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## REPORT WITH RECOMMENDATIONS

Ex-officio No. 567/2019

*related to the positive state obligations guaranteed by the Constitution of the Republic of Kosovo and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the case of K.V.*

**For:** Mr. Kujtim Munishi, Acting Chief Prosecutor, Basic Prosecution in Prishtina

Mr. Skender Reçica, Minister, Ministry of Labor and Social Welfare

Mr. Rashit Qalaj, Director, General Directorate, Kosovo Police

Prishtina, 6 december 2019

## **Purpose of the report**

1. The purpose of this report is to draw the attention of public institutions to the positive state obligations regarding the right to life in the case of K.V. who on 11 July 2019 was deprived of his life by another person.
2. Moreover, this report assesses how effective and swift the actions undertaken by the competent state institutions were in order to respect human rights, in this case in protecting the rights of K.V. as well as the obligations of the state to protect the lives of citizens, in accordance with the Constitution of the Republic of Kosovo, laws and other international instruments.

## **Legal basis**

3. The Ombudsperson, according to the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Law no. 05/L-019 on the Ombudsperson, Official Gazette of the Republic of Kosovo/no. 16/26 June 2015, Prishtina (hereinafter: the Law on the Ombudsperson) has, inter alia, the following powers and responsibilities:
  - 3.1 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);
  - 3.2 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);
  - 3.3 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);
  - 3.4 to publish notifications, opinions, recommendations, proposals and his/her own reports; (Article 18, paragraph 1, sub-paragraph 1.6 of the Law on Ombudsperson);
  - 3.5 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);
  - 3.6 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).

4. The Ombudsperson sends this report to the competent institutions and publishes this report on its website in order to avoid human rights violations and to comply with applicable laws as required by the rule of law.

## Facts

5. On 17 July 2019, the Ombudsperson, pursuant to Article 16, paragraph 4, of the Law on the Ombudsperson, initiated an ex officio investigation following the news published by *Gazeta Ekspress* portal on 15 July 2019, headlined: “Autopsy details of the murder of the 11-year-old victim reveal that he had been sexually abused three times”. According to the portal, the case of sexual abuse was filed at the police station in Fushe Kosova in January 2019, but the police had filed only a criminal report against the suspect.
6. On 18 July 2019, the Ombudsperson Institution (OI) appealed through a statement to the state institutions to implement the positive state obligations to guarantee the right to life as a fundamental right of everyone.<sup>1</sup> Also, in some reports published earlier, the OI has addressed to the responsible institutions a few recommendations regarding the proactive approach that the state should have towards fulfilling the positive obligations in guaranteeing the right to life of the citizens of the Republic of Kosovo.<sup>2</sup>
7. On 18 July 2019, the OI representatives met with the Kosovo Police in Fushe Kosova (hereinafter referred to as ‘KP’) to obtain information on the case and to provide documentation of the case (hereinafter referred to as ‘case documentation in KP’) regarding the reporting of the case to the KP on the sexual abuse of victim K.V. (hereinafter referred to as ‘the victim’) by suspect S.O. (hereinafter referred to as ‘the suspect’) in January 2019.
8. According to case documentation in KP, on 29 January 2019, R.O., the suspect's father (hereinafter referred to as ‘the suspect's father’) had informed the KP that his son had taken neighborhood children by force, in this case the victim, with whom he had had sexual intercourse.<sup>3</sup> The suspect's father had obtained this information from the victim's mother. He had confirmed that his son was also a drug user and that when he did not use drugs, he would become aggressive towards family members.
9. According to case documentation in KP, on 30 January 2019, the KP notified the Center for Social Work (hereinafter CSW) in Fushe Kosova and together they went to the house of the victim's mother but did not find her home.<sup>4</sup>
10. On 31 January 2019, the KP interviewed the victim's mother as a witness who had informed the suspect's father about the case in question.<sup>5</sup> After interviewing the suspect's father and the victim's mother, the State Prosecutor was duly notified, and the latter

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<sup>1</sup> <https://www.oik-rks.org/2019/07/18/avokati-i-popullit-fillon-hetimet-sipas-detyres-zyrtare-per-rastin-e-vdekjes-se-femijes-9-vjecar-nga-fushe-kosova/>

<sup>2</sup> <https://www.oik-rks.org/2016/08/10/raport-ex-officio-ne-lidhje-me-te-drejten-per-jete-10-gusht-2016/>;  
<https://www.oik-rks.org/2016/09/26/raport-me-rekomandime-i-avokatit-te-popullit-lidhur-me-detyrimet-pozitive-te-shtetit-perkitazi-me-trajtimin-e-detyrueshem-psikiatrik-2/>;

<https://www.oik-rks.org/2015/11/03/raport-me-rekomandime-892015-lidhur-me-te-drejten-ne-jete/>;

<https://www.oik-rks.org/2019/08/01/raport-me-rekomandime-ex-officion-rasti-nr-346-2019/>;

<https://www.oik-rks.org/2019/08/01/raport-me-rekomandime-ex-officion-rasti-nr-346-2019/>

<sup>3</sup> Police Report 53/19

<sup>4</sup> Official note of KP

<sup>5</sup> Minutes of the interrogation of witness M.B., 31 January 2019

instructed that the case remain initially proform and be investigated within the KP and that, after the interrogation of the suspect, the Basic Prosecution in Prishtina also be informed (hereinafter referred to as ‘BPP’).

