



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

REPORT WITH RECOMMENDATIONS OF THE OMBUDSPERSON OF THE REPUBLIC OF KOSOVO

Ex officio
No. 468/2019

In accordance with the positive obligations in the case of Ms Z. S., guaranteed by the Constitution of the Republic of Kosovo and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

To: Mr. Alexander Lumezi,
Chief State Prosecutor
Mr. Muja Ferati,
Chairman of the Independent Media Commission
Mr. Rashit Qalaj,
General Director of Kosovo Police
Mr. Skender Reçica, Minister,
Ministry of Labor and Social Welfare
Mr. Agim Veliu, Mayor,
Podujeva Municipality

Prishtina, on 9 December 2019

I. THE PURPOSE OF REPORT

- The purpose of this report is to draw attention to the positive obligations that the state has on guaranteeing the safety and life of citizens as in the case of Ms Z. S., who was physically assaulted on 29 May 2019 in Lipjan and on 31 May 2019 in Ferizaj by several citizens, as a result of hatred inciting on social media and various media portals. The report also warns against the limits of freedom of expression in relation to other rights and the risk of infringing privacy, human dignity, and incitement to violence, hatred, intolerance or disturbance of public order.
- The report emphasizes the need for action by the institutions of the Republic of Kosovo, in particular the law enforcement agencies, even with preventive actions to guarantee the lives of the country's citizens and ensure their free movement.

Competencies of the Ombudsperson

1. The Constitution of the Republic of Kosovo (hereinafter: the Constitution), in Article 132, paragraph 1, provides: *“The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.”*
2. The Ombudsperson, according to Law no. 05/L-019 on the Ombudsman, inter alia, has the following competencies 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, subpar. 1.2).
 - *“to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination.”* (Article 18, par. 1, subpar. 5).
 - *“. to publish notifications, opinions, recommendations, proposals and his/her own reports.”* (Article 18, par. 1, subpar. 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, subpar. 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, subpar. 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, subpar. 9).

By submitting this Report with recommendations to the competent institutions and publishing it, the Ombudsperson intends to carry out the aforementioned constitutional and legal responsibilities.

ACTION TAKEN BY OMBUDSPERSON INSTITUTION

3. On 31 May 2019, the Ombudsperson initiated *ex-officio* investigations, based on an article published on the portal "KlanKosova.tv", on 29 May 2019, titled: "Police talk about the 'mysterious' woman seen across Kosovo". It was reported, through social networks, but also through some online portals, that Z. S. kidnapped children in several cities, such as in Malisheva, Prizren and Fushe Kosova. In a video shared on the social network "Facebook" there was a photo of a woman at the bus stop in Malisheva, with the caption: "Beware of this woman, she is kidnapping children". This information quickly spread across many online portals in Kosovo, creating widespread public concern. In the following days, online portals of Kosovo disseminated information that the person identified in the photo was a male dressed as a female and there were suspicions that the person in question might be transgender.
4. On 28 May 2019, the online portal "Gazeta Metro" published information that Kosovo Police spokeswoman for Gjakova region claimed that while Z.S. was staying at the bus station in Malisheva, she was photographed by some young people (high school students), who then posted these pictures with her image on social networks for the sake of humour and ridicule, writing: "Beware, danger looms your houses".¹
5. According to the OI (Ombudsperson Institution) information received from the Department for Reintegration of Repatriated Persons of the Ministry of Internal Affairs (MIA), it is known that Ms. Z.S. is a repatriated person from Belgium three times in 2011, 2014 and 2015. She has been the beneficiary of certain services for repatriated persons, including rent payments, but due to frequent emigration, in the process of third repatriation, she did not use the reintegration schemes, preventing sustainable reintegration support. The representative of the MIA in the reply sent to the OI also stated that, due to the sensitivity of the case and the vulnerability, this Ministry is ready to regulate the case of Z.S. in the accommodation centre, to provide the victim with psychosocial treatment and with adequate support as needed.
6. On May 29, 2019, the online portal Koha.net published news titled: "*Policia mohon se gruaja rome ka kryer vepra penale, fotografinë e saj e shpërndanë për tallje disa të rinj*" (Police deny that a Roma woman has committed criminal offenses, her photos were spread by some young people to laugh at her). According to the article on this portal, the victim in question was identified by the Kosovo Police and released because she is not suspected of any criminal offense. According to the information of the Kosovo Police, published by this portal, it is known that everything started as a joke of high school students who photographed this person, then spreading it on social networking with the message that they should be careful of this person.² According to this medium, various

¹According to the article: "Roma woman under assault: This is her story, she came from Belgium and became a victim of social media", published by the "Gazetametro.net" portal, on 1 June 2019.

² According to the article: "*Policia mohon se gruaja rome ka kryer vepra penale, fotografinë e saj e shpërndanë për tallje disa të rinj*", (Police deny that a Roma woman has committed criminal offenses, her photos were spread by some young people to laugh at her), published by the portal "Koha.net", 29 May 2019.

groups on social networks have falsely alarmed about the danger posed by a woman seen in different cities in Kosovo.³

7. On the same date, *Koha.net* portal published the news with the headline: “*Disa të rinj në Lipjan sulmojnë gruan rome, njëri e rrëzon përtokë me grusht pas koke*” (Some young people in Lipjan attack Roma woman, one of them knocks her down and hits with a fist on her head).
8. On 30 May 2019, a protest was announced in the media and held in Prishtina standing in solidarity with the victim Z. S. condemning the assault on her. Participants in the protest appreciated that the assault on the person concerned was committed by persons, among other things, of homophobic mentality, and demanded from state institutions to take immediate action against potential perpetrators.⁴
9. On 31 May 2019, representatives of civil society, representing the interests of the Roma community, journalists, students and intellectuals, submitted a Public Letter to the Independent Media Commission, the Ministry of Internal Affairs and the Ombudsperson Institution regarding the latest attacks, they claimed, against members of the Kosovo Roma community. Through this letter, they demanded, inter alia, that the responsible institutions take concrete action to prevent such cases.
10. On 31 May 2019, the Ombudsperson received information that Mrs. Z.S. was again physically assaulted in the town of Ferizaj. Representatives of the Ombudsperson met with the Commander of the Police Station (SP) in Ferizaj, from whom they received information that a case of assault on a person has been opened at this Police Station and a person has been identified as a potential perpetrator of the assault, and in coordination with Chief Prosecutor of Basic Prosecution in Ferizaj, victim Z.S. is expected to be placed in shelter.
11. The medical team from the Main Family Medicine Centre had gone to the PS in Ferizaj upon invitation of police officers in order to provide medical services to the victim, which she refused. Also the Commander of the PS in Ferizaj informed the OIK representatives that communication with the victim is difficult as she does not communicate in the official languages, but only in English and in German.
12. Representatives of the Ombudsperson requested information from the commander of this PS on whether the victim was provided with an English or German translator, and were informed that no English or German language translator was employed at this police station. Information was also requested on whether the representatives of the Centre for Social Work (CSW) and the psychologist were present when the victim was interviewed. They received information that only one representative from the CSW was present during the interview. Also, the OIK representatives, while present at the police station, received information that the suspect as a possible perpetrator of the assault against the victim Z. S. in Ferizaj was arrested. Doctors claimed the victim had a slight injury to the right cheek. Also, the representative of the Ombudsperson talked with the representative of the

³ According to the article: “*Disa të rinj në Lipjan sulmojnë gruan rome, njëri e rrëzon përtokë me grusht pas koke*”(Some young people in Lipjan attack Roma woman, one of them knocks her down and hits with a fist on her head), published by “*Koha.net*” portal, on 29 May 2019.

