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## REPORT WITH RECOMMENDATIONS

Case No. 717/2019

Veton Elshani and others (175)

**With regard to the lack of effective investigations and violation of the dignity of under investigation officials**

**Addressed to:**

Mr. Aleksandër Lumezi, Chief State Prosecutor  
State Prosecution

Prosecutorial Council

Mr. Xhelal Sfeçla, Minister on duty  
Ministry of Internal Affairs and Public Administration

Mr. Exhevit Zuka acting Chief Executive  
Police Inspectorate of Kosovo

**Copy:**

Mr. Rashit Qalaj, Director  
Kosovo Police

National Agency for the Protection of Personal Data

19 May 2020, Prishtine

## Purpose of the Report

This Report aims assessment of application of main principles regarding the basic obligations for effective investigations within a reasonable time, in an investigation process against Police Officers (175), who are beneficiaries of the pension / financial benefit of “KLA War Invalid”, under the suspicion that the same have committed the criminal offense of “Fraud”<sup>1</sup>.

Report evaluates effective accomplishment of Police Officers’ rights who have benefited from the status of “KLA War Invalid”, with respect of their facing with ineffective basic investigation, followed in continuation by media without the basis of a proper analysis to ensure that freedom of expression, actually freedom of media is not abused in terms of violation of human dignity, privacy, dissemination of hate speech, intolerance and other detrimental consequences.

The Report demonstrates violation of rights of the parties in criminal proceedings, through interpretation of legal provisions which guarantee these rights and which are binding for the legal bodies, actually the Prosecution;

## Powers of the Ombudsperson

1. Constitution of Republic of Kosovo (henceforward: Constitution), in Article 132, paragraph 1, stipulates:

*“The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities”, while in paragraph 3 defines: “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.”*

2. According to the Law No. 05/L-019 on Ombudsperson, the Ombudsperson, among others has the following powers and responsibilities:

*“To draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases.” (Article 18, par. 1, subparagraph 1.2).*

*“To make recommendations to the Government, the Assembly as well as other responsible 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, subparagraph 5).*

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<sup>1</sup> “Fraud” according to the Criminal Code No. 04/L-082 of Republic of Kosovo (on which base it is claimed that these suspects have been interviewed) paragraph 1 of Article 335 stipulates: “ Except as provided for in Article 336 of this Code, whoever, by means of a false representation of facts or by concealing facts and with the intent to obtain an unlawful material benefit for himself, herself or another person, or to cause material damage to another person, deceives or continues the deception of another person and thereby induces a person to do or abstain from doing an act to the detriment of his or her property or another person's property shall be punished by a fine and imprisonment of three (3) months to three (3) years”.

*“To publish notifications, opinions, recommendations, proposals and his/her own reports.”* (Article 18, par. 1, subparagraph 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, subparagraph 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, subparagraph 8).

*“To recommend to the Assembly harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation.”* (Article 18, par. 1, subparagraph 9).

By submitting this Report to the responsible institutions, as well as its publication, the Ombudsperson aims to fulfill these constitutional and legal responsibilities.

### **Case circumstances**

3. The case has been investigated based on the complaint of Police Officers (175) towards Police Inspectorate of Kosovo (PIK) and the State Prosecution regarding the allegations of violations of the wide range of fundamental human rights and freedoms, guaranteed by the Constitution, by international instruments as well as applicable Laws.
4. PIK had initiated an investigation process towards a relatively large number of Police Officers (175) who are financial beneficiaries of *“KLA War Invalid.”* In this regard, the case in PIK was initiated by the Special Prosecution of the Republic of Kosovo (SPRK) under the suspicion of *“organized crime”*, but since no elements of the criminal offense have been found in this case, the investigations were continued by the Basic Prosecution (BP) in Prishtine under the suspicion that they may have committed the criminal offense of *“Fraud”* on the occasion of their admission to the Kosovo Police<sup>2</sup>.
5. During all the time these investigations were taking place <sup>3</sup> none of Prosecutor's Offices had issued any decision to initiate an investigation, which means that this is a pre-trial phase (collection and gathering of information). Furthermore since of 2016, the suspected Police Officers in this process faced with different humiliating articles in media <sup>4</sup> naming and addressing them with different awful names such as *“deceitful Policemen”*<sup>5</sup>, *“mentally ill Policemen”*<sup>6</sup>, *“fraudulent veterans”*<sup>7</sup> etc.

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<sup>2</sup> Police officials claim that they have been admitted to the Police in the early stages since the post-war period and some have been working with the Police since 1999 and 2000..

<sup>3</sup> Police officials indicate that investigations against them began before 2015.

<sup>4</sup> <https://zeri.info/aktuale/117151/ne-polici-punojne-edhe-invalidet-e-luftes/>

<sup>5</sup> <https://www.periskopi.com/prokurori-elez-blakaj-ishte-ne-lufte-me-94-policet-me-semundje-mendore/>

<sup>6</sup> <https://www.kosova-sot.info/lajme/303144/elez-blakaj-nuk-ishte-ne-lufte-vetem-me-veteranet-e-lsquo-rrejshem-rsquo-por-edhe-me-policet-e-lldquo-semure-mental-rdquo/>