11. On 4 April 2019, according to case documentation in KP, the suspect for sexual abuse was interviewed by the KP and he admitted having sexual intercourse with the victim. Also, after interviewing the suspect, the on-call State Prosecutor at the BPP was contacted, who ordered that the case be initiated for the criminal offense of *having sexual intercourse with a person under the age of 14* and that the case be investigated in due process.
12. After analysing the case documentation in KP, the Ombudsperson noted that a large number of cases were referred to the State Prosecutor on suspicion of committing certain criminal offenses.<sup>6</sup>
13. On 11 April 2019, the victim was interrogated and stated in the presence of his mother that the suspect had initially given him narcotic substances and then had beaten him and in the end had sexual intercourse with him.<sup>7</sup> After the victim was interviewed, according to the documentation, KP informed the BPP and received the notice that there was no need for forensic examination.
14. On 12 April 2019, the KP, acting pursuant to Article 81, paragraphs 1 and 2, of Code No. 04/L-123 of the Criminal Procedure, Official Gazette of the Republic of Kosovo/No. 37/28 December 2012, Prishtina,<sup>8</sup> filed a criminal report with the BPP against the suspect for committing the criminal offense of *“Sexual abuse of persons under the age of sixteen (16) years”*, pursuant to Article 235 paragraph 2 of Code Nr. 04/L-082 Criminal Code of the Republic of Kosovo, Official Gazette of the Republic of Kosovo/No. 19/13 July 2012, Prishtina.<sup>9</sup>
15. On 18 July 2019, the OI representatives met with the CSW representatives in Fushe Kosova to discuss the matter and provide the case documentation.
16. On 25 July 2019, the OI representative talked to the CSW representative who claimed to have requested to talk to the child, but he continued to refuse. He also claimed that they did not have a psychologist, so they asked the contracted psychologist to talk to the child. According to the CSW, the mother of the children was not very cooperative, but they continued to provide counselling.
17. According to the CSW claims and documentation provided (hereinafter referred to as ‘case documentation in CSW’), on 6 December 2018, the victim's mother with her four children had gone to the CSW to receive necessary social services, namely counselling for her child with disabilities M.V., where she was suggested to complete the medical documentation and apply for a social assistance scheme for the child, and the same had applied for this social scheme and was then granted the right to exercise it in the amount of 375€.

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<sup>6</sup> KPRK: Article 178 Murder; Article 188 Light bodily injury; Article 325 Theft; Article 325 Theft; Article 325 Theft; Article 325 Theft; Article 325 Theft; Article 187 Assault; Article 325 Theft; Article 325 Theft; Article 325 Theft; Article 325 Theft; Article 325 Theft; Article 325 Theft and Article 235 Sexual abuse of persons under the age of sixteen (16) years.

<sup>7</sup> Minutes of interrogation of the victim, 11.04.2019

<sup>8</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>.

<sup>9</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2834>.

18. According to the case documentation in CSW, the victim's mother along with her four children goes out to beg.<sup>10</sup> In December 2018, the CSW visited her family and she was warned not to go out on the street to beg, which is against the interest of the children. On 7 January 2019, the CSW representative visited the victim's family to verify that the mother was adhering to counselling. Also, according to the case documentation, the mother was found in the place where she lives, along with her four children, and nothing serious was noticed. The family was constantly visited and the mother was constantly warned not to go out and beg with all her children.<sup>11</sup>
19. On 31 January 2019, the CSW was informed by the KP about the case, namely the suspicion that the victim had been sexually abused by the suspect.
20. According to the case documentation in CSW, on 1 February 2019, at 12:10 hrs, the victim's mother filed a domestic violence case at KP against the person she cohabitates with, who occasionally caused problems.
21. On 7 February 2019, the victim's mother with her children was placed in the relevant shelter while on 8 February 2019, the mother and the children were taken from the shelter and placed in her home in Fushe Kosova.
22. On 13 February 2019, the CSW visited the victim's family because he was not attending school.<sup>12</sup> The CSW advised the victim to start attending classes at the primary school, but he refused, saying he did not want to go to school. The case documentation does not show that the CSW had taken any additional action including with other institutions to ensure that the child attended primary school.
23. On 12 March 2019, according to the case documentation in CSW, the family was notified of the psychological service by a CSW psychologist contracted for the victim.
24. On 13 March 2019, the family, namely the child victim was visited by a psychologist. The psychologist's finding was that the child did not want to talk, but later on he confessed and admitted to being twice abused by the suspect. The meeting lasted only 25 minutes.
25. On 11 July 2019, victim K.V. was found deceased, under the stairs of an apartment complex in the "Xhemal Mustafa" neighborhood in Fushe Kosova. He, according to the family, was allegedly sexually abused and then killed by a person while collecting cans on the streets of this city.<sup>13</sup>
26. On 7 July 2019, the Ombudsperson, through a letter, requested from the BPP to be informed of the actions taken within the powers and legal responsibility regarding the case in the period from 29 January to 10 July 2019. The Ombudsperson did not receive any response to this letter.
27. Also, through the letter (7 July 2019), the Ombudsperson requested from the BPP to answer some questions aimed at obtaining the necessary information and a clear overview of the case filed with the KP on 29 January 2019: "...Has the victim K.V. been

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<sup>10</sup> Form 001, file no. 1140/29, on 06.12.2018 and Form 005 of K.V.

<sup>11</sup> Visit and warning for the victim's mother by CSW representatives: on 8 February 2019; 13 February 2019; 12 March 2019; 26 March 2019; 7 May 2019; and 4 June 2019

<sup>12</sup> According to information from the case documentation.

<sup>13</sup> <https://www.gazetaexpress.com/detaje-te-autopsise-nga-vrasja-e-11-vjecarit-viktima-ishte-dhunuar-seksualisht-3-here/>

*interviewed, if so, when and where? Has any forensic examination or referral been made to other competent institutions in the provision of appropriate services to victim K.V.? (...) Was an arrest warrant issued against the suspect S.O. and what legal measures were taken by the BPP against the suspect from 29 January 2019 to 10 July 2019 regarding the case? What actions were taken by BPP following the arrest or detention of suspect S.O., prior to 10 July 2019? (...)*”.

