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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS

Ex Officio

Case No. 346/2019

Related to State's positive obligations as per protection from domestic violence on the right to life, deriving from the Constitution of Republic of Kosovo and Article 2 of the European Convention on Protection of Human Rights and Fundamental Freedoms

For:

Mr. Ramush Haradinaj, Prime Minister of Republic of Kosovo

Mr. Rashit Qalaj, Director, Kosovo Police

Mr. Uran Ismaili, Minister, Ministry of Health

Mr. Skender Çoçaj, Presider of the Kosovo Judicial Council

Mr. Bahri Hyseni, Presider of the Prosecutorial Council

Mr. Shpend Ahmeti, Mayor of Prishtina Municipality

Mr. Basri Kastrati, Manager of Victims' Advocates and Assistance Office

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

Mrs. Duda Balje, President of the Committee for Human Rights, Gender Equality, Missing Persons and Petitions

Prishtinë, July 31 2019

The Purpose of the Report

1. Protection of human rights and fundamental freedoms is crucial and very important for an effective response to the prevention and treatment of cases of domestic violence in the Republic of Kosovo. Despite the fact that the Republic of Kosovo has made progress in establishing responding mechanisms towards cases of domestic violence, there are still issues that call upon the attention of the responsible authorities, concerning State's positive obligations for the right to life. Victims of domestic violence continue to face various challenges, especially from the malfunctioning of authorities established specifically to prevent this distressing phenomenon, which in many cases is resulting with mortality. These challenges are also related to various obstacles, with authorities' inattention, prejudices and stereotypes, gender inequality, and the presence of stigma and discrimination in different institutions.
2. This Report aims firstly to assess application of the main principles of State's positive obligations related to the right to life, regarding the triple murder that happened on April 22, 2019 in the Dardania neighborhood in Prishtina, in the course of which has been reported that a man has murdered his wife, his daughter-in-law and has committed a suicide. Media reported that the perpetrator was mentally ill person, while his family members were at risk of his violent behavior even earlier¹.
Secondly, this Report aims to assess effective realization of the rights of persons / victims of domestic violence in Kosovo as per access to care and treatment, with particular reference to discrimination, inequality, failure of authorities to protect rights of victims of domestic violence as well as the State's obligations to protect citizens' lives.
3. These rights, protected by the Constitution and by International Instruments, are implemented in practice through Laws, policies and strategies, implementation of which will be analyzed by this Report, and by the end, findings and recommendations regarding improvement of the situation regarding persons / victims of domestic violence from the perspective of human rights will be disclosed, so that such cases of domestic violence are not repeated in the future.

Powers of the Ombudsperson

4. The Constitution of Republic of Kosovo (henceforth the *Constitution*), in Article 132, paragraph 1, reads: "*The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities*", while in paragraph 3 it stipulates: "*Every organ, institution or other authority exercising legitimate power of the Republic of*

¹ <https://indeksonline.net/vrasja-e-trefishte-ne-prishtine> What made the 61 old man to shot his wife and his daughter in law./

Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.”

5. According to the Law No. 05/L-019 on Ombudsperson, the Ombudsperson, among other things, has the following powers and 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;.” (Article 18, par. 1, sub-paragraph 1.2).*
- *“to inform 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, par. 1, sub-paragraph. 5).*
- *“to publish notifications, opinions, recommendations, proposals and his/her own reports.” (Article 18, par. 1, sub-paragraph. 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.” (Article 18, par. 1, sub-paragraph. 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.” (Article 18, par. 1, sub-paragraph. 8).*
- *“to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation;.” (Article 18, par. 1, sub-paragraph. 9).*

By delivering this Report to responsible institutions as well as its publication, the Ombudsperson aims to accomplish the following legal and constitutional responsibilities.

Description of the issue

6. This Report has been initiated *Ex-officio* based on media reporting, print and electronic media, which reported that on April 22, 2019, in the area of Dardania in Prishtine, the household head Hasan Krasniqi (hereinafter Mr. H.K.), murdered his wife Hysnije Krasniqi, (Mrs H.K.) his daughter in law, Remzije Krasniqi, and then committed suicide with a firegun, and this Report is exclusively based on findings of Ex Officio investigations conducted regarding this issue.

Actions of the Ombudsperson Institution

7. On April 30, 2019 representatives of the Ombudsperson Institution (OI) contacted responsible officials of the Institute of Kosovo Forensic Psychiatry in Prishtine (IKFP), with the request to gain information regarding psychiatric treatment of the patient Mr. H.K. and were informed that Mr. H.K. has never been treated at IKFP, but were informally informed that the same had psychological problems since he was suspected of suffering from "Syndroma Pschycoticum" and was under private psychiatric treatment.
8. On May 2, 2019, the OI representative met with the Victim Protector at the Victims' Advocates and Assistance Office (hereinafter referred to as VAAO) in Prishtine, with whom discussed on developments in the case of the victim Mrs. Krasniqi. He informed that he himself managed this case of domestic violence during 2017/18, pointing out that the court had rendered a Protection Order (case C.no.2006 / 17) to the protected party Mrs. Krasniqi for 12 months and on the other hand case prosecutor has initiated criminal proceedings against the accused Mr. H.K., for the criminal offenses "Assault" and "unlawful firearm possession", so the case has been proceeded to the Court to be reviewed and decided upon. He stressed that after 12 months deadline, Protection Order was discontinued and the spouses begun to live together, but unfortunately, situations of conflicts within the family went on, resulting with triple murder.
9. On May 7, 2019, OI representatives met with the acting director of the Center for Social Work (CSW) No. 1 in Prishtinë, from whom requested to be informed about psycho-social treatment of the perpetrator of domestic violence (Mr. H.K.), or the protected party / victim of domestic violence (Mrs. Krasniqi). He informed that the CSW No. 1 in Prishtinë, has subject and territorial competence to treat cases of domestic violence in Dardania area where family Krasniqi resided, but based on records of 2016, 2017 and 2018, it is clearly seen that no psycho / social services from this CSW have been provided to spouses Krasniqi. He informed that CSWs mainly deal with children / victims of domestic violence and pointed out that CSW no. 1 lacks psychologists, as of 1999 until present this CSW fail to employ any psychologist, despite the great need for the presence of a psychologist in the CSW.
10. On the same day, the OI representatives met with the supervisor of the VAAO as well as with the manager of the case Krasniqi in the VAAO in Prishtine, with whom they discussed about the progress on the case of the protected party Mrs. Hysnije Krasniqi. They have been informed that the spouses Krasniqi had disagreements since 2013 and due to this, as of August 2016, Mrs. Krasniqi left the flat of her husband and went to live in the flat of her children, who left the flat of their father Mr. H.K, as a result of the violence exercised over many years, but the violence remained unreported to the state authorities (at the police or anywhere else). They have reported that the case of domestic violence, handled by VAAO in Prishtine, has occurred on August 6, 2017, approximately at 20:30, when Mrs. Hysnije Krasniqi went at her spouse's flat in order to reach an agreement

regarding the issue of her residence, and during that period, the victim experienced violence, physical and psychological, therefore she reported the violence at Police Station “South” on 7th of August 2017, at 03:00 in the morning and was interviewed by responsible police investigator (case No. 2017-AD-2252, of 07 August 2017).