## **Actions undertaken by the Ombudsperson Institution, cooperation and stances of relevant authorities**

### **Police Inspectorate of Kosovo**

6. On 25 September 2019, Ombudsperson's representative had a meeting at PIK with the Head of the Inspection Department (who replaced the Chief of the PIK) as well as with the Head of the Investigation Department, with whom he talked regarding the case. Representative of the Ombudsperson was informed that PIK was initially notified by the SPRK that an investigation process has been initiated against these Police Officers under the suspicion of committing the criminal offense of "*organized crime*", but since the SPRK investigations had not resulted in organized crime, the case had addressed to the PIK to investigate their statement on the occasion of admission to the Police, since according to them, given Police officials have not declared that they are also beneficiaries of disability pension. Further, according to them, in 2017 the PIK received authorization from BP in Prishtine, to initiate investigations on the basis of suspicion of the criminal offense of "Fraud". In this context, they stressed that the PIK recommended to the General Director of Police suspension of given Police officers, on the grounds that they are incapable to work. Upon Police General Director's request, medical examinations of given Police officials were conducted and since the results were negative, PIK recommendations addressed to Kosovo Police were not implemented.
7. PIK officials stated that they had received additional authorizations from the BP in Prishtine to file criminal charges against these Police Officers, but had expressed incredulity on the consistency of the claim.
8. On 5 November 2019, the Ombudsperson sent a letter to the PIK Chief Executive Officer, informing her on concerns of these Police officers and asked from her to be informed about the investigations conducted by the PIK.
9. On 20 November 2019, the Ombudsperson received a response from the PIK, according to which, at the beginning of 2017, they have been instructed by Special Prosecution of the Republic of Kosovo (SPRK) to collect preliminary information with regard to the information on benefiting from the war invalid status, by members of the Kosovo Police. In this regard, PIK specifies that on 28 July 2017, they have received authorization from the SPRK (PPN Authorization: no. 167/2016), to investigate the issue of gaining the war invalid status by members of Kosovo Police, and that the number of Police members related to this case was approximately 150 Police Officers.
10. On 13 January 2020, additional information from PIK was required by the Ombudsperson, as well as a copy of Prosecution's authorization issued to the PIK was also requested to be forwarded to the Ombudsperson.
11. On 5 February 2020, since no response was received, the Ombudsperson, through a second letter, requested a copy of this authorization.

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<sup>7</sup> Ibid.

12. On 20 February 2020, the Ombudsperson received a response from the Head of the Investigation and Organized Crime Division at the PIK, who stressed that the Basic Prosecution in Prishtine, actually the Chief Prosecutor had been contacted regarding Ombudsperson's request for submission of the copy of Prosecution's authorization but Chief Prosecutor has given strict instructions to PIK, that any Prosecution's valid document should not be distributed to others because the case is under investigation at this Prosecution.

### **Basic Prosecution in Prishtinë**

13. On 18 October 2019, representatives of the Ombudsperson met with the acting Chief Prosecutor at the BP in Prishtine, with whom they discussed about the progress of investigations in the case of the suspects / Police Officers. During the meeting Ombudsperson's representatives was notified that until then there was no decision on initiation of investigations, there was no criminal charges or any decision for ceasing of investigations (the case was in the initial phase of investigations), as well as there were no investigations against other beneficiaries of the financial benefit of "*KLA War Invalid*" who work in other public institutions (for example: Fireman, Kosovo Security Force (KSF) Civil Service, Education, Health, Courts, Prosecutions, etc.). With regard to the case, he explained that initially a prosecutor (who was overloaded with cases) was assigned with this case, therefore, a decision has been taken that this case which involves 194 suspected persons to be allocated to a working group of five (5) Prosecutors who will conduct investigates on the case, and in the course of the meeting, Chief Prosecutor at the BP in Prishtine set next meeting on 8 November 2019, in order to inform Ombudsperson representatives on the progress related to investigations.

14. On 8 November 2019, the meeting was not held, because according to Chief Prosecutor's legal secretary, the meeting has been canceled due to the workload of the Chief Prosecutor.

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

15. On 20 January 2020, Ombudsperson representative met with the acting Head of the Division for War Categories Schemes in the Department of Martyrs' Families and War Invalids (DMFWI) at the Ministry of Labor and Social Welfare (MLSW) with whom he talked about the issue of Police Officers. According to him, in 2018, PIK took files of 175 Police Officers, beneficiaries of the "*KLA War Invalid*" pension, some of which they have made copies while some have not yet been returned to DMFWI. With regard to the number of KLA War Invalids working in public institutions, he stated that there is no data, but claimed that each member of the KSF, of Kosovo Police and each Fireman every 6 months undergoes medical examinations in order to assess his physical and mental fitness for work. In light of this, he emphasized that the same officials, beneficiaries of KLA War Invalid status, each year in the reassessment procedure, are subject to Medical Commissions' visits in MLSW, and according to him, this Commissions assesses the degree of disability, which at these Police Officers, ranges from 20% to 35%.

16. Regarding this issue, representative of the Ombudsperson talked with the Head of the Investigation Department in PIK, with whom he discussed the issue of assessments in

terms of physical and mental testing of Police Officers every six months. He exposed his disagreement as per these allegations and according to him, periodical assessments can be requested solely from Police Officers from specialized Police units.

### **Kosovo Police**

17. On 21 January 2020, representative of the Ombudsperson met with KP officials, with whom he discussed about the statements of MLSW officials regarding physical-mental tests every six months and re-evaluations by MLSW. They stated that these allegations are inaccurate and one of them stated that since he was admitted to the Kosovo Police (in 2000) he had never been asked to make such an assessment, while as per the assessments of MLSW Medical Commissions, he had stated that they continue their right to beneficiary pension on periodic basis on the basis of submitted documents when the beneficiary was granted the right to a pension and not on the basis of later re-assessment.