28. On 11 September 2019, the Ombudsperson, through a recurring letter, requested from the BPP, a reply to the letter dated 7 July 2019. It also drew attention to Article 132, paragraph 3, of the Constitution of the Republic of Kosovo and Articles 18 and 25 of the Law on the Ombudsperson calling on public authorities to respond to the OI's requests for the provision of information, documents and files within a reasonable time.
29. On 18 September 2019, the OI received a response from the BPP stating that: “(*... the case was received by the Prosecution on 15 April 2019. On 11 June 2019, a ruling was issued for the initiation of investigations since the defendant S.O. was summoned to the Basic Prosecution in Prishtina, the invitation was accepted by the same, but he did not appear before the Prosecution. The second invitation was sent to the defendant on 21 May 2019 and the second one was also accepted but the defendant still did not appear before the Prosecution. The investigation was suspended on 26.06.2019. A total of 26 criminal reports were filed with the Basic Prosecution in Prishtina and 15 indictments were filed against him.*)” The Ombudsperson did not receive any data that would justify the suspension of investigations on the case.
30. Until the publication of this report, the Ombudsperson did not receive response to questions raised under paragraph 25 of this report. In this case, the BPP did not comply with Article 24, paragraph 4, of the Law on the Ombudsperson. However, this does not prevent the Ombudsperson from making conclusions and recommendations on the matter at hand.
31. On 23 September 2019, the OI representative spoke with a representative of the Victims' Advocacy and Assistance Office (VAO) and was informed that Victim Advocates (VAs) were not informed by the KP of this case.

### **Relevant legal instruments**

32. There are a number of legal instruments that regulate this issue including but without being limited to:
  - 32.1. The Constitution of the Republic of Kosovo (hereinafter referred to as ‘Constitution’)<sup>14</sup> defines in Article 21, paragraph 1: “*Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.*” Paragraph 2 of this Article states: “*The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.*” Also, paragraph 3 states: “*Everyone must respect the human rights and fundamental freedoms of others.*”
  - 32.2. Further, the Constitution defines in Article 50 [Rights of Children]: “*1. Children enjoy the right to protection and care necessary for their wellbeing.*” Whereas

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<sup>14</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>



- paragraph 4 of this Article states: *“All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.”*
- 32.3. In addition, the Constitution defines in Article 25 [Right to Life], paragraph 1: *“Every individual enjoys the right to life.”* Further, Article 26 [[Right to Personal Integrity] states: *“Every person enjoys the right to have his/her physical and psychological integrity respected [...]”*.
- 32.4. The Constitution provides in Article 53 [Interpretation of Human Rights Provisions] that *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*.
- 32.5. The Constitution envisages in Article 22 [Direct Applicability of International Agreements and Instruments]: *“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: (...) (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (...) (...) (7) Convention on the Rights of the Child (...)”*.
- 32.6. The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (hereinafter ECPHR) states the following in Article 2: *“Everyone’s right to life shall be protected by law (...)”*.
- 32.7. Convention on the Rights of the Child (hereinafter CRC) defines in Article 3, paragraph 1: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*
- 32.8. CRC states in Article 6: *“States Parties recognize that every child has the inherent right to life (...)”*
- 32.9. CRC defines in Article 19: *“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 (...)”*.
- 32.10. Furthermore, the CRC envisages in Article 32: *“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 (...)”*.
- 32.11. The CRC promulgates in Article 34 that: *“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse (...)”*.
- 32.12. Law No. 02/L-17 on Social and Family Services, Official Gazette of the Provisional Institutions of Self-Government in Kosovo/Prishtina: year ii/No. 12/01 May 2007 (hereinafter Law No. 02/L-17) as amended and supplemented by Law

no. 04/L-081 on amending and supplementing the Law No. 02/L-17 on Social and Family Services, Official Gazette of the Republic of Kosovo/No. 5 April 2012, Prishtina<sup>15</sup> (hereinafter referred to as ‘Law No. 04/L-081’) regulates: “...*provision of Social and Family Services to persons who are in need and families who are in need in Kosovo. In circumstances where there is no family support or where this is insufficient to ensure the welfare of an individual the State has a duty to provide to those people who would not otherwise be helped, Social and Family Services in a manner that respects their dignity as human beings and their fundamental rights based on Kosovo Legislation and International Human Rights Conventions.....*”.

32.13. Law No. 05/L-021 on Protection from Discrimination, Official Gazette of the Republic of Kosovo/No. 16/26 June 2015, Prishtina (hereinafter referred to as ‘Law No. 05/L-021’)<sup>16</sup> provides in Article 1, paragraph 1: “*1. The purpose of this law is to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, personal or social status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment*”.

32.14. Law No. 05/L-021 states in Article 2: “*1. This law applies to all acts or omissions, of all state and local institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life, especially related to: (...) 1.5. social protection, including social assistance scheme, social security and health protection;; 1.6. social advantages; 1.7. social amenities, including but not limited to humanitarian aid;(...)*”.

32.15. Law No. 04/L-076 on Police, Official Gazette of the Republic of Kosovo/No. 04/19 March 2012, Prishtina (hereinafter referred to as ‘Law on Police’)<sup>17</sup> regulates the authorizations and duties of Police of the Republic of Kosovo, its organization and other issues related to activities and actions of the Police of the Republic of Kosovo.

32.16. The Criminal Procedure Code No. 04/L-123, Official Gazette of the Republic of Kosovo/No. 37/28 December 2012, Prishtina (hereinafter referred to as ‘CPC’)<sup>18</sup>, determines the rules of criminal procedure mandatory for the proceedings of the courts, the state prosecutor and other participants in criminal proceedings as provided for in the present Code.

32.17. The Criminal Code No. 04/L-082 of the Republic of Kosovo, defines in Article 235 (Sexual abuse of persons under the age of sixteen (16) years): “(...)*2. Whoever subjects a person under the age of fourteen (14) to the following offenses shall be punished as set forth below: 2.1. the perpetrator who commits the offense of rape in violation of Article 230 of this Code involving a person under the age of fourteen*

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<sup>15</sup> <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2808>.

<sup>16</sup> <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10924>.