⁴ According to the article: “*Sulmi ndaj gruas rome, sot në Prishtinë protestë kundër homofobisë* (Attack on Roma Woman, Protest Against Homophobia in Prishtina Today), published by *klankosova.tv*, on May 30, 2019.

CSW in Ferizaj, who stated that they do not have a psychologist due to lack of funds and in cases like this they request the assistance of the Main Family Medicine Centre in Ferizaj. But, according to him, psychologists of this centre work from 8:00 am to 2:00 pm, so they were not present that day, as their working hours had ended. In addition, the representative of the CSW in Ferizaj claimed that, in such cases, the Victims' Advocacy Office is not invited, and that the same is only invited in the event of a domestic violence case being reported.

13. Representatives of the Ombudsperson were allowed to meet the victim at the interview office while she was staying at Ferizaj Police Station. She appeared to be extremely tense, saying in English that she was not assaulted by anyone and requesting to be released of PS. During this time, the CSW representative in Ferizaj was also present in the interview office, as well as an employee of the Police Station in Ferizaj, who was trying to perform the job of translator from English into Albanian and vice versa. Later, a representative of the Victims' Advocacy Office in Ferizaj and some members of the Assembly of the Republic of Kosovo from Roma and Egyptian communities were present at the PS in Ferizaj. It was determined that the victim Z. S. be housed in a shelter in Ferizaj and is in custody of the Kosovo Police until 3 June 2019 and thereafter, in accordance with the Chief Prosecutor of the BPF, to consider the possibility of taking appropriate action as prescribed by applicable laws.
14. According to the CSW documentation in Ferizaj held by the Ombudsperson, it is seen that the officials of the shelter where the Z. S. victim was housed on 1, 2 and 3 June 2019, offered her psychosocial treatment, which was rejected by her.
15. On 31 May 2019, the Association of Journalists of Kosovo (AJK) also reacted to the assault on the victim Z. S. They expressed concern about the publication of unverified news, which, according to AJK, bring consequences as in the case of the woman who was reported as "*dangerous*" and "*child kidnapper*". AJK emphasized that this form of reporting is an infringement of human rights and in violation of professional journalistic standards as well as the Code of Ethics.
16. Based on the analysis of the documentation received by the CSW in Ferizaj, it can be understood that the CSW in this municipality did not file for custody order for the victim Z. S. The Ombudsperson's representative contacted one of the CSW officials in Ferizaj, who claimed that, because of their territorial competence, they did not file a claim for custody to the court, as they found out that the victim Z.S. was a resident of the municipality of Podujeva.
17. According to the Ombudsperson's information, the Basic Court in Ferizaj has imposed a 30-day detention on remand against the person suspected of assault on the victim.
18. On 3 June 2019, the representative of the Ombudsperson held an informational meeting with officials at the Police Station (SP) in Lipjan regarding the assault on the victim Z. S., on 29 May 2019, in Lipjan. According to Kosovo Police information, the PS in Lipjan has opened a case for investigation. Based on the documentation received by the PS in Lipjan, it is understood that an employee at this station, on 29 May 2019, at 2:21 pm, notified several police officers via e-mail that from 10:00 he had received information and phone calls from many citizens who saw a woman in Lipjan resembling the woman posted on social networks and labelled as a child kidnapper.

19. Nonetheless, KP released the victim Z.S. from Lipjan Police Station, but at around 17:20, information was received at the same station that some juveniles were verbally harassing and assaulting a female at "Skenderbeu" Street. According to the documentation received from the PS in Lipjan, police officers had come to the scene and attempted to communicate with Z. S., but she had refused to speak, and, as described by the police officer, no injuries were noted. Additionally, according to KP information, KP base was instructed to send Z. S. to the bus station to travel to Prishtina, since according to documents it appeared that her residence was Podujeva.
20. On 6 June 2019, the representative of the Ombudsperson received the case file from the PS in Ferizaj, which shows that, on 1 June 2019, the Basic Court in Ferizaj rendered a Ruling PPRM.nr.73/19, whereby a detention of 30-days has been imposed against a person who allegedly assaulted the victim Z.S.
21. On 13 June 2019, the Ombudsperson's representative was at the shelter in Prishtina. Officials from this shelter claimed that, on 3 June 2019, the victim Z.S. was brought to this shelter on the initiative of the Minister of Labour and Social Welfare. According to them, the victim Z.S. should be placed in a more stable location. According to the OI information, the CSW case manager in Podujeva has never visited the victim Z.S.
22. On the same date, 13 June 2019, the representative of the Ombudsperson met with officials from the Independent Media Council (IMC). They asserted that, under current IMC law, they have no mandate to act on portals, but only on television and radio media. In the question posed by the Ombudsman representative, what action they undertook against television media that displayed photos and videos of the assault on victim Z.S., IMC officials claimed that there was a public reaction from the IMC and that the Commission mandated within the IMC is expected to decide on any eventual disciplinary measures against the TV stations that broadcast the news about Mrs. Z.S., including records made on the assault against her in Lipjan and in Ferizaj. They stated that a notice of such publications had been sent to some media and now expect them to respond to the matter. According to them, it is expected that the current IMC law will be amended and it is said that to establish a portal, it must obtain authorization from the IMC. In addition, the representative of the Ombudsperson requested additional information about the IMC's further actions taken in relation to the case. According to information received by this Ombudsperson institution, as a precautionary measure, the IMC publicly reacted to the violation of the Code of Ethics during the reporting of several media outlets in the present case and at one of the meetings of the Commission in the IMC the actions of several television channels that transmitted the case in question were reviewed, whereupon the IMC, in accordance with the IMC Law and the Code of Ethics in force, decided that the parties responsible should be sanctioned with an admonition. Also, according to the IMC, the responsible parties are obliged in the future to pay due attention to the protection of the identity and integrity of the suspects, in order to comply with the applicable Code of Ethics.
23. The Ombudsperson representative contacted the manager assigned to the case from the CSW in Podujeva. She claimed that, as the case manager, she had not yet visited the victim Z.S., at the shelter in Prishtina, adding that she had been in constant contact over the phone with the director of the shelter. The Ombudsperson's representative asked her for the case file, which she received from the CSW in Podujeva.

