early Warning System EWS in the Information Management System (SMIA), a module that increases the chances of more efficient work in preventing and responding to drop-out. However, not all TPRAAN in schools and municipalities fulfill their obligations in accordance with the aforementioned instruction so that the issue of addressing non-enrollment and dropout by children, including children in street situation, is adequately addressed., It also resulted that improvement of the work and better addressing of this issue can be done with the assistance of the Education Inspectorate, which needs the support.
65. Further, it should also be noted that the CRC guarantees the protection of privacy, honor and reputation. In the case of children in street situation, the privacy and street life are two extreme contradictions. The private aspect, reputation and particularly honor of these children are often abused by others especially when they are forced to leave the street with violence.
66. From the responses provided by CSWs mentioned above it derives that two of them, according to their territorial responsibility, in a period of three (3) years, through periodical activities have identified a number of street children, some of whom were recidivists. According to them, they were provided with individual and family counseling, awareness of the consequences of hard work for children, return to the educational process, assistance in obtaining documents for gaining social assistance for families as well as cases of children at high and medium risk have been referred at the case management desk for provision of multidisciplinary services (medical, psychological, psychiatric or even foreign language

courses). They have also pointed out that they partially apply minimum standards for providing services to children at work because, among others, they lack staff and trained staff, financial means and insufficient space for service delivery. This is not in line with the views of the CRC Committee, respectively the recommendations addressed to one of the State Party to ensure that social workers are well trained, receive a sufficient salary and are clearly instructed in identifying families and children at risk, are able to effectively manage the social scheme, follow its implementation, and measure impact.<sup>23</sup>

67. Tdh from June through December 2019 has identified and provided services for 175 children. It has been stated that this number included also children who are siblings in street situations but who have been supported to work on prevention. Among the main causes that drive children to go in street situation, Tdh mentions poverty and severe economic conditions, and according to them there have been cases that children in street situation have been in life danger because they have been hit by cars during begging<sup>24</sup>.
68. From the review of relevant legal documents, information and facts in possession of the OI, it derives that despite the efforts made to protect and assist children in street situation over the years, the situation has not shown any significant improvement. Furthermore, now more than ever we see children in the street, among other things, cleaning vehicle windscreens, selling small things, begging or searching in garbage boxes. They live in poor physical, social, psychological conditions, face lack of food, clothing, have not proper hygiene and health care. They are unable to attend school and the fact that they are on the street, they are insecure and vulnerable as well as in permanent risk to be misused and abused.
69. In order to prevent, handle and adequately address the situation of children in street situation as well as their engagement with work, continuous commitment and coordination is required, not only of institutions but also of the whole society.
70. The Ombudsperson Institution considers that Kosovo institutions should have done more to prevent, handle and adequately address the issue of children in street situation, over the years this phenomenon has not declined.
71. The Ombudsperson ascertains that the current situation of children in street situations in Kosovo comprise serious violation of human rights, in this particular case of the rights of children, respectively violation of the Constitution of Republic of Kosovo, international standards and above stated legislation.

---

<sup>23</sup> Committee on the Rights of Children, Recommendations addressed to Albania regarding implementation of CRC.

<sup>24</sup> Date ensured by Tdh on February 12, 2019.

72. The Ombudsperson, based on what was said above, in accordance with Article 135, paragraph 3 of the Constitution of the Republic of Kosovo “*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*”. According to the meaning of Article 18, paragraph 1.2 of the Law on Ombudsperson, the Ombudsperson “*(...) has the responsibility to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases (...)*”, and “*to recommend [...] promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo.*” (Article 18, paragraph 1.7).

Therefore, the Ombudsperson,

## **RECOMMENDS**

### **The Ministry of Labour and Social Welfare:**

1. In cooperation with the Kosovo Agency of Statistics to gather data on the number of children in street situation and to set a database at national level containing, but not limited to, data on age, ethnicity, economic situation, reasons for such deeds as well as other circumstances related to the case. National data should not only rely on household surveys, but also include children living outside the family environment.
2. In cooperation with municipalities to strengthen and develop capacities for providing qualitative services for children and their families who live and/or work in street situations, by allocating sustainable funds, necessary for CSW for provision of adequate services for children in street situation.
3. To establish appropriate programs for providing direct services to children at work and children at risk as well as their families, without limitation on day care centers, for their rehabilitation and reintegration.

### **Kosovo Police:**

4. To actively undertake appropriate actions for identification and remove children from the street and at the same time to identify and ban activities of all criminal networks dealing with trafficking in human beings and abuse of children.
5. To coordinate and cooperate activities with relevant institutions in places of origin of children in street situation, by ensuring their safe return home, in compliance with the best interest of children.
6. To undertake information campaign with the aim to raise citizens’ awareness in relation to citizens’ legal liability for reporting children in street situation cases.



**Ministry of Education, Science and Technology:**

7. To increase capacities of the Education Inspectorate to oversee implementation of policies on prevention of school drop-out, having in consideration children's profile, pursuant to policies drafted by MEST.
8. To support municipalities on functionalization and empowerment of municipal TPRAAN to prevent drop-out as well as to react on non-enrolment at school of children in street situation cases as well.
9. To support and cooperate with schools to increase qualitative reporting at SMIA on drop-out cases including early notifications on dropping out from school, from which data for children in street situation can be produced and pursuant to them undertake respective actions.

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo and Article 28 of the Law on Ombudsperson, You are kindly asked to inform us on actions to be taken by your side regarding this issue but not later than 30 days from the day this Report has been delivered to you.

Respectfully submitted,

Hilmi Jashari

Ombudsperson