<sup>17</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2806>

<sup>18</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>



(14) shall be punished by imprisonment of at least ten (10) years. 2.2. the perpetrator who commits the offense of a using the sexual services of a victim of trafficking in violation of Article 231 of this Code involving a person under the age of fourteen (14) shall be punished by imprisonment of at least ten (10) years; 2.3. the perpetrator who commits the offense of sexual assault in violation of Article 232 of this Code involving a person under the age of fourteen (14) shall be punished by imprisonment of ten (10) to twenty (20) years; 2.4. the perpetrator who commits the offense of degradation of sexual integrity in violation of Article 233 of this Code involving a person under the age of fourteen (14) shall be punished by imprisonment of two (2) to ten (10) years. (...) 5. When the offense provided for in paragraph 1 or 2 of this Article results in the death of the victim, the perpetrator shall be punished by imprisonment of at least twenty (20) years or by long term imprisonment.” Paragraph 4 of this Article also provides for cases where the perpetrator is punished by imprisonment of at least fifteen (15) years.”<sup>19</sup>

32.18. Law No. 04/L-032 on Pre-University Education in the Republic of Kosovo, Official Gazette of the Republic of Kosovo/No. 17/16 September 2011, Prishtina,<sup>20</sup> regulates pre-university education and training from ISCED levels 0 to 4, including education and training for children and adults taking qualifications at these levels.

## The analysis

33. The Constitution protects and guarantees fundamental human rights and freedoms. Implementation and realization of these rights in practice is in the interest of the functioning of the rule of law, including the rights of children. The constitution explicitly stipulates the obligation of all institutions to respect human rights and freedoms,<sup>21</sup> so this principle is imperative and must be respected by all, including in *cases involving a child who is considered a vulnerable victim under the Criminal Code of the Republic of Kosovo*.<sup>22</sup>
34. The right to life as one of the rights guaranteed by the Constitution requires that state institutions take appropriate action to protect it. This right is at the heart of the constitutional system for the protection of human rights and it is an absolute right, which cannot be restricted under any circumstances, and deviation from this right is not allowed.<sup>23</sup> The Constitution also provides that every person has the right to respect for his

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<sup>19</sup> Code No. 04/L-082 Criminal Code of the Republic of Kosovo, Article 235, paragraph 4 “4.1. the offense is preceded, accompanied or followed by an act of torture or inhumane treatment; 4.2. the perpetrator uses force; 4.3. the perpetrator causes grievous bodily injury or serious disturbance to the mental or physical health of the person or the person attempts to commit suicide following the offense; 4.4. the perpetrator uses or threatens to use a weapon or a dangerous instrument; 4.5. the perpetrator intentionally causes the person to become intoxicated by alcohol, drugs or other substances; 4.6. the offense is jointly committed by more than one person; 4.7. the perpetrator knows that the person is vulnerable because of age, physical or mental disorder or disability or pregnancy; (...)”.

<sup>20</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2770>

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

<sup>22</sup> 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. (see Article 113, paragraph 39 of Code Nr. 06 / L-074 of the Criminal Code of the Republic of Kosovo).

<sup>23</sup> Constitution of the Republic of Kosovo, Article 56

or her physical integrity, and this right also includes positive obligations on the part of the state to take all measures to protect its invulnerability. The Constitutional Court of the Republic of Kosovo, in Judgment KI. 41-12,<sup>24</sup> found that there had been a breach of the right to life in cases where the competent authorities of the State did not provide sufficient protection to the citizens exposed to risk and when required by the circumstances of the case. The Court emphasized that the right to life is the most important right of all human rights, from which all other rights derive, and explained that there are positive obligations for the authorities to take preventive and operational measures to protect the lives of all those at risk. This also applies to the case of the child victim.

35. Furthermore, the Constitution stipulates that children enjoy the right to protection and care necessary for their wellbeing and that every child enjoys the right to be protected from violence, maltreatment and exploitation.<sup>25</sup> Also, all actions undertaken by public or private authorities concerning children shall be in the best interest of the children.<sup>26</sup> Consequently, there were state obligations to take all necessary measures to ensure the protection of the life of the child in this case victim K.V. and protection from abuse and maltreatment, as well as other protection in all areas of life that have been in the interests of his wellbeing.
36. The CRC as the most important international instrument in the field of children rights has provided that the right to life of children and the obligation of States to take all possible measures to ensure the survival and development of the child is not only one of the fundamental rights of the Convention<sup>27</sup> but also one of the four fundamental principles in its interpretation and application.<sup>28</sup> According to the CRC Committee, states should interpret "child development" in its broadest sense as a comprehensive concept that implies the physical, mental, spiritual, moral, psychological and social development of the child.<sup>29</sup> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.<sup>30</sup> The Convention provides for the obligations of the State to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence, including sexual abuse. These include, inter alia, the prevention and identification, reporting, referral, **investigation**, treatment and prosecution of child maltreatment cases, also through litigation.<sup>31</sup> The wording of this obligation is a term that leaves no leeway for the discretion of States parties. Accordingly, States parties are under strict obligation to undertake "all appropriate measures" to fully implement this right for all children.<sup>32</sup>

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<sup>24</sup> See the Judgment of the Constitutional Court of the Republic of Kosovo, Case KI 41/12, Applicants Gezim and Makfire Kastrati v. Municipal Court in Pristina and the Kosovo Judicial Council, known in public as the Diana Kastrati case.

<sup>25</sup> Constitution of the Republic of Kosovo, Article 50, paragraphs 1 and 3.

<sup>26</sup> Ibid, para. 4.

<sup>27</sup> CRC, Article 6.

<sup>28</sup> See General Comment No. 5 to the Convention adopted by the CRC Committee at: <https://www.refworld.org/docid/4538834f11.html>.

<sup>29</sup> Ibid, para. 12.

<sup>30</sup> CRC, Article 3(1).

<sup>31</sup> Ibid, Article 19.

<sup>32</sup> CRC Committee, General Comment no. 13 (2011) The right of the child to freedom from all forms of violence, para. 37, at: <https://www.refworld.org/docid/4e6da4922.html>.