### **Legal bases**

18. Constitution of the Republic of Kosovo (hereinafter the *Constitution*) in Article 3 [Equality before the Law], among other things, stipulates that the Republic of Kosovo is governed democratically, with full respect for the rule of law, is based on the principles of equality before the law of all individuals and fundamental human rights and freedoms, recognized internationally. Further Article 21, paragraphs 2 and 3 of the Constitution stipulate: *“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.”*

19. Article 22 of the Constitution stipulates: *“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions”* while Article 23 determines: *“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.”*

20. Article 24 of the Constitution, prohibits discrimination, by emphasizing paragraph 1, which stipulates: *“All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination”*, while paragraph 2 of this Article determines: *“No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status”*. Further Article 26 of the Constitution stipulates: *“Every person enjoys the right to have his/her physical and psychological integrity respected, which includes [...]”*.

21. Article 46 of the Constitution, paragraph 1, stipulates plainly that: *“The right to own property is guaranteed”*, while Article 53 of the Constitution determines 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”*

22. The Constitution makes directly applicable in Kosovo legal order a number of instruments and international agreements in the field of human rights. It stipulates that these acts are directly applicable in the Republic of Kosovo and have priority, in case of conflict, over

provisions of laws and other acts of public institutions; among them is the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

23. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950) (hereinafter referred to as the “Convention”) in paragraph 1 provides: *“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal [...]”*.
24. Article 10 of the Convention in paragraph 1 stipulates: *“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”* while Article 2 reads: *“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”*.
25. Article 13 of the Convention provides: *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”*.
26. Article 14 of the Convention stipulates: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*.
27. Law no. 04/l-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families (henceforward: “Law on War Values”), in Article 4 determines: *“Depending on the recognition and adjustment of the status, the categories addressed in this Law, through the recognition of the right to pension and different benefits, shall be provided financial support and certain benefits for the given contribution in the KLA war”*.
28. According to Article 5 of the Law on War Values, pensions defined by this Law are: Family pension, personal disability pension and family disability pension. On the other hand, Article 9 in paragraph 1, which is divided in 16 subparagraphs, determines rights and benefits of KLA invalids.
29. Article 23, paragraph 2, of the Law on War Values, provides: *“Beneficiaries of the base pension may realize all the rights and benefits determined by this Law, if they fulfill the conditions and criteria under the provisions of this Law”* while paragraph 3 stipulates:

*“Pension users for disabled persons, may not be users of the rights deriving from this Law”.*

30. Law No.04/L-261 on Kosovo Liberation Army War Veterans (hereinafter “Law on KLA Veterans”), in Article 1 stipulates: *“The purpose of the Law is to define the benefits entitlements for the Veterans of the Kosovo Liberation Army (KLA), who with their precious sacrifice, commitment and contribution at Kosovo Liberation Army were crucial factor in bringing freedom and independence to the people of Kosovo”.*
31. Furthermore, according to Article 15 of the Law on KLA Veterans, realization of the Right to Pension and Benefits is regulated, determining that: *“KLA Fighter Veteran, upon the recognition of the right to pension and various benefits, shall be provided with financial support and certain benefits for his/her contribution in the KLA War”.* While Article 16 of the Law on KLA Veterans, in paragraph 2 provides that: *“KLA Fighter Veteran may not benefit any pension from other pension schemes funded by the state. If the Fighter Veteran benefits from any other pension scheme funded by the state in the Republic of Kosovo, he/she shall decide on one of the pensions he/she will receive”.*
32. Law No. 05/L-078 on Amending and Supplementing the Law no. 03/l-019 on Training, Professional Rehabilitation and Employment of Persons with Disabilities in paragraph 2 of Article 6A stipulates: *“Assessment of the remaining working ability of persons with disabilities shall be assessed by the Medico-Social Commission. For the manner and procedure of assessment of the remaining working ability of persons with disabilities MLSW shall issue the sub-legal act”.*
33. Administrative Instruction (MLSW) No. 05/2018 on the Manner and the Procedures for Assessment of Work Ability For People With Disabilities in Article 4 stipulates: *“The right to work ability, vocational rehabilitation and employment, have all citizens of the Republic of Kosovo of age group between fifteen/eighteen (15/18) to sixty-five (65) and who fall under categories of people with disabilities as consequence of impairment:*
  - 1.1. War invalids;*
  - 1.2. War civil invalids;*
  - 1.3. Work invalid (...)*
34. Article 12 of Administrative Instruction (MLSW) No. 05/2018 on the Manner and the Procedures for Assessment of Work Ability For People With Disabilities determines the extant of reduced work ability as follows :
  - 1. “Based on conclusions of general conditions of the person, the Medico-Social Commission determines the extant of work ability, based on the following scale:*
    - 1.1. **Scale zero**- if the person has no difficulties and obstacles at work or if they are negligible and do not affect work ability (persons with impairment and reduced functioning up to 29%);*
    - 1.2. **Scale one**- if the difficulties and obstacles are mild and affect work ability related to the occupation or work that a person can perform and which enables employment in general (persons with impairment and reduced functioning up to 30-49%);*



1.3. **Scale two** – if the difficulties and obstacles are moderate or significant in relation to the occupation or work that a person can perform and which enables employment under special conditions (persons with impairment and reduced functioning up to 50-79%);

1.4. **Scale three-** if the difficulties and obstacles are full or multiple and if the person cannot be employed or have employment relationship under general or special conditions (persons with impairment and reduced functioning over 80%).