They explain that the very same day the Victim Protector from VAAO in Prishtinë submitted a *Request for issuing a Restraining- Protective Order* from the Basic Court (henceforward BC) in Prishtinë and on 14 August 2018, the BC in Prishtinë has rendered the Decision C.no.2006/17, by which a Restraining Order has been set, by forbidding the perpetrator Mr. H.K., to come closer than 50 meters to the protected party/ the victim and her children. They pointed out that Mr. H.K. lodged a complaint against the Decision C.no.2006/17, of August 14, 2018 and the case has been forwarded to the Court of Appeals for review and decide upon, which with Decision Ac.No.3912 / 17 of 12 September 2017 has partially approved the appeal of Mr. HK, and partially has ban the Resolution C.no.2006 / 17, of 14 August 2018, in the part dealing with the Restraining order towards his children, therefore for this part the case had been turned over for retrial to the first instance Court. On September 25, 2018, the BC in Prishtinë, in the procedure review (acting according to the Decision Ac.no.3912/17, of September 12, 2017), has issue a Resolution C.no.2448/17, through which has ascertained as partly withdrawn the request of protected party Mrs. Krasniqi, regarding *Restraining Order* towards her sons, with the reasoning that protected party has withdrawn the request and in the same way has acted the Victim protector.

During the discussion they stated that during 2018, VAAO in Prishtinë has defended 400 victims and has participated in 2250 Court hearings, stating that at the moment they have only 4 Victim Protectors from 6 having previously. According to them, the VAAO in Prishtinë needs to have additional two victim protectors and stated that during their work they encounter difficulties, especially in provision of shelter to domestic violence victims (women) with male children over the age of 12 (who are not allowed to stay in shelters) as well as removing the perpetrators from the family of the victim when spouses do not have other flats, pointing out that there are no shelters for perpetrators of domestic violence but only for victims of domestic violence.

11. On the same day, the OI representatives met with the Administrator of the Basic Court in Prishtina, as well as with other responsible Court’s officials, from whom requested to be informed on the criminal proceedings against the accused Mr. H.K., held in this Court during all years. Based on records of the Office of Case Management they obtained the information, that, three criminal proceedings: P.no.2487 / 08, archived case, P.no.4306 / 15, case under execution and P.no.5849 / 17- active case, were conducted against Mr. H.K. OI representatives met with case judge of the case P.no.5849 / 17 (active case), with whom they discussed about case P.no.5849 / 17. The judge reported that the Case P.no.5849 / 17 is

active and that the same concerns domestic violence (assault and unlawful arm possession). He explained that the case prosecutor filed an indictment against the defendant Mr. H.K. on 11 December 2017, and that the case had been handed over to the Court, and until 7 December 2018 it rested with the pre-trial judge, stating that after 7th of December 2018, case P. No. 5889/17, was assigned to him for review and he planned to convene a Court hearing on May 15, 2019, but according to him, until the murders occurred, summons were not sent to the parties. He admitted that no procedural action has been taken by the Court in terms of setting Court hearings and reasoning provided concerned the backlog of cases, pointing out that he has over 1000 cases.

12. Further, on the same day, the OI representatives met with the relevant police investigator and chief investigator at the Police Station "South" in Prishtine, with whom they discussed about the interview of Mrs. Hysnije Krasniqi, the victim of domestic violence exercised by the suspect Mr. H.K. conducted at the Police Station, on 7 August 2017. The police investigator confirmed case investigation conducted by her (Case No. 2017-AD-2252), but stated that she did not remember very much details of this case, since a long time has passed since then, but pointed out that she is sure that there was no other reporting of domestic violence cases by Mrs. H.K. either before or after this period. Regarding the criminal past of Mr. H.K., the police investigator stated that she had no knowledge of previous cases but nevertheless, searches should be conducted on Kosovo Police Information System (KPIS). On OI representatives' question whether the CSW had been informed about the psycho-social treatment of the victim or perpetrator of domestic violence, they replied that at cases of domestic violence they usually notify the CSW in the capacity of the custodian body and this is mainly the case when there are children / victims of domestic violence.
13. On May 8, 2019, the OI representative sent a letter to the commander of the Police Station "South" in Prishtine, requesting relevant information regarding the criminal past (based on the police database / KPIS records regarding domestic violence) for Mr. H.K., and an information report in terms of description of the circumstances of the incident of April 22, 2019 in Dardania neighborhood in Prishtine, as a result of which three people were killed.
14. On May 10, 2019, OI obtained various documents from Mr. H.K. family members, from which it was clearly seen that Mr. H.K. was diagnosed with coded diagnosis F-22, and the same at different time periods visited (outpatient visits) psychiatrists and was treated with anti-psychotic drugs (Risperidon² tbl.) and anxiolytic (Xanax³ tbl.). From documents received, OI representative found that Mr. H.K., in 2008, hit one of his family members related to the property and caused him body injuries, therefore the Municipal Court in Prishtine had convicted

² Risperidon Alkaloid belongs to the group of medications called "anti-psychotic"

³ Xanax is a sedative that contains as active substance alprazolam used primarily for the treatment of pronounced anxiety and anxiety associated with depression

him with Punitive Order (see case P.no. 2487/2008) and also in 2015, the same Court has imposed a Punitive Order for the criminal offense of Misuse of someone else's wealth (see Case P.no.4306 / 15).