Furthermore, the persons responsible for referring cases of violence against children must be trained professionals who provide a multi-disciplinary assessment of the short- and long-term needs of the child, caregivers and family, which invites and gives due weight to the child's views as well as those of the family, refer the child and family to a range of services to meet those needs; and follow up and evaluate the adequateness of the intervention.<sup>33</sup> Investigation must be undertaken by child rights-based and child-sensitive approach qualified professionals. Special care must be taken that the child is not further victimized.<sup>34</sup> Treatment of these cases means provision of medical, mental health, social and legal services and as well as longer-term follow-up services. At the same time, the living conditions of these children should be examined in order to promote their care and support.<sup>35</sup>

37. Following the process effectively requires that actions, once decided through a participatory process, where the child's and family's opinion is heard, must not be subject to undue delay.<sup>36</sup> Judicial involvement at all times and in all cases must respect the due process principle. In particular, the protection and the further development of the child and his or her best interests must form the primary purpose of decision-making.<sup>37</sup> In all proceedings involving children victims of violence, the celerity principle must be applied, while respecting the rule of law.<sup>38</sup> Moreover, actions taken should take into account the various factors that make children more vulnerable to violence such as poverty and discrimination, as well as belonging to vulnerable categories such as children in street situations and being part of ethnic minorities.<sup>39</sup>
38. In the case in question, there are no indicators showing that the State authorities considered any of the above-mentioned factors. The procedures for contacting the victim and providing medical and psychological services were lengthy and incomplete. Despite the severe sexual abuse experienced by the child classified as a vulnerable victim, he received a 25-minute treatment with a psychologist and only once. Violence against children is extremely complex and has severe psychosocial consequences, which directly affect the child's growth and development. Research shows that if a child experienced any form of abuse, and if he or she has not received the necessary help, there will be negative consequences later as an adult and it will be difficult to overcome those without adequate treatment.<sup>40</sup> There is no evidence that his and his family's views were taken into account in any of the steps in the proceedings. There is no evaluation for the short and long-term measures of his integration into society. The case was not prioritized by the prosecution and police. As will be elaborated below, these institutions did not take any measures required by law to secure the presence of the defendant in criminal proceedings, nor to secure the victim, despite the fact the suspect himself pleaded guilty in April when he was interviewed by the police.

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<sup>33</sup> Ibid, para. 50.

<sup>34</sup> Ibid, para. 51.

<sup>35</sup> Ibid, para. 52.

<sup>36</sup> Ibid, para. 53.

<sup>37</sup> Ibid, para. 54.

<sup>38</sup> Ibid, para. 54(d).

<sup>39</sup> Ibid, para. 72.

<sup>40</sup> Ombudsperson's opinion concerning the impact of violence into the health and social life of children, and the actions to be undertaken by responsible institutions. (15 November 2016.)

39. The constitutionally guaranteed human rights and freedoms are interpreted in accordance with decisions of the European Court of Human Rights (hereinafter referred to as ‘the European Court’), where Article 2 of the ECHR is relevant to this analysis. The European Court has reiterated that Article 2 should be regarded as one of the most fundamental provisions of the Convention and it constitutes one of the fundamental values of the democratic societies constituting the Council of Europe. (*see Soering v. United Kingdom, 7 July 1989 § 88, Series A no. 161*). This right requests the State not only to refrain from the "intentional" taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction.
40. This positive obligation includes, first, a state's primary duty to ensure the right to life by establishing a legislative and administrative framework designed to provide an effective barrier against threats to the right to life (*see Öneriyıldız v. Turkey, [GC] No. 48939/99, 89 89, ECHR 2004-XII*). Second, in certain circumstances there is a positive obligation on authorities to take operational preventive measures to protect an individual whose life is endangered by criminal actions of another individual (*see Osman v. The United Kingdom, 28 October 1998, § 116, 1998-VIII*). Children and other vulnerable individuals in particular are entitled to state protection (*Talpis v. Italy, no. 41237/14, § 99, 2 March 2017*).
41. A positive obligation will arise where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (*Osman v. Great Britain*).
42. In interpreting Article 2 of the Convention in the case *Branko Tomašić and Others v. Croatia, dated 15 January 2009*, in respect of positive obligations, the Court found that the authorities were aware of the seriousness of the threats but failed to take positive obligations.
43. In the present case, the police and the prosecution were informed that the suspect had assaulted the victim sexually. They were informed of this fact by four sources: the father of the suspect, the mother of the victim, the victim and the suspect himself. The father of the suspect had informed the police that his son became aggressive when he did not use narcotics. The victim confessed that the offense of sexual intercourse was committed in aggravating circumstances after the suspect had abused the victim physically by beating him up and that he had given narcotic substances to an 11 year old child, which is also another criminal act in itself. In addition, 26 criminal charges were filed against the suspect and 15 indictments were filed with the prosecution. Given all these facts, it is clear that a real and immediate danger to the victim's life existed, and the responsible authorities, albeit being aware of this, did not take any of the measures available under the Criminal Procedure Code, which would be reasonable, and consequently they failed to meet their respective obligations. Especially as the European Court has pointed out, children and individuals from vulnerable groups in particular have the right to protection by the state and as far as this case is concerned, the victim needed multiple protections as he was both a child and part of a vulnerable community marginalized in Kosovo.

44. According to the Criminal Code of the Republic of Kosovo, the victim in the present case is classified as vulnerable, while Law No. 02/L-17 on Social and Family Services, Article 1, paragraph 3, provides: *”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 of: **vulnerability to exploitation or abuse (...)** or other cause that renders them in need (...)*”, which is relevant to the present case. Even more when it is known that the CSW was aware that the victim was “a child in street situation”,<sup>41</sup> as a potential and basic element to assess that there is a serious, immediate danger to the victim's health, safety and well-being, the relevant institutions had to act urgently in child protection and, of course, upon assessing the situation in terms of legal provisions in force, take necessary measures to prevent, treat and adequately address the issue of the victim in both grounds, as a child in street situation and as a sexually abused child. Moreover, the victim belonged to the Ashkali community and lived in a family where domestic violence and severe economic conditions were reported. All these circumstances exacerbated his psychological and social state.
45. According to what the CSW representative stated, they tried to talk with the child, but the child consistently refused. The CSW should have been aware that this is expected of a child who has experienced violence. Persons trained in children rights and child-sensitive approaches would find another way to address this problem and would have been more aware of how to approach a child. The representative stated that the CSW did not have a psychologist, so they requested the contracted psychologist to talk to the child. The Ombudsperson notes that since the moment when CSW became aware that the victim may have been sexually abused, the victim received no psychological services at all for about 43 days. Based on the case file,<sup>42</sup> it appears that the victim had only one psychological hearing which lasted 25 minutes and the case file was summarized in a superficial manner without instructions for further actions to be taken for providing appropriate child help and support. Consequently, the CSW was not effective in providing professional psychological services to the victim in accordance with the minimum standards of quality of social services for children victims of sexual crimes.