24. On 19 June 2019, the representative of the Ombudsperson contacted the representative of the State Prosecutor's Office, who requested that a letter be sent to him via email regarding the case.
25. On 21 June 2019, the representative of the Ombudsperson sent an email to the State Prosecutor's Office requesting information on the actions taken by the prosecution regarding the case.
26. On 26 June 2019, the representatives of the Ombudsperson met with the representative of the State Prosecutor's Office. Since Mrs. Z.S. for the first time was photographed at the Malisheva Bus Station by several persons, a representative from the State Prosecutor's Office telephoned the Chief Prosecutor of the Basic Prosecution Office in Gjakova, who claimed that she had no information regarding the actions taken against the persons who posted and published the photo of Mrs. Z.S. on social networking sites. Also, the State Prosecutor's representative telephoned the Chief Prosecutor of the Basic Prosecution in Prishtina regarding actions in the case of the first assault against Mrs. Z.S. occurred in Lipjan. The State Prosecutor's representative stated that he will inform the OI regarding any other information related the present case.
27. On 27 June 2019, the representative of the Ombudsperson received information from the State Prosecutor's representative, according to which, in the case of the assault on the victim Z.S. occurred in Lipjan, the case prosecutor was appointed by the Basic Prosecution in Prishtina, under case no. PPM.I.No.211/19. But from the communications with the State Prosecutor's representative it can be concluded that no case has been opened by this Institution against the persons who first published photographs and messages about Mrs. Z.S., which proved to be untrue, as well as against the media that published the photographs and against the television media through which channels the video recording of the assault on the victim was published.
28. On 29 June 2019, representatives of the Ombudsperson, with the participation of the OI psychologist, for the second time visited the shelter where the victim Z.S. is accommodated. The representative of this shelter informed the representatives of the Ombudsperson that the victim Z.S. was visited by the Emergency Medical Center in Prishtina and healthcare service has been provided for her. The shelter representative repeatedly asked the psychiatrist of the Prishtina Mental Health Center, who is also the head of the Center, to visit the victim. According to the shelter's announcement, on 1 July 2019, the victim was visited by a psychiatrist at the Prishtina Mental Health Center and is expected to report on her mental health condition.
29. On 5 July 2019, the shelter's representative informed the Ombudsperson's representative regarding the victim's psychiatric-psychological assessment and after providing medical services at the healthcare institution, the victim Z.S. is returned back to the shelter in Prishtina.
30. On 8 July 2019, the Basic Court in Ferizaj, Juvenile Department, announced a Ruling against a juvenile defendant, whereby imposed an educational measure: and as result he will serve one-year (one) year sentence at the correctional facility, whereas with Decision his detention on remand has been extended until the judgment becomes final.
31. On 11 September 2019, the representative of the Ombudsperson, via email, requested additional information from the KP representative on the provision of translation services

for persons in KP, as in the case of victim Z.S., who does not speak any of the official languages of Kosovo; also sought information on whether there is a language procedure in KP in such cases. On 24 September 2019, the representative of the Ombudsperson, via email, received a response from the KP representative, according to which, with reference to the applicable legal provisions, including the Code of Criminal Procedure of Kosovo and Article 24 par. 2.1, of the Regulation on Operations in the Kosovo Police, is formulated Notice Guide for the Kosovo Police, as information about the suspect and notification of the rights of the arrested person are set out, in point 4 of the Guide, where the interpreter is specified, as follows: *"You are entitled to the free assistance of an interpreter if you do not understand or speak the language used by the police officer."* In addition, this KP response states that, in accordance with the provisions of legal and subordinate legal acts and with a view to prohibiting discrimination based on the language an individual speaks or doesn't speak, the Kosovo Police shall inform any person interviewed by the police who does not speak the language in which the procedure is conducted that he is entitled to the free assistance of an interpreter if he or she does not understand or speak the language used by the police officer.

32. Finally, according to the Notice of the Directorate of Health and Social Welfare in the Municipality of Podujeva, dated 13 November 2019, Z. S. has been accommodated in a rented house in Podujeva for a period of four months and the payment of rent is supported by the Municipality of Podujeva.

II. THE LEGAL INSTRUMENTS RELEVANT TO

33. Constitution of the Republic of Kosovo, Article 1, par. 2, defines: *"The Republic of Kosovo is a state of its citizens. The Republic of Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders."*
34. Article 21, paragraphs 2 and 3, of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) defines as follows:
- "The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution."*
- "Everyone must respect the human rights and fundamental freedoms of others."*
35. Article 27 of the Constitution provides: *"No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment."*
36. Constitution of the Republic of Kosovo, Article 35 [**Freedom of Movement**], par. 1, defines: *"Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence."*
37. Constitution of the Republic of Kosovo, Article 53 [**Interpretation of Human Rights Provisions**] defines: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."*
38. Law no. 05/L-021 on the Protection from Discrimination, Article 1 [**Purpose**], defines: *"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, social or personal 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.”

39. Law no. 05/L-021 on the Protection from Discrimination, Article 3, par. 1 [**The concept of discrimination**], defines: *“The principle of equal treatment shall mean that there shall be no discrimination, direct or indirect in the sense of any of the grounds set out in Article 1 of this Law.”* and par. 2 defines: *“Discrimination is any distinction, exclusion, restriction or preference on any ground specified in Article 1 of this law, which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislations of the Republic of Kosovo.”*
40. Law no. 05/L-021 on the Protection from Discrimination, Article 4, par. 1.4 [**Types of unequal treatment**], defines: *“Incitement to discrimination” shall be prohibited when it amounts to **promoting hatred based** on one or more of the protected grounds listed in Article 1. of this law and when done intentionally.”*; and par. 1.10 **“Multiple discrimination”**: *“occurs when discrimination is based on any combination of the grounds covered by this law. Multiple discrimination and multiple grounds shall be construed accordingly.”*
41. Criminal Code no. 06 / L-074 of the Republic of Kosovo, Article 202, par.1 [**Unauthorized photographing and other recording**], defines: *“Whoever, without authorization, photographs, films, or videos or in any other way records another person in his or her personal premises or in any other place where a person has a reasonable expectation of privacy, and in that way fundamentally violates another’s privacy, shall be punished by a fine or by imprisonment of one (1) to three (3) years.”*
42. Code no. 04/L-123, article 6, par. 3, defines: *“A state prosecutor may initiate a criminal proceeding in accordance with Paragraph 2 of this Article upon receiving information from the police, from another public institution, private institution, member of the public, media, from information obtained from another criminal proceeding, upon the filing of complaint or motion of an injured party.”*
43. Law no. 04 / L-44 on the Independent Media Commission, on article 1, determines the purpose of the law in question: *“The purpose of this Law shall be to establish the powers of the Independent Media Commission (hereinafter “IMC”) in order to promote the development of a viable market of audiovisual media services, serving all citizens of the Republic of Kosovo.”*
44. Article 3, par. 1, of same law defines: *“Independent Media Commission shall be an independent body for regulation, management, and oversight of the broadcasting frequency spectrum. IMC shall regulate the rights, obligations and responsibilities of natural and legal persons that provide audio and audiovisual media services.”*
45. The Code of Ethics for Media Service Providers (media service providers) in the Republic of Kosovo, ICMM-2016/03, issued by the Independent Media Commission