15. On May 13, 2019, the commander of "South" Police Station in Prishtine sent a letter to the OI representative together with relevant responses on the criminal past of Mr. H.K, as well as a description of the circumstances and the progress of the procedure for the tragic event of 22 April 2019. From the response delivered, she explained that, according to the KPIS, Mr. H.K. was involved in two different criminal cases, as a suspect for domestic violence cases (first case, number 2017-AD-2252, *the victim- wife of Mr. H.K. and second case with the number 2019 AD 0951, triple murder*) and in two other cases where Mr. H.K. had problem with family members, but these cases do not hold the categorization as "domestic violence" (*case no. 2008-AC-1104⁴, victim of violence was Mr. H.K. 's brother and the case no 2003-AC-428⁵, victim was the son of Mr. H.K. and the case was closed in police*). Regarding health condition of Mr. H.K., in Police's response to the OIK, is stated: "*Based on interviews with victims' family members, it has resulted that for several years Mr. H.K. had health problems, initially with blood sugar (diabetes) resulting with eyesight problems as well as with psychological problems later on, and medical reports stating that Mr. H.K. was on outpatient in the Psychiatric Clinic in Prishtine. Based on Police's request addressed to the Psychiatric Clinic to provide a medical file of case victims, Psychiatric Clinic submitted an information report, which does not contain the information that the victims were treated in a hospital as well as it does not contain the information that the victims obtained medical visits in the Clinic (as a result of lack of evidence through the Health Information System). According to the report issued by the Psychiatric Clinic it is possible that in some cases the patients are not attentive or even intentionally avoid the protocols of medical reports and there are no strict mechanisms at place to force reporting*".

Legal bases

16. Article 21, paragraphs 2 and 3, of the Constitution of Republic of Kosovo (henceforth the *Constitution*) determine as follows: "*The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by*

⁴ On 08.08.2008 a case has been initiated "Assault- body injuries" with number 2008-AC-1104 in the Police Station- South, the case has been reported in the Municipal Public Prosecution on August 22, 2008 with criminal charges against Hasan Sadri Krasniqi, on the occasion of which, the victim of violence was the brother of Mr. H.K., and regarding this case the Municipal Court in Prishtinë has rendered the Judgment with Punitive Order with the fine of 200 euros

⁵ Case 2003-AC-428, initiated on 21 April 2003, for criminal offense "Threat with firearm " occurred in the village Grashtica, where according to information, the victim is A. Krasniqi, the son of Mr. H.K. and the case has been closed on 31 May 2003 , within the Police Station.

this Constitution, Everyone must respect the human rights and fundamental freedoms of others.”

17. Article 22 of the Constitution stipulates: *“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”* while Article 23 reads: *“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.”*

18. Article 25, paragraph 1 of the Constitution stipulates as follows :

“Every individual enjoys the right to life [...]” while Article 26 determines:

” Every person enjoys the right to have his/her physical and psychological integrity respected, which includes [...]”.

19. Constitution of Republic of Kosovo, in Article 29, paragraph 1 stipulates: *“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:*

- *pursuant to a sentence of imprisonment for committing a criminal act [...];*
- *for the purpose of medical supervision of a person who because of disease represents a danger to society, [...]*”, while Article 53 determines:

“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”

20. Constitution of Republic of Kosovo has encompassed a number of international agreements and instruments on Human rights and fundamental freedoms in Kosovo legal order which 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 among them is the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.*

21. Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950), (henceforth the “European Convention on Human Rights”, or “Convention”) stipulates :

“Everyone’s right to life shall be protected by law [...]”, while Article 5, paragraph 1, of the Convention determines: *“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law [...]”*.

22. Article 1, paragraph 1 of the Law No. 03/L-182 on Protection Against Domestic Violence, stipulates: *“This Law aims to prevent domestic violence, in all its forms, through appropriate legal measures, of the family members, that are victims of*

*the domestic violence, by paying special attention to the children, elders and disabled persons” while paragraph 2 further continues: “This Law, also aims, **treatment of perpetrators of domestic violence and mitigation of consequences**”.*

23. Article 4, paragraph 1 of the Law No. 03/L-182 on Protection Against Domestic Violence, stipulates: ” **The protection measure for psycho-social treatment may be issued to a perpetrator of domestic violence in combination with any other preventing measure** with the aim of eluding violent behaviors of the perpetrator or if there is a risk to repeat the domestic violence”, while Article 7, paragraph 1 stipulates: ” *Removal from the apartment, house or other living premise may be imposed to a person who has committed violence against a member of the family sharing the same apartment, house or living premise if there is a risk to repeat domestic violence*”.
24. Article 17, paragraph 2 of the Law No. 03/L-182 on Protection Against Domestic Violence, stipulates: “*The competent court shall issue a Protection Order or Emergency Protection Order, where it suspects that the perpetrator shall unavoidably risk the health, safety or wellbeing of the protected party and the person who has a domestic relationship with the protected party and who is to be protected by the protection order or emergency protection order*” while Article 27 of this Law, determines: “*Ministry for Labor and Social Welfare, in cooperation with: Ministry of Health, j Ministry of Justice, Ministry of Internal Affairs, Ministry of Culture, Youth and Sports and Ministry of Education is responsible for support and raise ancillary structures and necessary infrastructure, which serves to support and meet the needs of persons against whom domestic violence is exercised, including social assistance and medical services, in accordance with applicable law*”.
25. Article 1, paragraph 3, of the Law No. 02/L-17, on Social and Family Services determines: ” *Person in need shall mean any person found on the territory of Kosovo, regardless of status or place of origin, who is in need of social services because o [...] mental disabilities [...]*”.
26. Article 13, paragraph 2 of the Law No. 02/L-17 on Social and Family Services determines: “*If there are reasonable grounds to suspect that the vulnerable person lacks the capacity to act on their own behalf and it is necessary to protect the adult from serious harm, the Director of the relevant Centre for Social Work must make application to the court for a Guardianship Order*”, while paragraph 4 stipulates: “*Such an order specify the steps that the Director of the Centre for Social Work is empowered to take in order to safeguard the health, safety and wellbeing of the person in respect of whom the Order is being made. The powers that are available to the court are:*
 - a. *Supervision of the living circumstances of the vulnerable adult by a professional designated by the Department of Social Welfare for the purpose, while remaining in their own home,*

b. Direction to the Department of Social Welfare to place an adult who is lacking the mental capacity to care for themselves in a suitable residential facility, [...].”