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<sup>41</sup> For the purposes of this report, the term “**children in street situation**” is used in accordance with the recommendations of the Committee on the Rights of the Child and include: *“(a) children who are depended by the street to live or work alone, with their peers or their families; (b) a wider population of children who have developed close ties to public places and for whom street plays a vital role in their identity and daily life. This wider population includes children who occasionally (periodically) live or work on the streets and children who do not live or work on the streets but regularly accompany their peers, siblings, or families on the streets. In the case of street children, “being present in public places” means spending a lot of time on the street or in open markets, public parks, community public spaces, squares, bus and train stations This term does not include public institutions such as schools, hospitals or other similar institutions. (Committee on the Rights of the Child, General Comment No. 21 on Children in Street Situations, III (4), 2017).* The term “**child labour**” include: *“all activities that deprive children of their childhood, their potential and dignity and that is harmful to physical and mental development. It refers to work that: is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work. (International Labor Organization (ILO), Convention No. 138 on Minimum Age, Geneva, 1973).*

<sup>42</sup> Form 005, dated March 13, 2019, regarding the case.



46. Further, Law No. 04/L-081 designates the Custodian Body as a municipal professional body for social affairs, responsible for protecting the interest of children and adults, composed of a group of experts operating within the CSWs. In the case in question, this body failed to take action in accordance with legal obligations, to conduct a comprehensive professional assessment of the child's needs, and to seek protective measures by the court, since there was a well-founded suspicion that the child may have been a victim of sexual abuse, among other things. From the information and documentation provided on the case, it appears that the Custodian did not deal with the case at all.
47. Law No. 04/L-076 on Police, namely Article 10, stipulates that the KP, inter alia, has the duty *to protect the life, property and offer safety for all people, detect and prevent criminal acts and offenders, investigate criminal acts and offenders, perform other duties as assigned by applicable law.*<sup>43</sup> Whereas under Article 16, a Police Officer has power to identify other person only when: *“1.1. there is a reasonable suspicion that the person has committed, is committing, or will commit a criminal act; 1.2. there is a reasonable suspicion that the person poses a danger to persons or property or is causing a disturbance ;(..).* Based on the analysis of the information provided and the documentation of the case, the Ombudsperson observes that the KP, although it was aware that it involved a person suspected of committing many other offenses (recidivist) and in the present case of sexual abuse of a minor, did not take appropriate action in accordance with this Article. So the KP failed to effectively exercise its legal mandate to take him into custody and arrest him.
48. According to Article 20 of the Law on Police, a Police Officer has power to take a person into temporary custody when it is necessary to protect the person from harm or danger, especially when the person is in a helpless condition or to identify the person or to restrict the movement of the person as authorized by law, when the person is uncooperative with lesser measures. Paragraphs 2 and 3 of Article 20 also provide for the situation and time of temporary police custody *“2. Temporary police custody shall continue as long as necessary for the achievement of the legitimate police objective, but no longer than six (6) hours, excluding circumstances when the person is still in a helpless condition, but no longer than additional six (6) hours. 3. Temporary police custody, in accordance with subparagraph 1. 2. of paragraph 1 of this Article, may last up to twenty four (24) hours, within this time the police is obliged to inform a competent Public Prosecutor, in accordance with the Penal Procedure Code. (...).”* According to the case file provided by the KP, on 29 January 2019<sup>44</sup> the suspect's father notified the KP that his son had taken neighbourhood children, in this case, the victim with whom he had sexual intercourse. The Ombudsperson, upon analysing and evaluating the case file, notes that no action had been taken to identify, take into custody or arrest the suspect pursuant to this provision, despite the fact that they knew the suspect's name and surname, his negative record with the law and other circumstances requiring urgent action. (See point 12 and 29 of this report). Thus, the KP failed to take effective action in accordance with these provisions.

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<sup>43</sup> In this case, it also refers to the relevant provisions of the Criminal Procedure Code, namely the section of Chapter IX concerning initial police actions.

<sup>44</sup> Police Report 53/19.



49. Article 70 (Police Investigation Steps) of the CPC defines: “1. After receiving information of a suspected criminal offence, the police shall investigate whether a reasonable suspicion exists that a criminal offence prosecuted *ex officio* has been committed. 2. The police shall investigate criminal offences and shall take all steps necessary to locate the perpetrator, to prevent the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings. 3. In order to perform the tasks under the present Article the police shall have the power: 3.1. to gather information from persons; 3.2. to perform provisional inspection of vehicles, passengers and their luggage; 3.3. to restrict movement in a specific area for the time this action is urgently necessary; 3.4. to take the necessary steps to establish the identity of persons and objects; 3.5. to organize a search to locate an individual or an object being sought by sending out a search circular; 3.6. to search specific buildings and premises of public entities in the presence of a responsible person and to examine specific documentation belonging to them; 3.7. to confiscate contraband or objects which may serve as evidence in criminal proceedings, unless doing so would require an order under Article 105 of this Code; 3.8. to provide for a physical examination of the injured party, in accordance with Article 144 of the present Code; 3.9. to detect, collect and preserve traces and evidence from the scene of the incident a suspected criminal offence and to order forensic testing of that evidence by the forensic laboratory in accordance with Article 71 of this Code; 3.10. to interview witnesses or possible suspects in accordance with Article 73 of this Code; 27 3.11. to take steps necessary to prevent an emergent danger to the public; 3.12. to take all steps necessary to locate the perpetrator and to prevent the perpetrator or his or her accomplice from hiding or fleeing; and 3.13. to undertake other necessary steps and actions provided for by the law. 3. The police shall make a record, photograph or official note of the actions they take and of the facts and circumstances which are established by their investigation. 4. As soon as the police obtain a reasonable suspicion that a criminal offence prosecuted *ex officio* has been committed, the police have a duty to provide a police report within twenty four (24) hours to the competent state prosecutor, who shall decide whether to initiate a criminal proceeding”.