(hereinafter: the Code), Article 1, provides: *“The Code of Ethics aims to determine the rules of ethics for Media Service Providers in accordance with legal provisions that are necessary in a democratic society; in accordance with ethical principles and internationally accepted standards and respect of the diversity of ethnic, cultural and religious heritage in the Republic of Kosovo; in the interests of national security, territorial integrity and public safety; for the prevention of disorder and crime; for the protection of the dignity and human rights; for the protection of health and morals, for the protection of children, for preventing the disclosure of information given in confidence and maintaining the authority and impartiality.”*

46. Code, article 3, par. 1, defines: *“MSPs shall not broadcast any material which promotes or incites crime and criminal activities or that contains the risk of causing harm that can result in death, injury, damage to property or any other form of violence.”*
47. Code, article 6, par. 1, defines: *“MSPs have to report the news accurately and present them in an impartial manner. They must not broadcast material that they know or should know is false or misleading.”* Whereas par. 5 defines: *“MSPs have a professional obligation to correct immediately any published information that is found to be incorrect and acknowledge their mistake. Corrections should be appropriately scheduled.”*
48. Code, article 7, par. 3, defines: *“MSPs should not broadcast materials that identify the arrested or detained person who are physically or verbally attacked in order to humble or humiliate them.”*
49. Code, article 11, par. 1, defines: *“The possible violation of the provisions of this Code will be processed and sanctioned by the IMC Law.”*
50. Law No. 06/L-082 on Protection of Personal Data, article 1, defines: *“This law determines the rights, responsibilities, principles and punitive measures with respect to the protection of personal data and privacy of individuals. This Law determines responsibilities of the institution responsible for monitoring the legitimacy of data processing and access to public documents.”*
51. Law No. 06/L-082 on Protection of Personal Data, article 3, par. 1.1, term used in this law shall have the following meanings **“Personal Data”** *“any information related to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified directly or indirectly, particularly by reference to an identifier such as a name, an identification, number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”*
52. Law No. 06/L-082 on Protection of Personal Data, article 3, par. 1.17, term used in this law shall have the following meanings **“Consent of the Data Subject”** *“any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.”*
53. Law No. 06/L-082 on Protection of Personal Data, article 3, par. 1.25, term used in this law shall have the following meanings **“Sensitive Personal Data”** *“personal data revealing ethnic or racial origin, political or philosophical views, religious affiliation, union membership or any data related to health condition or sexual life, any involvement*

in or removal from criminal or offence records retained in accordance with the law. Biometric characteristics are also considered sensitive personal data if the latter enable the identification of a data subject in relation with any of the abovementioned circumstances in this sub-paragraph.”

54. Law No. 06/L-082 on Protection of Personal Data, article 5, par. 1, defines: “*Personal data processing shall be lawful only if one of the following criteria applies:*

1.1. if the data subject has given consent to the processing of his or her personal data for one or more specific purposes; [...].

55. Law No. 04/L-076 on Police, article 2, par. 2, defines: “*Police officers shall exercise their authorizations and perform their duties in a lawful manner, based on the Constitution, on other applicable laws, and in the Code of Ethics compiled by the Police of Republic of Kosovo and approved by the Ministry of Internal Affairs.”*

56. Law No. 04/L-076 on Police, article 7, par. 1, defines: “*The Police shall communicate and cooperate with local governmental authorities, civic organizations, and local communities for the purpose of preventing and combating crime and enhancing the safety of all communities in Republic of Kosova.”*

57. Law No. 04/L-076 on Police, article 10, which provides the general duties and powers of the Police, as follows: “***to protect the life, property and offer safety for all people [...].***”

58. Law No. 04/L-076 on Police, article 20, par. 1 [***Temporary Police Custody***], defines: “*A Police Officer has power to take a person into temporary custody when it is necessary to:*
1.1. protect the person from harm or danger, especially when the person is in a helpless condition; [...].”

59. Law No. 05/L -036 on Crime Victim Compensation, article 1, par. 1, defines: “*The purpose of this law is the establishment and the functioning of the Crime Victim Compensation Program.*”; while article 2 defines: “*This Law regulates the right to financial compensation for victims of violent crimes and their dependants, the decision making authorities and the procedures on the right to compensation in national and cross-border situations.*” Further the Law in article 6 par. 1, defines: “*The following violent crimes are compensable crimes according to this Law:[...] “rape”.*”; whereas par. 2 defines: “*Except for the crimes defined by paragraph 1. of this Article, the Committee may review and decide on other applications received by individuals who claim to have been victims of other violent crimes, which due to their nature and the consequence caused may justify the compensation according to this Law, in particular if the victim is a vulnerable victim.*”

60. Law No. 02/L-37 on the Use of Languages, article 16, par. 1, defines: “*Any person participating in criminal or other judicial proceedings who does not speak and understand the language(s) of proceedings, has the right to use his or her language in the proceedings.*”

16.2. “Persons belonging to communities whose mother tongue is not an official language and who are participating in criminal or other judicial proceedings have the right to use their mother tongue in the proceedings.”

16.3. *“Courts and prosecution bodies, as well as other authorities involved in a criminal procedure, should provide to persons mentioned in paragraphs 1 and 2 of this article the assistance of an interpreter free of charge.”*

17.1. *“Any person participating in criminal proceedings who does not speak and understand the language(s) of proceedings, has the right to make submissions, testify and hear the facts of the case and any evidence against him or her, in a language spoken by him or her.”*

17.2. *“Persons belonging to communities whose mother tongue is not an official language who are participating in criminal proceedings have the right to make submissions, testify and hear the facts of the case and any evidence against them, in their mother tongue.”*

17.3. *“Courts and prosecution bodies, as well as other authorities involved in a criminal procedure, should provide to persons mentioned in paragraphs 1 and 2 of this article the assistance of an interpreter and translator free of charge.”*

61. Law No. 02/L-17 on Social And Family Services, article 1, term used in this law defines: *“**Social Services Officer** shall mean a qualified Social and Family Services professional, in the area of social work, psychology sociology, law, pedagogy or other discipline closely related of social and family services licensed and registered in the register of General Social and Family Services Council.”*
62. Law No. 04/L-081 On Amending and Supplementing the Law No. 02/L-17 on Social And Family Services, article 1, par. 3, defines: *“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** [...].”*
63. Law No. 02/L-17 on Social and Family Services, article 7, par. 6, defines: *“The CSW is obliged to conduct a professional assessment in respect of any individual or family residing in, or found in, its area who refer themselves for assistance or who by other means come to its attention as needing or appearing to be in need of Social or Family Services.”*
64. Article 13, paragraph 1 of the law “Protection of Vulnerable Adults”, states: *“In cases where it comes to the attention of a Centre for Social Work that there is evidence that an adult is unable to care for themselves because of mental disability or is being neglected, exploited or abused by others and because of age, physical or mental infirmity or disability, fear of those harming them or other factor is vulnerable to the degree that they lack the capacity to act on their own behalf, the Director of a Centre for Social Work in whose territory they reside, or are found, must take all necessary steps to secure their safety without delay”* and paragraph 2. *“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.”*
65. Law no. 03 / L-164 on Housing Financing Special Programs in the Republic of Kosovo, Article 3, lays down: *“The providing of housing shall be done through financing specific Programs for renting housing, which includes.”*, whereas Article 19, par. 1.2 of this law

provides: “*Programet e banimit mund të financohen nga: [...]municipal revenues dedicated to housing.*”