27. Article 13, paragraph 5, of the Law No. 02/L-17 on Social and Family Services, determines: *“In no circumstances will the person who is the subject of a Guardianship Order be detained in a penal establishment”*, while paragraph 6 determines: *“If necessary, the courts can direct the Kosovo Police Service to assist the Centre for Social Work in the execution of a Guardianship Order”*.
28. Article 75 of the Law No. 03/L-007 on Out Contentious Procedure stipulates: *“According to the rules of this procedure the court with an act-judgment decides for the maintenance of a mentally (psychic) sick person in a health institution, where because of the nature of sickness it is indispensable that such person gets restricted in the freedom of movement and communication with people outside the noted institution”*.
29. Article 4, paragraph 1 of the Law No. 04/L-125 on Health stipulates : *“Implementation of this law shall be in full compliance with the human dignity, fundamental rights and freedoms set by the Constitution of the Republic of Kosovo, international covenants and legislation guaranteed by the Constitution and directly implemented in the Republic of Kosovo”*, while paragraph 5 of the same Article stipulates: *“The rights and responsibilities of the citizens, residents, and other healthcare users are regulated by the Law on rights and responsibilities of citizens in healthcare.”*
30. Article 1 of the Law No. 05/L-025 on Mental Health, (henceforth “Law on Mental Health”) determines: *“This law aims to protect and promote mental health, prevent the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders”*, while Article 5 paragraph 1 determines general principles of healthcare in mental health services which are:
 - 1.1. *“equal treatment and without discrimination of persons with mental disorders, in order to respect the physical integrity and human dignity;.*
 - 1.2. *the provision of health care for persons with mental disorder in a less restrictive environment, mainly at the community level, to avoid at the maximum the displacement from family environment and to facilitate the social integration and rehabilitation;;*
 - 1.3. *creation of facilities through programs and projects to be implemented by competent bodies for these people and their families with a view to their inclusion in society.*
 - 1.4. *provision of care for persons with mental disorders from **multidisciplinary teams** that respond in a complex manner to the medical, psychological, social and rehabilitation needs; [...].”*

31. Article 9, paragraph 1 of the Law on Mental Health determines: *“Removing or limiting the ability to act for persons with mental disorders is prohibited, except the cases as provided with the legal provisions in force. In special cases, this measure can be proposed at the request of the psychiatric - legal commission. The respective decision is made by the court in accordance with the legal provisions in force”*.
32. Article 5 paragraph 1 of the Law No. 04/L-125 on Health reads: *“The provision of healthcare is based on implementation of basic principles”, while paragraph 1.2 stipulates: “2. inclusiveness and non-discrimination: equal healthcare for all citizens and residents by ensuring the standards during fulfilling the needs at all levels of healthcare as well as ensuring healthcare without discrimination on basis of: gender, nation, race, color, language, religion, political preferences, social status, sexual orientation, the level of physical or mental abilities, family status, or age;”*. Paragraph 2 of Article 52 of this Law determines: *“Healthcare institution from paragraph 1 of this Article is responsible for regular and safe, collection, storing, and management of the data provision of the easy access to data protection and confidentiality of the personal data and protection of data from abuse, in compliance with the legislation in power.”*; and *“Healthcare professional as well as healthcare institution should report for their work [...] by ensuring professional confidentiality⁶, pursuant with the law”*.
33. Article 4, paragraph 1, of the Law No. 2004/38 For the Rights and Responsibilities of the Kosovo Residents in the Health Care, stipulates: *“Every resident is entitled to the health care that is conditioned by his state of health. The health care should be adequate and continuously accessible to all without discrimination.”* While paragraph 5 of this Article stipulates: *“Health care is provided without any discrimination, if, in the course of the medical treatment resident are not discriminated on the basis of their social position, political views, origin, nationality, religion, gender, sexual preferences, age, marital status, physical or mental disability, qualification or on any other grounds not related to their state of health [...]”*.
34. Article 6, paragraph 1 of the Law No. 2004/38 For the Rights and Responsibilities of the Kosovo Residents in the Health Care, stipulates: *“In the course of medical treatment, the resident's human dignity, privacy, personal integrity and religious beliefs shall be respected.”* While paragraph 2, of this Article stipulates: *“In the absence of provisions in this Law to a different effect, only the interventions necessary for the health care of the resident may be performed on a resident, without his consent.”*
35. Article 9, paragraph 1 of the Law No. 2004/38 For the Rights and Responsibilities of the Kosovo Residents in the Health Care, stipulates: *“The resident is entitled to receive full information in an individualized form”*; While paragraph 2 determines:

⁶ Law No. 04/L-125, Article 3 (Definitions), paragraph 1.33: Professional confidentiality - keeping confidential the data about the health status of the healthcare user from unauthorized access

“The resident is entitled to receive detailed information on: a) His state of health, including its medical evaluation (...); h) The success or failure of the medical treatment, upon completion of each examination and intervention, including if the result deviated from what was expected, and the reasons for this; [...]”.

36. Paragraph 1, Article 1 of the Law No. 05/L -036 on Crime Victim Compensation, stipulates: *“The purpose of this law is the establishment and the functioning of the Crime Victim Compensation Program”* while Article 2, stipulates : *“This Law regulates the right to financial compensation for victims of violent crimes and their dependents, the decision making authorities and the procedures on the right to compensation in national and cross-border situations”* further the Law in Article 6 determines: *“The following violent crimes are compensable crimes according to this Law:[...] criminal offences which fall within the definition of domestic violence under the Law on Protection Against Domestic Violence”.*
37. Article 1 of the Administrative Instruction (GRK) No. 01/2017 on the Manner of Compensation Including the Calculation of the Compensation for Multiple Damages: *“The purpose of this Administrative Instruction is to determine the manner of compensation, including the procedure of receiving, handling and reviewing applications, calculation and decision-making on the compensation of crime victims”.*
38. Article 1, paragraph 1 of the Administrative Instruction No. 12 / 2012 for Determining the Place and Way of Psychosocial Treatment of Perpetrators of Domestic Violence stipulates: *“This Administrative Instruction regulates and determines the place and manner of implementation of psychosocial treatment on a perpetrator of domestic violence in order to prevent the recurrence or if there is a risk of repeated domestic violence”* while paragraph 2 of this Law determines: *“Psychosocial treatment to perpetrators of domestic violence is aimed at preventing further violent behavior, increasing the self-control by the perpetrator of violence and overcoming situations that could lead to a violent behavior by offering counseling perpetrators of violence, identifying the origin of violent behavior and increasing the responsibility of the perpetrators violence for his violent behavior”.*

Legal analyses

39. The Constitution, as the highest legal act, protects and guarantees human rights and fundamental freedoms; therefore it is in the interest of functioning of rule of law state pragmatic accomplishment of these rights. Constitutional guarantees serve to the protection of human rights as well as functioning of rule of law state. The Constitution, in Article 21 explicitly stipulates obligations of all bodies to have due respect for freedoms and rights of others, therefore this principle is imperative and should be respected by all, including here police, judicial as well as health institutions.