50. One of the measures envisaged by the CPC that could be exercised by the police was the arrest of the suspect. Article 164 of the CPC provides that an arrest may be made with the authorization of the state prosecutor when conditions are met: there is a grounded suspicion that he or she has committed a criminal offence which is prosecuted *ex officio*; and the seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit. For the reasons stated during this analysis, the OI is of the opinion that in the given case both conditions have been fulfilled to exercise this measure. Furthermore, on the basis of the guilty plea, Article 165 of the CPC, there was a possibility that the suspect could also be given detention.

51. The Ombudsperson also notes that, after interviewing the suspect's father and the victim's mother, the KP on 31 January 2019 informed the BPP, which instructed that the case initially remain *proform* and **be investigated within the police station**. It also authorized the KP to contact the prosecution again after interviewing the suspect. The Ombudsperson notes that the suspect was interviewed only sixty-five (65) days after the BPP was notified. Consequently, the case file does not constitute evidence that would reflect and substantiate any procedural-legal action on how the suspect was detained or arrested, as well as other legal actions that the KP should have taken after his detention or arrest. What is noted in the documentation is that the suspect was interviewed on 4 April 2019. In this interview, the suspect admitted to having had sexual intercourse with the victim. Thus the KP failed to be effective in fulfilling its legal mandate under paragraphs 1 and 2 of Article 70 of the CPC.<sup>45</sup>
52. The Ombudsperson notes that the victim was interviewed seventy-two (72) days after the KP was notified that the child may be a victim of sexual abuse, adding to the delay in notifying the potential victim of being an injured party (Article 62, paragraph 1, subparagraph 1.2, of the CPC). Moreover, pursuant to Article 77, paragraph 1, of the CPC “*When collecting data from the injured party, the police shall inform the injured party of his rights under Article 62 of this Code and at the request of the injured party or when the injured party belongs to one of the categories referred to in Article 62, paragraph 1 of this Code, shall notify the Victim Protection Unit.*”. In the present case, it emerged that the victim's defence counsel was not invited to be part of the victim assistance and support process, thus assisting and facilitating the process of properly addressing the case. Thus, the KP did not comply with these legal provisions.
53. Article 70 of the CPC defines the Police Investigative Actions prior to the commencement of criminal proceedings, which are indispensable prerequisites for initiating criminal proceedings in order for the criminal process to be effective. In this case, based on the investigations carried out, the Ombudsperson notes that the KP did not take appropriate action to determine the whereabouts of the perpetrator despite the fact that he possessed the necessary information and suspicion that a criminal offense is being prosecuted *ex officio*. It also turns out that the KP did not take the necessary actions to ensure the physical examination of the injured party under Article 70, paragraph 3, in accordance with Article 144. Furthermore, only sixty-five (65) days after the time it became aware of the alleged sexual assault case, it requested from the BPP to conduct a forensic examination, which considered that it was not necessary to carry out a forensic examination. The Ombudsperson notes that the KP has failed to implement paragraph 2 and paragraph 3, subparagraph 3.8, of Article 70 of the CPC.
54. Although the case was filed on 29 January 2019, the KP filed a criminal report with the BPP on 12 April 2019 against the suspect for the criminal offense of “**Sexual Abuse of Persons under Sixteen (16) Years of age**”. On 7 July 2019, the Ombudsperson, through

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<sup>45</sup> Article 70, paragraphs 1 and 2, of the CPC: “1. Upon receipt of information on a suspected criminal offense, the police shall investigate whether there is reasonable suspicion that a criminal offense prosecuted has been committed. 2. The police shall investigate criminal offenses and shall take all measures necessary to detect the whereabouts of the perpetrator, prohibit the perpetrator or his aide from concealing or fleeing, detecting and preserving traces and other evidence of the criminal offense and objects which may serve as evidence, and collect all information that may be used in criminal proceedings.”

a letter, requested from BPP to be informed whether there was an arrest warrant for the suspect and what legal measures had been taken by BPP against the suspect from 29 January 2019 to 1 July 2019, inter alia for actions taken in connection with the case, from 29 January 2019 until 10 July 2019. On 18 September 2019, the BPP informed the OI that the case was received in BPP on 15 April 2019, and on 11 June 2019, a ruling was initiated for the investigation since the defendant S.O. was summoned to the BPP, which he accepted, but did not appear before the prosecution office. The second call (invitation) was sent to the defendant on 21.05.2019, which he again accepted but did not appear before the prosecution office. According to the BPP, on 26 June 2019, the investigation was suspended. The CPC defines in Article 157 cases where the Prosecutor suspends the investigations.<sup>46</sup> Consequently, the investigative authorities have failed to be effective in arresting and detaining the suspect, evaluating the case and imposing legal measures to ensure the presence of the defendant in criminal proceedings.

55. According to the provisions of the CPC, the defendant must respond to the prosecution's invitation<sup>47</sup>, but although the suspect did not respond to the invitation of the prosecution, among other things, the latter failed to take additional legal action in bringing the suspect in criminal proceedings, as a procedural suspect charged with allegedly committing a criminal offense for which criminal proceedings were initiated (*Article 174, paragraphs 2 to 5, of the CPC applies accordingly to the prosecution as well*). If the suspect did not respond to the invitation, the prosecution office should have requested that the suspect be brought to criminal proceedings by force. On 21 May 2019, the second invitation was sent out and from that date until the suspect who allegedly took the life of the child (victim) on 11 July 2019 was still free. In this case, the Ombudsperson considers that the BPP should be more efficient and faster in bringing the defendant in criminal proceedings and that inefficiency in taking adequate legal action has led to the death of the child (victim).