66. Law in question, article 25 [Responsibilities of Municipalities], par. 1, For the Implementation of this Law Municipality shall: “*identify the housing needs for population under their territorial jurisdiction programs, according to this Law.*”; whereas par. 2 Municipality shall: “*raft three (3) year programs and projects for housing based on the financial sources.*”; and par. 3 Municipality shall: “*provide construction sites and develop infrastructure land for implementation of housing programs.*”
67. Also, Law No. 03/L-040 on Local Self Government, article 17, defines: “*Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation in the following areas: item k): “provision of family and other social welfare services, such as care for the vulnerable, foster care, child care, elderly care, including registration and licensing of these care centres, recruitment, payment of salaries and training of social welfare professionals”; item l): “public housing”.*

III. LEGAL ANALYSIS

68. The Constitution as the highest legal act protects and guarantees the human rights and fundamental freedoms, therefore, the practical implementation and realization of these rights is in the interest of the functioning of the rule of law. Constitutional guarantees serve the protection of human dignity and functioning of the legal state. The Constitution, in Article 1, par. 2, stipulates that *The Republic of Kosovo is a state of its citizens* and as such *the Republic of Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders*. The previous reporting that Ms Z. S. is a man clad on women’s attire, therefore, at that time there were talks on information regarding her sexual orientation, which created various homophobic prejudice. KP, but the media as well, published information on the ethnic background of the person Z. S. The Ombudsperson draws the attention of all institutions that the Constitution stipulates clearly that the *Republic of Kosovo is a state of its citizens* and in such cases it is enough to determine the nationality of the person/s.
69. The Constitution in Article 21 explicitly stipulates the obligation of all organs to respect human rights and freedom, therefore this principle is imperative and should be respected by everyone, including the courts, police and the institutions providing social services.
70. The Constitution of the Republic of Kosovo, in Article 35 [**Freedom of Movement**], par. 1, stipulates: “*Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence.*” Freedom of movement, as one of the fundamental rights of each individual, is also proclaimed in Article 13 of the Universal Declaration of Human Rights. Based on this international instrument, it can be understood that each person, situated legally in a territory of a state, shall be guaranteed the right to freedom of movement and residence within the borders of that state.
71. In terms of the provision of Article 3 of the Convention, the Ombudsperson recalls that, in accordance with Article 53 of the Constitution, the fundamental human rights and

freedoms guaranteed by this Constitution are interpreted in accordance with the court decisions of the European Court of Human Rights (hereinafter: the European Court).

72. The European Court has repeatedly stated that this is one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or humiliating treatment or punishment, regardless of the circumstances and behaviour of the victim. Treatment was considered to be "*humiliating*" within the meaning of the Article when the person intends to humiliate or demean a person, showing lack of respect and affront to his/her dignity, and is considered to cause the victim feel fear, anxiety or inferiority, leading to the breaking of his/her moral and physical resistance. But the European Court recalled that, even in the absence of such a purpose, a violation of Article 3 could not be ruled out. It noted in particular that the public nature of the treatment may be a relevant or aggravating factor in assessing whether the treatment is "*humiliating*" within the meaning of Article 3, (see *Svinarenko and Slyadnev v. Russia*, 17 July 2014).
73. Law no. 05/L-021 on Protection from discrimination, in Article 1, stipulates the purpose of this Law, according to which the Law aims 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, social or personal 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.*" Similarly, this law stipulates the *types of unequal treatment*, among them, incitement to discrimination, deemed discrimination on the basis set forth in Article 1 of this Law, and includes **every promotion of hatred** when it is done intentionally and determines **multiple discrimination**, which occurs when discrimination is based on any combination of the grounds covered by this law⁵. Consequently, the Ombudsperson raises the concern that the victim Z. S. even though her name and surname were made public by the KP and the initials through the media, the KP should not have specified the ethnic background or any other feature of the victim/s in their public statements. The publication of such information is also contrary to the applicable Law on the Protection of Personal Data, which will be discussed below.
74. Criminal Code of the Republic of Kosovo stipulates: "***Whoever, without authorization, photographs, films, or videos or in any other way records another person in his or her personal premises or in any other place where a person has a reasonable expectation of privacy and in that way fundamentally violates another's privacy shall be punished by a fine or by imprisonment of one (1) to three (3) years***⁶." Thus, the Criminal Code prohibits, whoever the person may be, from committing such an act without authorisation. In the case in question, simple access to social networks on the Internet or in some portals sufficed, and seeing the video of the assault against her, in both cases - in Lipjan and Ferizaj. Similarly, the images of the victim have been distributed dozens of times across social networks and portals, including on televised media.

⁵ Law no. 05/L-021 on the protection from discrimination, Article 4, par. 1.4 and par. 1.10.

⁶ Criminal No. 06/L-074 procedure code of the Republic of Kosovo, Article 202, par. 1.

75. Publication of fake and unidentified news, both from media and publication of claims by some young people that the victim is dangerous kidnaps children, and other untrue allegations should have been an alarm for the prosecution authority (Office of State Prosecutor) to initiate criminal proceedings. The Ombudsperson states that the Office of State Prosecutor did not initiate investigations against the media and persons that have published fake information, as set forth by Code no. 04/L-123 of Criminal Procedure, which in Article 6, par. 2, stipulates: “*Criminal proceedings shall only be initiated upon the decision of a state prosecutor that reasonable suspicion exists that a criminal offence has been committed.*”
76. The Criminal Procedure Code stipulates: “*A state prosecutor may initiate a criminal proceeding in accordance with Paragraph 2 of this Article upon receiving information from the police, from another public institution, private institution, member of the public, media, from information obtained from another criminal proceeding, upon the filing of complaint or motion of an injured party.*” The Ombudsperson estimates that the data published on media are considered sufficient for the State Prosecutor to start the investigation regarding the publication of persons, images, video recordings of the assault caused to the victim Z. S.
77. Council of Europe Protocol (2003) on hate speech, adopted pursuant to the Convention on Cybercrime with a view to combating online hate. The two fundamental objectives of this protocol are the harmonization of criminal law combating racism and xenophobia on the internet, and second, the advancement of international cooperation in this field. According to the protocol, online hate speech means: “Racist or xenophobic motivated threat via computer systems” while racist and xenophobic material is considered: “Any written material, any photograph or any other presentation of ideas and theories that represent, promote or incite hatred, discrimination, or violence against an individual or group of individuals based on: race, colour, ancestry or national or ethnic origin, as well as religion if used as a pretext for any of these factors”.
78. It should be emphasized that this ground has also been accepted in most criminal laws of the states, incriminating incitement to hatred as a criminal offense (as is the definition of the Criminal Code of the Republic of Kosovo, namely the criminal offense of “Inciting Discord and Intolerance” (Article 141).
79. Based on the information received from the IMC representatives, the current Law on the Independent Media Commission does not vest this institution with the powers to monitor online portals, the Ombudsperson will emphasize the legal analysis chiefly regarding television and the obligations set out in the Law no.04/L-44 on the Independent Media Commission and Code of Ethics for Media Service Providers (MSPs) in the Republic of Kosovo, KKPM-2016/03. The Ombudsperson states that many television channels have shown images and footage of attacks in Lipjan and Ferizaj against the victim. Such images are still available to the public online today.
80. Law no. 04/L-44 on the Independent Media Commission, the purpose of which is to establish the powers of the IMC, in order to promote the development of a viable market of audiovisual media services, serving all citizens of the Republic of Kosovo, defines the IMC as an independent body, which is competent for regulation, management, and oversight of the broadcasting frequency spectrum. IMC shall regulate the rights,