40. The Constitution in Article 25, paragraph 1 stipulates: “*Every individual enjoys the right to life.*” From this paragraph it is clearly seen that the right to respect life of a citizen is at the core of the constitutional system for protection of human rights and the right to life (its inviolability) is an absolute human right, which cannot be restricted under no circumstances, as well as avoidance from this right is not permitted. The Ombudsperson observes that the Constitution clearly defines that each person has the right that his/her physical and psychological integrity is respected, that among other things, when it comes to the right of personal integrity, the right to health and the right to life, the State has **positive obligation** to undertake all measure to safeguard inviolability of the physical and health integrity of persons, especially when integrity and human life is at risk. Constitutional Court of Republic of Kosovo, in the Judgment KI. 41-12⁷, has found that the right to life has been violated in cases when state responsible bodies failed to provide appropriate protection to citizens exposed to domestic violence and when the case circumstances required so.

Constitutional Court pointed out that the right to life is the most important right from all human rights, from which derives all rights and explained that positive obligations are at place for state bodies to undertake preventive and operational measures to protect lives of all those who are exposed to danger.

41. The Ombudsperson reiterates that, pursuant to Article 53 of the Constitution, Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights (henceforward *European Court*).

42. Article 2 of the Convention presents State’s general obligations to protect the right to life and includes **positive and negative aspects**: a) **positive obligation** to protect the life; and b) **negative obligation** to refrain from illegal deprivation of life. Positive obligation imposes **prevention and investigation liabilities**. **Liability of prevention** (see case *Osmani v. Great Britain, of February 28, 1998*) obliges state governments to prevent and combat criminal offenses. If it is established that governments had knowledge, or should have known, at the time of real and direct risk of life of an identified person, of criminal offenses of third parties and if appropriate measures have not been taken by them within their powers, which according to a reasonable assessment, could have been expected, in order to avoid the risk of life, they should be responsible for the failure of implementing positive obligations..

43. According to the case law of European Court, Article 3 of the Convention can be violated either from deliberate ill-treatment, or from the neglect or inaction to undertake specific steps or failure to ensure proper care standards. This Article imposes both negative as well as positive obligations, that is, an obligation not to

⁷ See the Judgment of the Constitutional Court of Republic of Kosovo, Case KI 41/12, Applicants Gezim and Makfire Kastrati versus Municipal Court in Prishtine and Kosovo Judicial Council, in public known as **Diana Kastrati case**.

commit a particular offense, and the obligation to undertake positive steps to ensure respect individuals' rights and to protect them from mistreatment. Given the case law of the European Court in cases of provision of health care, it is clear that the state has a responsibility to provide appropriate working systems and skilled staff for protecting lives, for example in hospitals, where appropriate measures should be taken to protect patients' lives,⁸ not to reject provision of health care (to provide with health care)⁹ and should provide adequate medications (appropriate).¹⁰ The Court found violation of Article 2 in the case when a child died in an ambulance because the child has not been admitted in hospital and was transferred to other institutions due to the lack of specialized equipment¹¹ and in cases where due to the malfunctioning of hospital departments it resulted with the lack of urgent medical care, which ended with death. Therefore, in this case, the Court found that this deed constitute violation of Article 2¹².

44. According to European Court's decisions the scope and the nature of the responsibility to investigate mortal / fatal incidents are explained particularly in the case of *Tanrikulu versus Turkey*, the Judgment of 8 July 1999, whereby the European Court has estimated that the *obligation to investigate cases of death* does not involve solely cases of deaths for which the state authorities were responsible but all death cases for which the authorities were notified, that is, for which they have been aware of. Authorities should take reasonable / necessary steps to provide relevant evidence (including eyewitness testimonies and forensic evidence) so that the investigation is useful and efficient. Therefore, the failure to continue clear flow of examination during the investigation, may lead to ascertainment of violation of Article 2.
45. European Court, in the course of interpretation of Article 2 of the Convention, in case *Branko Tomašić and others versus Croatia*, of January 15, 2009, related to positive obligations analyses the case when a person carried out his previous threats to kill his partner and their little daughter. He had been imprisoned for five months due to the death threats he had previously made to his family, and therefore the authorities ordered the measure of compulsory psychiatric treatment in custody. Immediately after his release, he killed his wife and his child before committing suicide. The court found that the authorities were aware of the seriousness of the threat but failed to meet their positive obligations, primarily because of insufficient psychiatric treatment, considering that it lasted too short, as well as whether appropriate psychiatric treatment has been provided. The European Court found that there was no prior risk assessment prior to his release from the measure of compulsory psychiatric treatment in a custody, while the domestic legislation did not permit continuation of compulsory psychiatric

⁸ *Vo v France*

⁹ *Cyprus v Turkey*

¹⁰ *Panaitescu v Rumania*

¹¹ *Asiye Genç v Turkey*

¹² See *Mehmet Şentürk and Bekir Şentürk v Turkey*

treatment even after serving the custody, which according to the European Court poses violation of Article 2 of the Convention. A very similar situation, not to say the identical, is presented in this Report, since Mr. H.K. had chronic psychiatric disorders, obtained insufficient psychiatric treatment and his periodical physical attacks against his family members have become a terrible distress for the members of his family by risking their lives and property, and the evidence obtained discloses that at least from 2003 and ahead the authorities were aware of the seriousness of the threats of Mr. H.K. to his family members, but failed in their positive obligations to secure lives of citizens and all ended with triple killing.

46. The Convention (Article 5, paragraph 1) allows detention as lawful in the cases of “*the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrant*” and related to the reason why persons belonging to these categories of people can be detained the European Court has voiced its stands that “*Not only should they be considered as **dangerous cases for public safety, but also their own interest may require the respective detention***” (see case *GUZZARDI versus ITALY no. 7367/76*). The Criminal Code of Republic of Kosovo sets forth the measures of mandatory treatment that may be imposed on a perpetrator who is not criminally liable, has substantially diminished mental capacity or is addicted to drugs or alcohol. These measures according to the Criminal Code are: *mandatory psychiatric **treatment and custody in a health care institution; mandatory psychiatric **treatment at liberty; and mandatory **rehabilitation treatment of persons addicted to drugs or alcohol.******* Criminal Code further explains that the Court may impose the measure of mandatory psychiatric treatment to the person at liberty who has committed a criminal offense in a state of mental inability or diminished mental capacity, if it ascertains that there is a serious risk that the perpetrator will again commit a criminal offense, therefore mandatory psychiatric treatment at liberty is necessary to elude the commission of another criminal offense, as well as when it ascertains that the mandatory psychiatric treatment at liberty is sufficient to elude serious risk, actions which has not been undertaken at any period towards Mr. H.K.
47. In the case ***Kontrová versus Slovakia no.7510 04***, the victim of domestic violence filed a criminal complaint against her husband accusing him of assaulting and beating her with electric cable. After this, accompanied by her husband, she went to authorities and requested to withdraw the criminal complaint and changed the complaint in a way that the alleged actions of her husband were treated as an offence and she did not seek further action. Two months after that, her husband killed her daughter and her son, born in 1997 and 2001. In front of the European Court of Human Rights, the applicant alleged, in particular, that the Police, being aware of her husband’s abusive and threatening behavior, has failed to undertake appropriate actions for protection of her children’s lives. Further on she ~~complained on the fact that it was impossible for her to obtain compensation.~~