35. Law No. 05/L-021 on Protection from Discrimination, in Article 1 stipulates: “*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.*” While paragraph 1.1 of Article 4, of this Law determines: “*Direct discrimination is considered when a person is treated less favourably than another is, has been or would be treated in a comparable situation based on one or more grounds such as those stated in Article 1 of this Law*”.
36. Criminal Procedure Code No. 04/L-123 of Republic of Kosovo (henceforward: “CPC”) in Article 1 stipulates: “*This Code 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*”, while paragraph 2 of Article 3 reads: “*Doubts regarding the existence of facts relevant to the case or doubts regarding the implementation of a certain criminal law provision shall be interpreted in favor of the defendant and his or her rights under the present Code and the Constitution of the Republic of Kosovo*”.
37. Article 5 of the CPC stipulates: “*Any person charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time*”, while paragraph 2 of Article 7 determines: “*Subject to the provisions contained in the present Code, the court, the state prosecutor and the police participating in the criminal proceedings have a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in his or her favor, and to make available to the defense all the facts and pieces of evidence, which are in favor of the defendant, before the beginning of and during the proceedings*”.
38. Article 68 of the CPC determines: “*A criminal proceeding under this Criminal Procedure Code shall have four distinct stages: the investigation stage, the indictment and plea stage, the main trial stage and the legal remedy stage. A criminal proceeding may be preceded by initial steps by the police or information gathering under Article 84 of this Code,*” while paragraph 4 of Article 70 stipulates: “*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*”.

39. Article 101 of the CPC stipulates: *“If the police or other government agency reports to the state prosecutor a reasonable suspicion of a criminal offence the state prosecutor may initiate the investigatory stage of a criminal proceeding under Article 102 of this Code”* while Article 104 determines: *“The investigation shall be initiated by a decision of the state prosecutor. The decision shall specify the person or persons against whom an investigation will be conducted, the date and time of the initiation of the investigation, a description of the act which specifies the elements of the criminal offence, the legal name of the criminal offence, the circumstances and facts warranting the reasonable suspicion of a criminal offence, whether any technical or covert measures of investigation or surveillance had been authorized and the evidence and information already collected. A stamped copy of the ruling on the investigation shall be sent without delay to the pretrial judge”*.
40. Paragraph 2 of Article 172 of the CPC provides: *“The police shall keep a written record of any examination of the arrested person, including the time of beginning and concluding the examination and the identity of the police officer who conducted the examination and any other persons present. If the defense counsel was not present, this shall be duly noted”* while paragraph 4, of the same Article defines: *“The written records under paragraphs 1 and 2 of the present Article shall be made available to the arrested person and his or her defense counsel on their request and in a language that the arrested person understands”*.
41. Criminal Code No. 06/L-074 of Republic of Kosovo (hereinafter “CCRK”) in Article 3 stipulates: *“The law in effect at the time a criminal offence was committed shall be applied to the perpetrator”* while paragraph 1 of Article 100 determines: *“The period of statutory limitation on criminal prosecution commences on the day when the criminal offence was committed. If a result constituting an element of the offence occurs later, the period of limitation shall commence to run from that time”*.
42. Law No. 03/L-225 on State Prosecutor in Article 6 [Efficiency of the State Prosecutor] determines that: *“The State Prosecutor shall exercise its functions in an efficient and effective manner and in accordance with the Constitution, the applicable law, and internationally recognized principles of non-discrimination, human rights, and fundamental freedoms.”* While Article 7, paragraph 1, subparagraph 1.6 stipulates that: *“to undertake the necessary legal actions for the detection of criminal offences and discovery of perpetrators, and the investigation and prosecution of criminal offences in a timely manner”*
43. Law No. 04/L-076 on Police (henceforward: “Law on Police”), in Article 46 determines: *“Police officers shall enjoy the same civil and political rights as other citizens, being subject only to restrictions in this Law deemed necessary for the effective exercise of their police powers and duties in the democratic society”*, while paragraph 2 of this Article defines: *“Police officers shall enjoy the same social and economic rights as other public servants, such as the rights to organize or to participate in representative organizations and to receive appropriate remuneration, social insurance, legal aid, health and other benefits for their work”*.

44. Law No. 03/L-231 on Police Inspectorate of Kosovo (hereinafter: “Law on Police Inspectorate”) in Article 3 stipulates: “*The Mission of the Police Inspectorate of Kosovo is that through exercising its duties to ensure an accountable, democratic and transparent police service in accordance to the legislation in power and required standards*” while Article 5, determines basic principles, therefore for the purposes of this Report only some of them will be mentioned: paragraph 2 stipulates: “*PIK employees while conducting their duties shall respect applicable law, human rights and freedoms guaranteed by the Constitution of the Republic of Kosovo and shall contribute in their promotion*”; paragraph 3 defines: “*PIK is guided by the principles of professionalism, objectivity, political impartiality and nondiscrimination.*”; paragraph 7 stipulates: “*PIK shall conduct its investigation promptly and in an expeditious manner in order to maintain confidence in the rule of law*” and paragraph 8 determines: “*While performing their duties, PIK investigators shall comply with the Criminal Code and Criminal Procedure Code.*”.
45. Article 6 of the Law on Police Inspectorate determines: “*PIK is an executive institution under the Ministry of Internal Affairs, independent from the Kosovo Police and under direct subordination of the Minister*” while paragraph 3 of Article 10 determines: “*PIK will not disclose to the Minister, public authorities or other person any information related to its investigations including but not limited to information related to witnesses, collaborators or informants. This type of information shall be only disclosed by the competent body according to the Criminal Procedure Code*”.
46. Article 17, paragraph 1 of the Law on Police Inspectorate determines: “*PIK investigators, while performing their duties, have police powers and shall exercise them in accordance with the Constitution, Criminal Code, Criminal Procedure Code, this law, other laws and sublegal acts in power*” while paragraph 12 of this Article defines: “*When PIK considers it is in the interest of the investigation it shall recommend to the Police General Director a form of action that may include, but is not limited to, types of suspension with pay or transfer. The recommendation must be accompanied with a statement, which includes the reasons for the recommendation*”.
47. Article 18, paragraph 4 of the Law on Police Inspectorate determines: “*If after the pre-charge criminal investigation, PIK determines that there is reasonable suspicion to believe that a police employee who was the subject of an investigation have committed a criminal offence, PIK shall prepare a criminal indictment and send it to the Prosecutor together with all the evidence*”.
48. Paragraph 1, of Article 9 of the Law No. 2004/38 for the Rights and Responsibilities of the Kosovo Residents in the Health Care determines: “*The resident is entitled to receive full information in an individualized form*” while paragraph 2 stipulates: “*The resident is entitled to receive detailed information on: a), His state of health, including its medical evaluation (...) h) The success or failure of the medical treatment, upon completion of each examination and intervention, including if the result deviated from what was expected, and the reasons for this [...]*”.