obligations and responsibilities of natural and legal persons that provide audio and audiovisual media services, while the Code of Ethics for Media Service Providers (MSP) in the Republic of Kosovo KKPM-2016/03 sets out the basic rules of media service providers.

81. According to this Code, the MSPs shall not broadcast any material that promotes or incites crime and criminal activity or contains the risk of causing harm that may result in death, injury, property damage or any other form of violence. Images posted on several television channels in Kosovo that feature attacks on the victims in Lipjan and Ferizaj are in violation of the provisions of this Code.
82. According to this Code, the MSPs must report news accurately and present it impartially. They should not broadcast material that they know or should know to be untrue or misleading. Some media reported that the person in question was dangerous and kidnaps children. The KP detained the victim, whereby after verification in the KP system it resulted that the person has no criminal background and does not pose social risk⁷.
83. In democratic countries, in principle, freedom of expression, i.e. freedom of the media, is guaranteed (constitutionally and legally) from the abuse of those in powers, and there can be no censorship of this fundamental right. But in all democratic countries, the law also sets limits on the exercise of this right to avoid abuse, in particular with regard to defamation and insult through the media, delivery of fake news in order to harm the dignity and reputation of a person, spreading hate speech, violating public safety, etc.
84. International and regional human rights conventions, courts and mechanisms recognise that freedom of expression can be limited by law in certain, strictly defined ways and under specific circumstances. Restrictions on the exercise of freedom of expression may not put in jeopardy the right itself.⁸
85. The Italian Supreme Court has set three basic criteria in relation to guaranteeing other rights, particularly protection of human dignity from defamation and insult, in order to restrict freedom of expression, such as **truthfulness, self-restraint and public interest**.
86. The Ombudsman also recalls that eventual violations of the provisions of this Code should be processed and sanctioned under the Law on IMC. The sanctions provided for in this Code, inter alia, include the imposition of a fine of not less than one thousand (1.000) euros and not more than one hundred thousand (100.000) euros; changing the conditions of the broadcaster's license; termination or refusal of a broadcasting license. But in the present case, the IMC has acted by making relevant decisions on several television channels, through which it has only issued warnings, obliging them to pay due attention in the future to protecting the identity and integrity of persons, as should have been the case with the victim Z. S.
87. The Ombudsperson also raises concerns that the posting of video recordings and images of the victim on social network and media is also contrary to the Law no.06/L-082 on the Protection of personal data. The publication of such images showing acts of violence against the concerned person without her consent seriously harms the dignity of the

⁷ According to the article: "Police deny that Roma woman committed criminal offenses, her photo was shared by some young people as a joke", published by "Koha.net" portal on 29 May 2019.

⁸ See EU Guidelines, point 19.

victim. This law defines the term “**Personal data**” and it has the following meaning: “**Any information relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.**” Although the law does not explicitly define images as personal data, however by breaking down the definition of the term above, it can be understood that photography can also be regarded as personal data, because: “**any information relating to an identified or identifiable natural person [...] an identifiable person is one who can be identified, directly or indirectly.**” Therefore, the Ombudsperson considers that the image, and moreover the video recording of the assaults against the victim in Lipjan and Ferizaj, may be personal data if we refer to the definition of the notion “**Personal data**”, defined in the applicable Law on Protection of Personal Data, because the publication of the image and recordings of the victim was done without her consent and this law stipulates that: “*processing of personal data is lawful if at least one of the following criteria are implemented, among which:*

1.1. The data subject has given his or her consent on the processing of his/her personal data for one or more specific purposes; [...].”

88. Moreover, this law defines the expression “**Sensitive personal data**“, which means: “*Any personal information revealing racial or **ethnic origin**, political or philosophical opinions, religious beliefs, trade-union membership or any information on health status and sex life, any entries in or removals from criminal records or records on minor offences that are kept on the basis of the law.[...].”* In the case in question, apart from publishing the image and video-recordings in both cases of the assault against the victim, the disclosure of ethnic background represents **sensitive personal data**. Therefore, the Ombudsperson draws the attention that in this case, the protection of the sensitive personal data was not respected from the KP and from the media.
89. Law no. 04/L-076 on Kosovo Police defines that Police officers shall exercise their authorizations and perform their duties in a lawful manner, based on the Constitution, other applicable laws, and the Code of Ethics compiled by the KP. Similarly, this law sets forth the general duties and competencies of the KP, whereby “*KP should protect the life, property and offer safety for all people*” is defined as a primary duty. The Ombudsperson recalls that before the occurrence of the first assault against the victim in Lipjan on 29 May 2019, KP was informed by some citizens that the victim happened to be in Lipjan, which was a sufficient signal for the Kosovo Police that the citizens, who the victim of fraud, were concerned by her presence in the town. The Police had met the victim, and after verification, the same was released without taking any concrete action to secure her, despite the fact that they were informed that the citizens were victim of social media fraud. The Law on Kosovo Police, Article 7, par. 1, stipulates: “*The Police shall communicate and cooperate with local governmental authorities, civic organizations, and local communities for the purpose of preventing and combating crime and enhancing the safety of all communities in Republic of Kosova.*” Thus, first of all, the KP has a **preventive mandate**, a legal obligation which in the current case seems to have not been met. Furthermore, the Law on Police in Kosovo, Article 20, speaks about the temporary police custody. According to this law, the police officer is authorised to take the 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 The person taken into temporary custody shall be informed of the reason for custody, and shall be given an opportunity to notify any family member, protector, any respective institution, or other trusted person.*