European Court alleged violation of Article 2 of the Convention, regarding authorities' failure to protect children's lives of the applicant and pointed out that her family circumstances were well known by District Police Department having in regard of criminal complaint of November 2002 and emergency telephone calls of December 2002.

In response, under the applicable law, the police had been obliged to initiate a criminal investigation and criminal proceeding against her husband immediately after the criminal complaint, to keep a proper register of emergency calls and advise on the future change of the situation and, to take action as to the claim that the applicant's husband had a hunting weapon and threatened to use it. Finally, as proved by the domestic Courts and the Slovak Government had acknowledged that the police had failed in its obligations and the direct consequence of these failures had been the death of the applicant's children. The European Court further found that there had been a violation of Article 13 (right to an effective remedy) of the Convention since the applicant should have been able to claim compensation for the non-material damage but no such remedy had been available to her.

48. In the case *Durmaz versus Turkey* (no. 3621/07), the complainant alleged that the investigation related to the death of her daughter by the Turkish authorities had been ineffective and the European Court found, following case handling, violation of Article 2 of the Convention in its procedural aspect due to the failure of Turkish authorities to conduct an effective investigation concerning the death of the applicant's daughter. The European Court noted (as in the *Opuz* case) that domestic violence mainly affected women and that the general and discriminatory judicial apathy in Turkey created a climate favorable to domestic violence. Suitably, we can consider that despite existence of appropriate mechanisms in our country against domestic violence, in many cases they are proven ineffective and vain, as domestic violence is mainly affecting women and children.
49. On the case of *Talpis versus Italy* (nr.41237/14), concerning the domestic violence to which the mother of two children was exposed (Ms. Talpis) and resulting in the death of her son and attempted murder against her, the European Court found that there had been violation of Article 2 because of murder of her son and attempted murder against her and that in the present case there has been a violation of Article 3 (Prohibition of Inhuman, Degrading Treatment and Punishment) due to the failure of the authorities in their obligation to protect Mrs. Talpis against acts of domestic violence and that there has been a violation of Article 14 (Prohibition of discrimination) in relation to Articles 2 and 3 of the Convention. The European Court found that national authorities failed to take effective action against the complaint lodged by Mrs. Talpis and created a situation of impunity by the perpetrator of domestic violence which brought to the repetition of acts of violence which subsequently led to an attempted murder of Mrs. Talpis and the death of her son, therefore Italian authorities have failed to

fulfill their obligation to protect lives of given persons. The European Court found that Mrs. Talpis jointly with her children had lived in a climate of serious violence, sufficient to be qualified as ill-treatment, and that the manner in which the authorities had conducted the criminal proceedings noted the judicial motionlessness which was incompatible with Article 3 of Convention. Finally, the European Court found that Mrs. Talpis was a victim of discrimination due to the failure of authorities to act, which had underestimated reported violence, a situation that is in very corresponding manner presented on the case subject of this Report of Krasniqi family. Article 3 of the Convention also imposes an obligation on the State that *no one may be subjected to torture or inhuman or degrading treatment or punishment*. The Convention should be understood from the point of view of its "aim and purpose", as submitted by the European Court, to protect individual human beings within the meaning of the values of a democratic society, which implies that its provisions should be interpreted and applied in order to provide practical and effective protection, therefore Article 3 of the Convention contains substantive and procedural aspects, such as the obligation to investigate exercised *prima facie* allegations of torture and other inhumane treatment.

50. The Law on Protection from Domestic Violence clearly stipulates that it intends to prevent domestic violence, in all its forms, by applying appropriate legal measures, of family members who are victims of domestic violence, paying special attention to children, to elderly people and to those with disabilities. Furthermore, the Law aims treatment of perpetrators of domestic violence, facilitation the consequences of violence, imposing of protective measures (psychosocial treatment may be imposed to the domestic violence perpetrators in combination with other preventive measures), in order to avoid perpetrators' violent behaviors or if there is a risk of domestic violence reoccurrence. Additionally, the Law establishes a protective measure of removing from the apartment, house or other place of residence, imposed to a person who has committed violence against a family member with whom he or she lives in a household, home or any other residential place, if there is a risk of repetition of domestic violence, deeds which did not occur to Mr. H.K., due to which situations of violence have been repeated which turned later in a tragedy.
51. The Law on Protection from Domestic Violence clearly stipulates that the decision on Protective Order or Emergent Protective Orders is executed immediately by appropriate decision, issued by the competent court and is immediately delivered to the perpetrator of domestic violence, to the Kosovo Police, Centers for Social Work as well as to other parties in the proceedings, specifying that the Ministry of Labor and Social Welfare, in cooperation with the Ministry of Health, the Ministry of Justice, the Ministry of Local Government Administration, the Ministry of Internal Affairs, the Ministry of Culture, Youth and Sports as well as the Ministry of Education, is responsible for the support and establishment of necessary ~~supporting structures and infrastructure that serves to support and meet the~~

needs of persons towards whom domestic violence is exercised, including social assistance and medical services, in accordance with legislation at effect. Based on investigations of this case, we have found that in addition to imposing of Protection Order by the Court, no other procedure was undertaken in terms of support and establishment of the mandatory aiding structures or infrastructure for the support and fulfillment of the needs of persons against whom domestic violence has been exercised, including psycho-social assistance by the CSW and other services, has been conducted, in accordance with the legislation at force. On the other hand, such institutions' actions lacked as well towards the perpetrator Mr. H.K. which due to improper medical treatment, resulted with the loss of three lives.