49. Paragraph 1, of Article 20, of the Law No. 2004/38 for the Rights and Responsibilities of the Kosovo Residents in the Health Care determines: “*The resident has the right to protection of the confidentiality and secrecy of his personal data and information related to his state of health and medical treatment, as well as to any other information included in his health documentation*” while paragraph 2 determines: “*A resident is entitled to make a statement as to who may receive information on his illness and the expected outcome thereof and who is not entitled to be fully or partially acquainted with his health care data*”.
50. Law No. 06/L-082 on Protection of Personal Data, in Article 3, paragraph 1, subparagraph 1, stipulates: “*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*”; while subparagraph 4 of paragraph 1 of the same Article determines: “*Classification of Personal Data – marking of personal data to indicate their sensitive nature. Specific conditions should be set for classified data, according to which users shall be able to process them. The classification should be attached to sensitive personal data until their deletion, erasure, destruction or making them anonyms*”; while subparagraph 25 defines: “*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 subparagraph*”. While Article 8 of the same Law determines: “*Specific categories of personal data should be protected in a special manner and be classified for the purpose of preventing the unauthorized access and use [...]*”.

## Case analyses

51. Since from the investigations carried out with regard to this case we have received information that at the beginning of 2017, the PIK was instructed by the SPRK to collect preliminary information regarding information on the beneficiaries of the status of war invalid by members of Kosovo Police (see paragraph 9), which brings into light the need for a comparative analysis between the Law on War Values and the Law on KLA Veterans as well as the actions of state bodies. The Law on War Values stipulates that depending on the recognition and regulation of the status, the categories treated in this Law through the recognition of the right to pension as well as other various benefits will be provided financial support and certain benefits for the contribution given in the KLA war.

52. The pensions defined by this Law are: family pension, personal disability pension and family disability pension. On the other hand, this Law defines the rights and benefits of KLA invalids, by determining that this category has priority in employment in equal working conditions (Article 9, par. 1, subparagraph 1.8). Furthermore, the Law on War Values explicitly stipulates that the beneficiaries of the basic pension can realize all rights and benefits defined by this Law, if they meet the conditions and criteria according to the provisions of this Law and specifies that the users for disabled persons cannot be users of the rights deriving from this Law. On the other hand, the Law on KLA Veterans, which in Article 1 stipulates that the purpose of the Law is to define the benefits entitlements for the Veterans of the Kosovo Liberation Army (KLA), who with their precious sacrifice, commitment and contribution at Kosovo Liberation Army were crucial factor in bringing freedom and independence to the people of Kosovo. Furthermore, the Law on KLA Veterans regulates the realization of the right to pension and benefits, stipulating that the KLA War Veteran, through the recognition of the right to pension and various benefits, is provided with financial support and certain benefits for the contribution given to the KLA war. Furthermore, it is stipulated that the KLA Fighter Veteran cannot benefit any pension from other pension schemes funded by the state and if the Fighter Veteran is user of any other pension schemes funded by the Republic of Kosovo he/she must decide which pension he/she will receive. Based on analysis done to these two Laws, it is noticed that PSRK, BP and IPK have used double standards in comparable situation. **In the first case** (of KLA War Veterans), the SPRK has filed an indictment against the Government Commission for the Recognition and Verification of the Status of National Martyrs, Invalids, Veterans, deported (imprisoned) and members of the of Kosovo Liberation Army, as suspects in the capacity of official persons, while in **the second case** (KLA War Invalid) subject under consideration of this Report, the SPRK, BP and PIK have conducted investigations towards the individuals / Police Officers- who have gained the status of disabled person based on the assessment of the Central Medical Commission, established by the Administrative Department of Health and Social Welfare<sup>8</sup> and then re-evaluated by the Medical-Social Commission of MLSW, on a periodic basis, based on documents / case files deposited in MLSW in the course of recognition of the status, but not on the current health status of the beneficiary.
53. When it is about the work skills we see that the Administrative Instruction (MLSW) no. 05/2018 on the Manner and the Procedures for Assessment of Work Ability for People with Disabilities determines the extant of reduced work ability and ascertains the general condition of the person through the Medical-Social Commission, which determines the degree of reduced working skills. The Instruction stipulates that “**Zero Scale**” is when the person has no difficulties and obstacles at work or if they are negligible and do not affect work ability (persons with impairment and reduced functioning up to 29%. Further, the Instruction defines the category “**First Degree**” when the difficulties and obstacles are mild and affect work ability related to the

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<sup>8</sup> See UNMIK Regulation No. 2000/66 21 December 2000, on Beneficiaries of Kosovo War Invalids and their family members who died due to armed conflict in Kosovo

occupation or work that a person can perform and which enables employment in general (persons with impairment and reduced functioning up to 30-49%);). Therefore, from what has been stated above, it can be seen that people with impaired and reduced function up to 29% may not have any obstacles at work. This was argued in 2018, when PIK recommended suspension of 100 Police Officers to the General Director of the Kosovo Police, but this recommendation was not implemented because Police Officers, upon request of Police General Director, underwent a medical checkup and it turned out that they did not have obstacles that affect their ability to work.