90. The purpose of the Law no. 05/L-036 on Crime victim compensation is the establishment and the functioning of the Crime Victim Compensation Program. This Law regulates the right to financial compensation for victims of violent crimes and their dependants, the decision making authorities and the procedures on the right to compensation in national and cross-border situations. Furthermore, the Law stipulates that the following violent crimes are compensable crimes according to this Law: [...] *“rape”*. But the Committee may review and decide on other applications received by individuals who claim to have been victims of other violent crimes, which due to their nature and the consequence caused may justify the compensation according to this Law, in particular if *the victim is a vulnerable victim*. These legal provisions may be considered as sufficient, so that the victim Z.S. is also part of the proceedings for crime victim compensation.
91. Law on the Use of Languages in Kosovo sets forth that: *“any person participating in criminal or other judicial proceedings who does not speak and understand the language(s) of proceedings, has the right to use his or her language in the proceedings”*. Further, this law stipulates that the Court and prosecution bodies, as well as other authorities involved in a criminal procedure, should provide to persons mentioned in paragraphs 1 and 2 of this Article the assistance of an interpreter free of charge⁹. The Ombudsperson recalls that this law allows courts and criminal prosecution bodies, and other authorities involved in criminal procedure, including Kosovo Police in this case, to provide an interpreter free of charge.
92. Furthermore, referring to the information sent by the KP, on 24 September 2019, this institution refers to legal provisions, including the Criminal Procedure Code of Kosovo and Article 24, par. 2.1, of the Rules of Procedure of Kosovo Police, through which the *Notice Guide to the Kosovo Police* was drafted, the interpreter is specified as information about the suspect and the notification of the rights of the arrested person, in point 4 of the guide: *“You are entitled to the free assistance of an interpreter if you do not understand or speak the language used by the police officer.”* However, the Notice Guide for the Kosovo Police refers to arrested persons and includes information on suspected persons and the recognition of their rights, but not those of victims, as in the concrete case of the victim Z. S. Similarly, Article 24, par. 2.1 of the KP Rules of Procedure speaks about the rights of the arrested person, in particular this Article and paragraph sets out: *“An arrested person has the following rights: To be informed about the reasons for the arrest, in a language that he or she understands.”* Therefore, it sets forth the right of the arrested person and not that of the victim, as in the concrete case. Moreover, in this response, the KP says that, in compliance with the provisions of these legal and sublegal acts and in terms of stopping discrimination on the basis of language, KP shall inform each person subject to interview from the police, who does not speak the language of the proceedings, on the right to free interpreter, if the person does not understand or speak the language

⁹ Law no. 02/L-37 on the Use of languages in Kosovo, Article 16, par. 1 and 3.

used by the police officer, without mentioning a sublegal act on this right for the person being interviewed by the KP. However, this was not done in the case of interviewing the victim Z. S. in Ferizaj PS; the person concerned was not given the right to free assistance of an interpreter.

93. Law no. 04/L-081 on amending and supplementing the Law no. 02/L-17 on Social and Family Services defines the term "*Person in need*", which shall mean any person found on the territory of the Republic of Kosovo, regardless of status or place of origin, who is in need of social services because of, inter alia, due to risk of abuse. In the case in question, the victim is considered a person in need, because first of all she needs to be cared after, because according to information provided, she lives alone.
94. Law on Social services and family services in Kosovo, respectively Law no. 04/L-081 on Amending and supplementing the Law no. 02/L-17 on social and family services, *Person in need* shall mean any person found on the territory of the Republic 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*. Similarly, the Law no. 04/L-081 on Amending and supplementing the Law no. 02/L-17 on social and family services adds the new definition on "*Centre for Social Work (CSW)*", which means that it is a public institution of professional municipal level that is responsible for protecting citizens in need, therefore the victims, as in the case in question Z. S., enjoys all the rights to use the social services from the CSW, depending on where she was.
95. Following the second assault against the victim, that had happened in Ferizaj, during her interview in the PS, there was no psychologist, which the CSW representative in this city justifies with the lack of funds. In such cases, they seek the help of the Main Family Medicine Centre in Ferizaj, but the psychologists of this centre work from 8:00 until 14:00, and on the day when the assault against the victim occurred, the psychologists had already finished their work. The Ombudsperson finds that such justifications are not grounded and that the lack of funds should not comprise an obstacle for hiring psychologists. Moreover, the presence of psychologists in such cases is undeniable and also a legal obligation that every CSW should observe. The CSW in Ferizaj claimed that the victim had only been provided psychological sessions in the shelter, but the victim rejected them.
96. Further the Law stipulates: "*In cases where it comes to the attention of a CSW that there is evidence that an adult is unable to care for themselves because of mental disability or is being neglected, exploited or abused by others and because of age, physical or mental infirmity or disability, fear of those harming them or other factor is vulnerable to the degree that they lack the capacity to act on their own behalf, the Director of a Centre for Social Work in whose territory they reside, or are found, must take all necessary steps to secure their safety without delay.*" Law on Amending and supplementing the Law no. 02/L-17 defines that if there are reasonable grounds to suspect that the endangered person lacks ability to act on own behalf and that it is necessary to protect the adult person from the serious danger, the Center for Social Work must submit a request for a custody order with the court. Based on the information received from the Ombudsperson, the CSWs in Lipjan and Ferizaj have claimed that they have not submitted claims with the competent

courts to issue custody orders on the grounds that they have no territorial competence to take such action, since the victim Z.S. is from Podujeva.

97. According to the communications that the Ombudsperson's representative had with the case manager from the CSW in Podujeva, this institutions had not submitted a proposal with the competent court for a custody order either. Nevertheless, the law, as mentioned above, stipulates that: "*the Director of a Centre for Social Work in whose territory they reside, or are found, must take all necessary steps to secure their safety without delay.*" Therefore, in such cases, as the case in question, the territorial jurisdiction does not apply. Such a finding is even more consistent, as the law stipulates that the CSW is obliged to conduct a professional assessment in respect of any individual or family residing in, or found in, its area who refer themselves for assistance or who by other means come to its attention as needing or appearing to be in need of Social or Family Services. In this sense, it is noted that social and family services could, in this case, be provided to the victim by the CSWs of other municipalities where she happened to be.
98. Law no. 03/L-164 on Housing Financing Specific Programs in the Republic of Kosovo specifies that the provision of housing shall be done through financing specific Programs, whereby according to this law, housing programs may be funded by the Municipal revenues dedicated for housing. This law stipulates that the Municipality shall identify the housing needs for population under their territorial jurisdiction programs, according to this Law and provide construction sites and develop infrastructure land for implementation of housing programs. Therefore, based on this legal base, the Municipality of Podujeva should have acted so as to provide housing through special programs for cases similar to Z. S. Similarly, the Law no. 03/L-040 on Local Self-Government stipulates that Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation, provision of family and other social welfare services, such as care for the vulnerable, foster care, as well as public housing.