52. The Law on Social and Family Services defines "*Person in Need*" any person found in the territory of the Republic of Kosovo, regardless of the status or place of origin, who needs social services due to, inter alia, mental illness. Further, the Law stipulates that if there are reasonable grounds to suspect that the vulnerable person lacks the capacity to act on their own behalf and it is necessary to protect the adult from serious harm, the relevant Centre for Social Work must make application to the Court for a Guardianship Order in order to protect the health, safety and well-being of the person to whom the order is made. The Law stipulates that the Court may decide to supervise the living circumstances of the vulnerable adult by a professional, appointed by the CSW, or to order the CSW to place the adult, who is mentally incapable to care for himself/herself in an appropriate residential facility. From what has been said above (see paragraph 46 of this Report) it is obvious that when it comes to persons with mental disorders, as in the case of Mr. H.K., the European Court has ascertained that these persons *not only should they be considered as dangerous cases for public safety, but also their own interest may require the respective detention*, therefore if there was a prior assessment conducted by authorities concerning the Mr. H.K., as well as enforcement of the Law at force, incontestably this tragedy would have been prevented and will not had a tragic end.
53. The Law on Mental Health clearly stipulates that it aims to protect and promote mental health, to prevent problems related to mental diseases, to guarantee rights and to improve the quality of life for people with mental disorders. According to the Law, provision of health care for persons with mental disorder should be done in a less coercive setting, mainly at the community level, in order to avoid in the highest extend the relocation from the family setting and to facilitate social integration and rehabilitation by stipulating that creation of facilities should be made through programs and projects implemented by the competent bodies for these persons and their families, for the purpose of their involvement in social life. The Law stipulates that provision of care for persons with mental disorders is done

by **multidisciplinary teams**¹³ which respond in a complex manner to the medical, psychological, social and rehabilitation needs. From the investigations conducted to the case it resulted that the CSW in Prishtine and the respective psychiatric institutions did not involve themselves at all with health / psychiatric treatment of Mr. H.K. Likewise, from the *Ex officio* investigation of this case, it resulted that the prosecution authorities or other bodies did not at any stage ask the Court to request from the competent health authorities expertise regarding the mental state of Mr. H.K., and later to be able to issue any order for compulsory psychiatric treatment in custody or at liberty.

54. Administrative Instruction on Determination of the way and the location of Implementation of psycho-social treatment of the domestic violence perpetrator, which derives from the Law on Protection from Domestic Violence, clearly defines that its aim is to regulate and determine the setting and the manner of implementation of the psycho-social treatment towards the domestic violence perpetrator with the intention of preventing such deeds or in case of repeating such misdemeanor in the family. Further, the Law states that the psychosocial treatment of perpetrators of domestic violence aims stopping violence, preventing other violent behavior, increasing self-control by the perpetrator, as well as overcoming of situations that could lead to violent behavior, providing counseling to perpetrators of violence, identifying the origin of the violent behavior, and increasing the responsibility of the perpetrator for his violent behavior. This Instruction is dedicated to the perpetrators of domestic violence to whom the Court imposes the measure of compulsory treatment of psychosocial rehabilitation and mainly to persons committing domestic violence with anamnesis/positive psychiatric diagnosis, which should be treated in health institutions. In the current case, it can be clearly seen that Mr. H.K, has met necessary preconditions of imposing mandatory treatment of psychosocial rehabilitation as a perpetrator of domestic violence with positive anamneses / psychiatric diagnosis, but has lacked the promptness as well as request of responsible bodies, the Court itself for such action, despite the fact that the victim of domestic violence / the protected party claimed to the police that her husband Mr. H.K. was mentally ill and was under therapy prescribed by the psychiatrist, since three years before the current situation, he attempted to jump from the flat and commit a suicide¹⁴.

Ombudsperson's Ascertainments

55. The Ombudsperson, based on findings and facts gathered as well as review of relevant Laws, which stipulate the right to life and State's positive obligations on the right to life, **ascertains violation of human rights and fundamental**

¹³ The Law defines Multidisciplinary Teams as “- teams composed of specialists from several fields such as physicians, nurses, psychologists, social workers, psychosocial advisors, work therapists, logopedes, development therapists or other professionals, who act in a coordinated manner, according to the respective protocols for maintaining and improving mental health”.

¹⁴ See the statement of Mrs. Hysnije Krasniqi given to the Police Station “South” in Prishtinë on 7 August 2017, Case 2017-AD-2252.

freedoms, since the authorities have failed to comply with legal and constitutional obligations as well as international standards applicable in the Republic of Kosovo, towards undertaking appropriate actions for protection of victims of domestic violence and psychiatric treatment of persons with chronic psychiatric disorders, as consequence of which the situation created by inattentiveness of the responsible authorities, had direct implications on loss of lives of three persons.

56. Furthermore, at the outset it should be noted that generally it is admitted that, in the international human rights Law, domestic violence raises many issues related to human rights. In general, human rights and mental health share the same objective for the promotion and protection of the right to welfare of all people. The Vienna Declaration and Action Plan, approved by the World Conference on Human Rights in 1993, confirmed that all human rights are universal, indivisible, interrelated and interdependent. The main human rights principles that are essential to an effective response of states against violence against individuals and human rights abuses can be found in several international instruments:¹⁵ 1) Universal Declaration on Human Rights; 2) European Convention on Protection of Human Rights and Fundamental Freedoms and its Protocols; 3) The International Covenant on Civil and Political Rights and its Protocols; 4) Council of Europe Framework Convention of for the Protection of National Minorities; 5) International Convention on the Elimination of All Forms of Racial Discrimination; 6) International Convention on the Elimination of All Forms of Discrimination against Women; 7) Convention on the Rights of the Child; 8) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; 9) International Covenant on Economic, Social and Cultural Rights, etc. In addition, a number of Conventions and declarations have been adopted that specifically or generally recognize and protect human rights, particularly against domestic violence such as the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence, adopted in Istanbul on May 11, 2011, known as the Istanbul Convention.

57. The Ombudsperson finds that Kosovo has a strong constitutional framework as well as a number of relevant national and local Laws and policies, strategies and mechanisms against domestic violence and in this context some major achievements have been made. However, the progress has not been equal to a number of challenges that hamper the proper implementation of these Laws, strategies and mechanisms, and these relate to the system in general, including poor implementation of Laws and policies, poor coordination between sectors and authorities, poor monitoring and accountability, actions that are being followed by impunity and non-compensation of victims of violence, which violates not only human rights but also serves as a disappointment in seeking services from public authorities in Kosovo.