54. In this context, the CPC sets out rules of criminal procedure which are binding for the work of Courts, the State Prosecution as well as other participants in criminal proceedings, by specifying that doubts with regard to the existence of important facts on the issue or for the implementation of any provision of criminal law are interpreted in favor of the defendant / the suspect. The CPC stipulates that any person suspected or accused for a criminal offense has the right to request an impartial criminal procedure carried out in a reasonable time, indicating that the state bodies which participate in the criminal proceedings have a duty to examine carefully and with maximum professional devotion and with equal attitude facts against the defendant as well as those in his or her favor, prior initiation of the proceedings as well as during the proceedings. The CPC stipulates that criminal proceedings have four different stages (*the investigation stage, the indictment and plea stage, the main trial stage and the legal remedy stage*), but criminal proceedings may be preceded by initial steps by the Police or information gathering (Article 70). As soon as the Police have a reasonable suspicion that a criminal offense has been committed, which is prosecuted ex officio, is obliged to submit a police report to the competent State Prosecutor within twenty-four (24) hours, who then decides whether criminal proceedings should be instituted. From what has been stated above it can be seen that in the preliminary criminal procedure, that is before the initiation of formal investigation, the Police acts on its own initiative (ex officio) or based on authorization by the State Prosecutor and has the obligation to investigate criminal offenses, as well as to report to State Prosecutor as soon as possible on investigation conducted. In the case subject of this Report, based on PIK letters (*which according to the Law on PIK has police authorizations*) it can be seen that they have launched a preliminary criminal investigation based on SPRK authorization of 2016, (there are indications that information gathering by PIK had begun years ago) and this investigation has remained unfinished at least until publication of this Report. Such PIK and Prosecutions' practice is in contradiction with their values and principles, as well as ECtHR case law, as these institutions, with the Constitution and Laws are established to provide justice and to protect the rights of citizen.

55. The Law on the Police Inspectorate plainly stipulates that PIK mission is that, through exercising of its activity, provide a responsible, democratic and transparent police service, in accordance with applicable law and the required standards. Furthermore, basic principles are defined there by stipulating that PIK, during accomplishment of liabilities, will respect the applicable laws, fundamental human rights and freedoms,

guaranteed by the Constitution, and will contribute to their realization. Further, it states that the PIK is guided by the principles of professionalism, objectivity, political impartiality and non-discrimination, that during exercising of the activity, they will be independent, that they will conduct investigations accurately and quickly, in order to increase confidence in the rule of law by specifying that PIK investigators will exercise their powers in accordance with the CCRK and the CPC. **Applicability of Article 6 of the ECHR.**

56. With regard to the compliance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the ECtHR, through its case law, has provided relevant interpretations. The ECtHR, in the case of *Dimitrov and Hamanov v Bulgaria* (the Decision of 10 August 2011), stated that the principle of timely proceedings guaranteed under Article 6 of the European Convention on Human Rights aims to ensure public confidence in administration of justice. Another purpose of this principle is to protect parties in the proceedings from belated procedural delays in criminal matters, and in particular aims to avoid the fact that the accused persons not remain for a long time in a state of uncertainty about their fate.<sup>9</sup>
57. The ECtHR, in the other case *Boddaert v. Belgium* (the Decision of 1992) found that justification of the duration of the proceedings should be determined by the criteria set out in the ECtHR case law and on the basis of the specifics of the case, which requires a comprehensive assessment.<sup>10</sup> Furthermore, the ECtHR, in its case law with regard to the time when calculation of deadline starts has ruled that, under other circumstances, the starting point for the proceedings is the date on which the preliminary investigation were initiated by continuing with other circumstances prior the case is brought before the competent court.<sup>11</sup>
58. The Court also noted that Article 6 applies throughout the entirety of the proceedings for “*the determination of any criminal charge*.”<sup>12</sup> starting from the stage of investigations carried out by the Police<sup>13</sup>, up to setting the conviction<sup>14</sup>. The European Court further states that the concept of the “*charge*” should be understood/ defined as an “*official notification issued by the competent authority, as criticism for commitment of a criminal offense*”, a definition that also depends on the existence or not of significant consequences for the state of the suspect (see case, *Deweert v. Belgium*, §§ 42 and 46, as well as the case *Eckle case v. Germany*, § 73). Thus, for example, the statements made by a person during a road check, while he was not warned about the

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<sup>9</sup> Case *Dimitrov and Hamanov versus Bulgaria*, ECtHR Decision of 10 August 2011, paragraph 70.

<sup>10</sup> Case *Boddaert v. Belgium*, ECtHR Decision of 1992, paragraph 36.

<sup>11</sup> The right to trial within reasonable time under Article 6 ECHR, A practical handbook prepared by Ivana Roagna, Council of Europe, 2018, page 17.

<sup>12</sup> See case of *Phillips versus United Kingdom*, 5.06.2001, No. 41087/98, § 39;

<sup>13</sup> See case *Imbroscia versus Swiss*;

<sup>14</sup> See case *Findlay versus United Kingdom*, 25.02.1997, See also the case *Aleksandr Dementev versus Russia* where the Court emphasized, in paragraph 25, that Article 6 was applicable at the stage of imposing a global sentence, as this could not be considered a “formality or an arithmetic exercise, while Russian courts in determining the measure must take into account the personality of the accused as well as the mitigating or aggravating circumstances in relation to the offense committed. It even pointed out that Article 6 extends to the stage of setting the conviction, even when this element of the procedure, in the practice of different countries, is left to the executive with a special court decision (see also cases *T. and K. Against the United Kingdom*, 106-110.

reason for which he was being questioned, about the nature and cause of the suspicions that weighed on him, nor about the fact that his statements can be used against him, these can have important consequences for him, despite the lack of formal guilt against him (see the case of Alexander Zaichenko v. Russia, § 43). According to European Court case law, Article 3 of the Convention may be infringed by both premeditated ill-treatment and negligence or passivity in taking specific steps or failing to ensure proper standards of care. This Article imposes on the state both negative and positive obligations, which means an obligation not to perform a certain action, as well as liabilities to take positive steps in order to ensure individuals respect of their rights as well as protect them from mistreatment.