## Conclusions

56. The Ombudsperson, after reviewing the relevant legislation, international instruments, case documentation, information and data available to him, concludes that in the present case, there has been a violation of fundamental human rights and freedoms, namely the positive obligations of the State to protect the right to life, as well as children's rights to

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<sup>46</sup> See Article 157 of CPC: “1. The state prosecutor may render a ruling to suspend the investigation if the defendant, after committing a criminal offence, has become afflicted with a temporary mental disorder or disability or some other serious disease, **if he or she has fled** or if there are other circumstances which temporarily prevent successful prosecution of the defendant. 2. Before the investigation is suspended, all obtainable evidence regarding the criminal offence and the criminal liability of the defendant shall be collected. 3. The state prosecutor shall resume the investigation after the obstacles that had caused suspension cease to exist. 4. The state prosecutor shall make an official note in the record of the investigation of the time and reasons for suspending the investigation and of the time when it was resumed. The state prosecutor shall inform the pre-trial judge of this suspension. 5. The time when the investigation was suspended shall not be taken into account in calculating the period of time for completing the investigation or for the expiration of the statute of limitations of a criminal offence.”

<sup>47</sup> KPP “2. The defendant shall be obliged to appear before the state prosecutor upon being summoned. Article 174 paragraphs 2 through 5 of the present Code shall apply *mutatis mutandis*. The defendant may appeal to the pre-trial judge to decide on the lawfulness of his or her being made to appear before the state prosecutor.”

protection from violence and abuse, as the relevant authorities have failed to meet constitutional and legal obligations as well as international standards applicable in the Republic of Kosovo to protect the life of the victim.

57. The Ombudsperson concludes that the responsible authorities were aware of the risk that the child (victim) was exposed to as a child in street and as a sexually abused child and therefore, failed to take positive action measures, namely the protection of the victim's life.
58. The Ombudsperson considers that the CSW should have done more to prevent, treat and adequately address the issue of child victimization in a street situation.
59. The Ombudsperson considers that the CSW failed to provide psychological services to the child for sexual abuse. In the absence of a psychologist, the CSW contracted a psychologist who only held one psychological session of 25 minutes and with superficial findings.
60. The Ombudsperson notes that since the CSW became aware that the victim had been sexually abused, about 43 days elapsed before the victim received the necessary psychological services.
61. The Ombudsperson notes that the competent state authorities did not show the necessary skills to handle such cases. They should further enhance inter-institutional cooperation, with the sole aim of preventing similar situations and providing adequate services to victims.
62. After analysing the documentation of the case in the KP, the Ombudsperson notes that a large number of cases were referred to the State Prosecutor on suspicion of committing certain criminal offenses and 15 indictments were filed against the suspect.
63. The Ombudsperson finds that, given the protection of the injured party or the victim, the more so when the injured party is a child victim of sexual violence, the KP failed to inform the victim defence counsel and that it delayed the interviewing of the victim and informing the latter of his rights as an injured party (Articles 77 and 62 of the CPC).
64. The Ombudsperson, based on the case documentation, finds that the Custodian Body did not deal with the case as a professional municipal body for social affairs, responsible for protecting the interests of children and adults.
65. The Ombudsperson considers that child protection institutions are obliged to develop and implement social programs that provide support to the child and the family in order to prevent the risk of life, violence, neglect, abuse and exploitation.
66. In these circumstances, the State Prosecutor and the KP should have done more to take effective actions provided for in the CPC and relevant laws within their scope, and that their failure to act constitutes a violation of the constitutional obligations arising from Article 25 of the Constitution and Article 2 of the ECHR.
67. Based on the abovementioned, in accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo "*Has the right to make recommendations and propose measures he/she observes violations of human rights and freedoms by public administration bodies and other state bodies*" and for purposes of Article 18, paragraph 1.2, of the Law on the Ombudsperson, according to which the Ombudsperson is

entitled “(...)to draw attention to cases when the institutions violate human rights and to make a recommendation to stop such cases (...)”, and ”to recommend [...]issuance or amendment of sub-legal and administrative acts by the Institutions of the Republic of Kosovo.” (Article 18, paragraph 1.7).

The Ombudsperson

## **RECOMMENDS to the following:**

### **Basic Prosecution in Prishtina**

1. Incorporate internal investigations into the prosecution's failure to meet its positive obligations to protect the right to life.
2. In cases where the child is a victim of sexual assault, such cases should be dealt with effectively and urgently by assessing and ensuring adequate legal remedies for the perpetrator of sexual assault.

### **Kosovo Police**

3. Increase the professional capacity of the Kosovo Police on the right to life and procedural aspects for effective investigations in cases where the child is a victim of sexual assault.
4. In cases where the child is a victim of sexual assault, the Victim defence counsel and Assistance Office should be notified immediately.
5. Provide training on child rights-based and child-sensitive approaches to police officers working with children.

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

6. In cooperation with the Municipality of Fushe Kosova, strengthen and develop the capacities of the CSW to provide quality professional services to children victims of sexual assault and to children and their families living and/or working on the streets, in order to prevent the risk to life, violence, neglect, abuse and exploitation.
7. In cooperation with the Municipality of Fushe Kosova, undertake all necessary measures to provide psychologists in the CSW.
8. Provide training on child rights-based and child-sensitive approaches to CSW staff working with children.

Pursuant to Article 132, paragraph 3 of the Constitution of the Republic of Kosovo (“Any other body, institution or authority exercising legitimate power in the Republic of Kosovo is obliged to respond to the requests of the Ombudsperson and submit to him/her all the documents and information required in accordance with the law”) and Article 28 of Law No. 05/L-019 on the Ombudsperson (“The authorities to which the Ombudsperson has addressed a recommendation, request or proposal for taking concrete action must be responded within thirty (30) days. The response must include written reasons for the actions taken in relation to the matter in question”), we would kindly ask you to inform us of the actions you will take regarding this matter.

Sincerely,

Hilmi Jashari  
The Ombudsperson