¹⁵ See: A/CONF.157/24 (Part I), chap. III, *World Conference on Human Rights in Vienna on 25 June 1993*.

58. The Ombudsperson finds that the responsible authorities, by the failure to act in compliance with legal and constitutional obligations to handle the case of domestic violence perpetrator (of Mr. H.K.), has directly violated individual rights of other members of Krasniqi family, guaranteed by Article 25, with Article 31, with Article 32 and with Article 54, of the Republic of Kosovo, as well as with Article 2, with Article 6 and Article 13 of the European Convention. As a consequence of this, rule of law, as a fundamental principle of the Constitution and the Convention, obliges state bodies to respect / enforce the legislation approved by the country's government. Constitutional guarantees for human rights are fundamental values of a democratic society that serve to protection of human dignity, freedom and equality, because these values are the fundamental basis for rule of law state functioning and are precondition for respecting the principle of separation of the powers. The European Court in its practice stipulates that *“it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference”* (See the Decision of the ECtHR on the case *Malone versus United Kingdom, of August 2, 1984 § 68*).
59. The Ombudsperson reminds that as an integral part of principle of legal certainty the legitimate expectations principle is guaranteed as well. Based on the legitimate expectation principle, those who act in good faith and in accordance with the law should not be frustrated by their legitimate expectations. This principle is not applicable only to lawmaking procedures but also in issuing decisions in individual cases by public authorities. Additionally, legal certainty requires that legal rules are clear and precise, and aim at ensuring that situations and legal relationships remain foreseeable¹⁶. According to the case law of the European Court (see cases *Kopecky v. Slovakia*, Judgment of September 28, 2004, para 45-52; *Gratzinger and Gratzingerova versus Czech Republic (dec.)*, no. 39794/98, para 73, ECHR 2002-VII), *“legitimate expectation”* should be of a concrete nature and be based on legal provisions or legal acts. In the present case, the legitimate expectation for protection from domestic violence was based solely on the Law on Protection against Domestic Violence, the Law on Protection from Discrimination, the Law on Gender Equality, the Criminal Code, as well as on series of other normative acts applicable in Kosovo, but all available legal remedies were shown to be inadequate and ineffective remedies in the case that this Report addresses. The entire situation as per this case has resulted due to the fact that the competent authority disregarded the validity of the legislation

¹⁶ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)
~~REPORT ON THE RULE OF LAW~~ Adopted by the Venice Commission at its 86th plenary session
(Venice, 25-26 March 2011) (44-51).

approved by the Assembly of the Republic of Kosovo and therefore have created a situation of "**nudum ius**", where Laws are at place but are not being applied.

60. In the course of case review, the Ombudsperson finds that the perpetrator of domestic violence has not been treated in terms of his mental health wellbeing and sufficient evidence has been ensured by us proving that violence exercised by Mr. H.K. had been initiated at least 16 years before the murder occurred and that responsible authorities have never pay due concern to the case at any phase, therefore Mr. H.K. was consistently left unattended as per his mental health problems, so the same has accomplished his threats, and all this happened due to institutional carelessness. Further, the Ombudsperson finds that the lack of psychologist at CSW no. 1 in Prishtine and the failure of psycho-social treatment of the perpetrator of domestic violence and the victim of domestic violence, as was the case in the present case, had direct implications in the conclusion of the case. Moreover, the Law on Mental Health clearly stipulates that provision of care for persons with mental disorders should be made by **multidisciplinary teams** which are comprised of specialists in certain fields such as doctors, nurses, **psychologists**, social workers, psychosocial counselors, occupational therapists, logopeds, development therapists, or other professionals who act in a coordinated manner, according to appropriate protocols for maintaining and improving mental health that responds more complexly to medical, psychological, social, and rehabilitation needs.
61. In this meaning, the Ombudsperson reiterates that the obligation of state bodies is not only to refrain from intentional and unlawful taking of life but to take the necessary actions to protect lives of individuals in order to ensure the right to life, in particular towards vulnerable categories, in this case towards women and children risked by domestic violence. Based on some of cases occurred in our country (see paragraph 40 of this Report) it has been proved that in some cases the state bodies have failed to provide the necessary protection to victims of domestic violence and cases ended tragically. It is obvious that homicide killings as well as domestic violence cannot be completely eliminated in any state of the world, but when cases are in front of the Court proceedings and when there are indications that relationships within the family members are aggravated by indications that there may be serious threats to life, at that case the Police, the Judicial and Prosecutorial system, the CSWs, the Health system etc., should act promptly and if there are omissions or obstacles in appropriate cases proceedings or Law enforcement by them (as in the present case) then the state is held responsible for the violation committed to the victims of crime and their family members are entitled to **compensation**.

The Ombudsperson, based on what has been stated above, pursuant to Article 135, paragraph 3, of the Constitution of Republic of Kosovo: "*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*". In the meaning of Article

18, paragraph 1.2, of the Law No. 05/L-019 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 (...)*”; as well as: “*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 1.7).

Therefore, the Ombudsperson

RECOMMENDS

1. The Government of Republic of Kosovo that:

- ***Pursuant to responsibilities and legal powers (based on the Law on Crime Victim Compensation) through other subordinate bodies, to compensate family members of crime victims of Krasniqi Family.***

2. Kosovo Police that:

To keep a register of emergency calls for recidivist cases of domestic violence acts and prioritize handling of these cases

3. Ministry of Health that :

- ***Kosovo Clinical and University Hospital Service to issues an Instruction through which to inform all health institutions about obligations and responsibilities that they have when dealing with cases of treatment of persons with mental disorders and impose them to work pursuant to Article 19, paragraph 4 of Law no. 05 / L-025 on Mental Health.***

4. Judicial and Prosecutorial Council that:

- ***When reviewing cases for Protection Orders, to verify mental condition of the perpetrator of the domestic violence and to decide pursuant to Article 20, paragraph 2.2 of Law no. 05 / L-025 on Mental Health.***

5. The Municipality of Prishtina that:

- ***Pursuant to the competencies and legal authorizations and in cooperation with the competent authority, to undertake all necessary measures and ensure the presence of a psychologist in all CSWs in Prishtine in order to comply with Article 16, paragraph 3 of Law no. 05 / L-025 on Mental Health.***

6. Victims’ Advocates and Assistance Office that

- ***Pursuant to the legal authorization and in cooperation with respective authorities to increase the number of defense attorneys in VAAO, in***

Prishtinë.

In compliance with 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, including disciplinary measures also, 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 regarding this issue.

Warmly submitted,

Hilmi Jashari

Ombudsperson