### **Presumption of innocence**

59. Obligation to respect the dignity of every person derives from the Constitution, which in Article 23 stipulates that "Human dignity is inviolable and is the basis of all fundamental human rights and freedoms." On this basis, the Ombudsperson recalls that the actions and decisions of all judicial bodies must be in the spirit of this definition, as a fundamental principle and framework for interpretation of fundamental rights of every individual, including parties to criminal proceedings.
60. Protection of "Human dignity" is the basic principle set out in main international documents for the protection of human rights, such as the Universal Declaration of Human Rights of 1948 (Article 5), the International Covenant on Civil and Political Rights. (Article 7), etc.
61. There is no doubt that in the spirit of these provisions is also CPC, provisions of which explicitly defines the obligation to protect the dignity of the defendant in criminal proceedings (see in particular Articles 83, paragraph 6; Article 108, paragraph 5; and Article 154, paragraph 3).
62. Therefore, the Ombudsperson insists that the principle of protection of the dignity of persons, who are defendants in criminal proceedings, should be the basis of all interpretations and procedural actions by the Prosecution and the Court.
63. Presumption of innocence, as a basic principle in criminal proceedings is enshrined in provisions of the Constitution, where Article 31, paragraph 5 stipulates that: "*Everyone charged with a criminal offense is presumed innocent until proven guilty according to law*". While CPC in Article 3, parag.1, further defines that: "*Any person suspected or charged with a criminal offence shall be deemed innocent until his or her guilt has been established by a final judgment of the court*". As such, the principle of presumption of innocence derives from the text and the spirit of key international human rights instruments such as the Universal Declaration of Human Rights (Article 11, paragraph 1) and the ECHR (Article 6, paragraph 2) which are directly applicable in the Republic of Kosovo (Article 22 of the Constitution).
64. As such, presumption of innocence of the defendant in the criminal proceedings of Kosovo should not only be understandable, but should be expressed by each action of the judicial authorities, in particular at the stage of investigation and indictment. In



relation to complainants' case and other cases at this stage of the proceedings, it is up to the Prosecution to take care on maintaining the identity of the suspect / the accused, and the availability of the indictment and the evidence on which the person is charged with, should always be done before the information on the case is published in media.

### **Freedom of expression and media**

65. In accordance with the standard set out in international documents, the Ombudsperson draws attention that restrictions on freedom of expression are justified to the extent that its realization is not violated and only to the degree that is necessary that this right is not abused to the detriment of other rights. Therefore, achieving such a balance requires special care as well as establishment of a legal framework and appropriate enforcement mechanism. This goal can only be achieved on the basis of an in-depth treatment and analysis to ensure that freedom of expression, actually freedom of the media is not abused in terms of violating human dignity, privacy, the spread of hate speech, intolerance and other harmful consequences.
66. It should be noted that writing against these persons, media have used various insulting and derogatory terms, without having due regard for the rights of these persons. Furthermore, their personal data have been revealed (such as, name, father's name and surname) and their health condition, referring to mental illness, despite the fact that they were not categorized as such. Therefore, these media actions are in contradiction with principles of the Constitutional, with international instruments for human rights directly applicable in the Republic of Kosovo, as well as on the applicable laws in Kosovo.
67. In case law of European countries' Courts it has been noticed mainly a tendency of setting criteria which would assist building of a standard to set cases related to freedom of expression and its limits. As an example we can use the standard set by the Court of Cassation in Italy (Supreme Court) in relation to guaranteeing other rights, especially protection of human dignity from defamation and insult, which in order to restrict freedom of expression has defined three basic criteria, such as: truthfulness, self-restraint and public interest.

### **Discriminatory access**

68. Article 24 of the Constitution prohibits discrimination, emphasizing since in the first paragraph that "*Everyone is equal before the law*". The Constitution further guarantees that no one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability **or other personal status**. In this regard, the Law on Protection from Discrimination plainly stipulates that direct discrimination is considered when a person is treated less favourably than another is, has been or would be treated in a comparable situation based on one or more grounds such as those stated in Article 1 of this Law". In such a comparable situation, persons who gained the status of "*KLA War Invalid*" and engaged as police officers were treated differently from other persons

working in other state institutions and who are also beneficiaries of the status of "*KLA War Invalid*".

69. In this regard, Article 14 of the ECHR provides for the prohibition of discrimination, stating that the enjoyment of the rights and freedoms set forth in ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth **or other status**. The concept of discrimination means that "*Discrimination*" is any distinction, exception, restriction or preference on any grounds, the purpose or effect of which is to depreciate or infringe recognition, enjoyment or exercise, in the same way as others. In the given case, it has been proved that the Prosecution has not initiated any investigation against other officials employed in public institutions of the Republic of Kosovo (see paragraph 13), including those of armed forces and firefighters as comparable professions, therefore situation in the given case can be considered apparently as discriminatory approach.