IV. OMBUDSPERSON'S FINDINGS

99. Based on all the evidence presented and the facts collected, as well as relevant laws, the Ombudsperson **finds** that in the case in question *there have been violation of fundamental human rights and freedoms*, as the respective authorities did not meet their constitutional and legal obligations nor the international standards applicable in the Republic of Kosovo, towards taking concrete actions in the protection of the victim Z. S., respectively, in the prevention of the assault against her in Lipjan and Ferizaj. Hence, the Ombudsperson finds that the competent state authorities did not provide sufficient protection to the victim Z. S., who was exposed to the risk and as a result was attacked twice.
100. The Ombudsperson finds that the Office of State Prosecutor, by failing to open investigation *ex-officio* against persons who first published the images of the victim Z.S. on social network, as well as the publication of various messages by some media, constitutes a failure to meet the constitutional and legal obligations.
101. The Ombudsperson finds that the publication of the image and video recording by some portals and television media, without the consent of the victim, seriously undermines her dignity, further humiliating and victimizing the person concerned and, as such, is contrary

to the ethical principles of international standards and thereby promote and encourage such criminal activities. Such actions are in violation of the applicable Law on Protection of Personal Data, in violation of the Law on the Independent Media Commission, and in violation of the Code of Ethics for the MSP.

102. In accordance with the standard laid down in international documents, the Ombudsman warns that restrictions on freedom of expression are justified to the extent that its implementation is not violated and that it is only necessary that this right is not abused to the detriment of other rights. Therefore, achieving such equilibrium requires special care, and the construction of an appropriate legal framework and enforcement mechanism. This objective can only be achieved on the basis of in-depth treatment and analysis to ensure that freedom of expression, namely freedom of the media, is not abused in order to infringe human dignity, privacy, hate speech, intolerance and other harmful consequences.
103. The Ombudsperson considers that the IMC, by issuing warnings against certain television channels for the case in question, could hardly affect the due diligence of certain television channels to protect the identity and integrity of future victims; and achieving the other goals set forth in the applicable Law on IMC, as well as with the Code of Ethics for the IMC.
104. The Ombudsperson considers that according to the Constitution, the Republic of Kosovo *is a state of its citizens* and, in the case in question, publication of information by some media and the Kosovo Police regarding the ethnic background of the victim Z. S. and the prejudices for her sexual orientation are completely unnecessary and had a negative impact by causing *multiple discrimination* and as a consequence it resulted in two repeated assaults against her.
105. The Ombudsperson considers that responsible authorities have failed to undertake measures in relation to the positive obligations for the victim Z. S. In this sense, the Ombudsperson finds that the Police Station in Lipjan, which had information by the citizens on the presence of the person Z. S. in this town, before she became a target of the assault, did not meet their *constitutional and legal powers* and failed to fulfil their primary task, which is protecting life and providing security for all persons. As such, the police officers of the PS in Lipjan have not achieved their goal of preventing the assault against the victim. The Ombudsperson also finds that the PS in Ferizaj was late in inviting the representative from the Office on Protection of Victims. The representative of the Office on Protection of Victims came to the SP only after the request of the Ombudsperson's representatives.
106. The Ombudsperson finds that the failure to provide an interpreter for the victim Z. S. in the PS in Ferizaj, represents violation of the applicable legal provisions, in the first place of the Law on the Use of Languages, then of the Law on Police and the Criminal Procedure Code.
107. In the KP's response on 24 September 2019, it is highlighted that the Criminal Procedure Code of Kosovo and Article 24, par. 2.1, of the Rules of Procedure of Kosovo Police, through which the *Guide to the Kosovo Police* was drafted, point 4 of the guide, with regard to information and the rights of the detained persons stipulates as follows: "*You*

are entitled to a free of charge assistance of an interpreter if you do not understand or speak the language used by the police officer.” However, the Notice Guide for the Kosovo Police refers to arrested persons and includes information on suspected persons and the recognition of their rights, but not those of victims, as in the concrete case of the victim Z. S. Similarly, Article 24, par. 2.1 of the KP Rules of Procedure speaks about the rights of the arrested person, in particular this Article and paragraph defines: *“An arrested person has the following rights: To be informed about the reasons for the arrest, in a language that he or she understands.”* Therefore, it sets forth the right of the arrested person and not that of the victim, as in the concrete case. Moreover, in this response, the KP says that, in compliance with the provisions of these legal and sublegal acts and in terms of stopping discrimination on the basis of language, KP shall inform each person subject to interview from the police, who does not speak the language of the proceedings, on the right to free of charge interpreter, if the person does not understand or speak the language used by the police officer, without mentioning a sublegal act on this right for the person being interviewed by the KP. However, this was not done in the case of interviewing the victim Z. S. in Ferizaj PS; the person concerned was not given the right to assistance by an interpreter.

108. The Ombudsperson ascertains that the CSWs in Lipjan, Ferizaj and Podujeva failed to provide the necessary social services for the provision of safety to the person Z. S., including the proposal for a custody order to the competent courts. The CSWs in Lipjan and Ferizaj have not provided timely psychological counselling to the person concerned. Failure to provide such social services by these CSWs and transfer of the victim from one city to another comprises a re-victimization of the victim.
109. Based on the Law no. 03/L-164 on Housing Financing Specific Programs and Law no. 03/L-040 Local Self-Government in the Republic of Kosovo, the Municipality of Podujeva, in such cases should provide housing through specific housing programs, as the Municipalities have full and exclusive competencies regarding the local interest, while observing the standards set forth in the applicable legislation, including the provision of family and other social welfare services, such as care for the vulnerable, foster care, and public housing.
110. Based on the abovementioned, pursuant to Article 135, paragraph 3, of the Constitution of the 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.”* According to the sense of Article 18, paragraph 1.2, of the Law no. 05/L-019 on the 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 Article 18, paragraph 1.7: *“to recommend […] promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo.”*;

RECOMMENDS

To the Office of State Prosecutor:

- The Office of State Prosecutor should undertake all the necessary actions, in accordance with the legal authorizations, against the persons who either directly or indirectly incites hatred on social networks by publishing images and various messages, which incited violence against Ms. Z.S, and the same was exposed to prejudice and motivated attacks.

To the Independent Media Commission:

- Independent Media Commission, in accordance with its legal powers and authorisations, should impose stricter controls towards media service providers in the Republic of Kosovo so that the television channels pay due attention to the protection of identity and integrity of the victims.

To the Kosovo Police:

- The Kosovo Police shall, in addition to publishing the initials of the name and surname of the person(s) involved in various cases, protect other personal data, in media notices and other communications with the public, including data on ethnic background for the purpose of safeguarding and protecting the identity of the parties involved in the cases.
- Kosovo Police should issue a Regulation or Protocol on language, setting out and standardizing the standard operating procedures for the enforcement of victims' language rights when detained by police officers in accordance with the Law on the Use of Languages, the Law on Kosovo Police and the Criminal Procedure Code.

Centres for Social Work in Podujeva, Lipjan and Ferizaj:

- The Centres for Social Work should increase the level of co-operation and coordination and, in accordance with the applicable legal powers and authorizations, assess the gravity of the case and consider the possibility of submitting it to the competent court for a custody order in such or similar cases.

To the Municipality of Podujeva:

- In cooperation with relevant institutions, it should provide sustainable housing to the victim Z.S., as well as provide her with other social services in accordance with the applicable Law on Housing Financing Specific Programs, as well as Law on Local Self-Government.

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

Sincerely,

Hilmi Jashari
Ombudsperson