### **Lack of effective legal remedies**

70. International Covenant on Civil and Political Rights (ICCPR) in Article 2 stipulates that each State Party to the present Covenant pledges to ensure that every person, whose rights and freedoms recognized with this Covenant, to have **the right to effective legal remedy**, even when the violation is committed by persons while exercising their official functions. Article 26 of the ICCPR stipulates that all persons are equal before the law and are entitled to equal protection of the law, without discrimination.
71. Additionally, the ECHR in Article 13 stipulates that everyone, whose rights and freedoms as set forth in this Convention are violated, shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. Criminal legislation of Republic of Kosovo provides the State Prosecutor with discretion with regard to initiation of an investigation or the authorization of the Police for gathering of information, therefore a large number of cases pertaining to the pre-trial phase or the investigation phase in criminal proceedings are handled by the Prosecution without any judicial control and the suspects at this stage have no legal means at their disposal to be able to protect themselves from arbitrariness. The lack of legal remedy by the suspect at this stage of the procedure does not guarantee legal certainty for the rights and freedoms of the citizens of the Republic of Kosovo, because pre-trial procedures, lasting for many years, can be initiated and developed, keeping them in this way in anxiety, as in this Report, therefore actions conducted by the Prosecution and the PIK constitute violation of Article 13 of the Convention.
72. In the case *Husayn (Abu Zubaydah) v. Poland*<sup>15</sup> the applicant complained that the Polish authorities, by violating Article 13 separately and in conjunction with Articles

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<sup>15</sup> [https://hudoc.echr.coe.int/eng#\\_Toc393886343](https://hudoc.echr.coe.int/eng#_Toc393886343)

3, 5 and 8 of the Convention, had denied his right to an effective remedy due to the failure to conduct an effective investigation with regard to his allegations for the breach of the Convention. In the case of *Wille v. Liechtenstein* 28396/95 | the Court (Grand Chamber) 28/10/1999, the Commission found that Government had not succeeded in showing that, against the violation of Article of the Convention alleged by the applicant, a remedy effective in practice as well as in law existed under Liechtenstein law. In particular, in connection with an appeal to the Constitutional Court, the Government had not presented any example indicating its application in a similar and current case. In this case, it is seen that we have a comparable situation as the Police Officers benefiting from the financial benefit of the "KLA War Invalid", are held in pre-trial investigations / information gathering phase by the Prosecutions and PIK for many years and they have no effective legal remedy to challenge this.

### **Violation of privacy and personal data**

73. Law no. 04 / L-125, on Health clearly stipulates that the owner of health data is the health institution that registers them and the same is responsible for the collection, storing and management of data in a regular and secure manner, ensuring easy access to data, protection and confidentiality of personal data and protection of data from abuse, in accordance with applicable law (see Article 52). Law No. 2004/38 For the Rights and Responsibilities of the Kosovo Residents in the Health Care plainly determines the resident has the right to protection of the confidentiality and secrecy of his personal data and information related to his state of health and medical treatment, as well as to any other information included in his health documentation by leaving to the full discretion of him (the citizen) to make a statement as to who may receive information about his illness and the expected outcome, as well as who is not entitled to be fully or partially acquainted with his health care data (Article 20). This Report will undoubtedly address the health aspect of Police Officers in terms of violating their privacy as a result of the flow of information, as it was mentioned earlier in this Report, they were the main headlines on portals' front-pages with various insulting names and expressions.
74. The Law on Personal Data Protection defines the term "*Personal Data*" 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, while the term "*Classification of personal data*" is defined as the labeling of personal data to indicate their sensitive nature. The Law stipulates that classified data must specify the conditions under which the user can process it, therefore the classification has to remain with the sensitive personal data until they are deleted, erased, destroyed or made anonymous, while with regard to the term "*Sensitive personal data*" is defined 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.

75. It is worth mentioning that the Law no. 03 / L-172, on the Protection of Personal Data, which was repealed by the Law no. 06 / L-082, on Protection of Personal Data required that sensitive personal data are protected in a special way and classified in order to prevent unauthorized access and use of third parties, except in specified cases determined by Law. From what has been stated above, it can be seen that despite the fact that the state authorities had a legal obligation to protect the health data of these persons, such thing did not occur in practice, since at least from 16 November 2016, media article among others wrote that: "... *Police and the Armed forces cannot be composed from invalids.*"<sup>16</sup> The Law defines rights, responsibilities, principles and measures related to the protection of personal data and establishes the institution<sup>17</sup> which is responsible for supervision of the legitimacy of data processing and defines the right to compensation of any person who has suffered material or immaterial damage as a result of an infringement of this Law, by the controller or processor of personal data.

### **Acquired right**

76. In addition to the above, the Ombudsperson recalls that the respective authorities did not take into account the fact that the right to enjoy pensions, in particular the right to KLA war invalid benefit, in the case of Police officers is e **acquired right**. This legal doctrine stipulates that a right acquired under certain legal norms cannot be restricted by laws or acts issued later and the same is closely related to the principle of legal certainty. Therefore, endeavors of relevant authorities to restrict the right of KLA war invalid benefit of police officers violate the principle of legal certainty because this right has been acquired under previous laws.

77. It should be mentioned here that UNMIK Regulation no. 2000/66, of 21 December 2000, for the first time has regulated the issue of the benefit for the category of "War Invalid" and then the pension right was recognized to persons with disabilities over 40%, therefore since most of the Police Officers since then were assessed with a 20% disability rate, benefits have been denied to them. With legal amendments of 2006<sup>18</sup>, Police Officers with a disability rate of 20-30% gained the right to a Personal disability pension, while Law no. 03 / L-035 for the Police, adopted by the Assembly of the Republic of Kosovo on 20 February 2008 and the same was published in the Official Gazette no. 28, June 2008. While it is about personal disability pension, it is important to emphasize that the Law No. 04/L-172, on Amending and Supplementing of the Law no. 04/1-054 on the Status and the Rights of the Martyrs, Invalids,

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<sup>16</sup> See the link <https://zeri.info/aktuale/117151/ne-polici-punojne-edhe-invalidet-e-luftes>

<sup>17</sup> Law No. 06/L-082 on Protection of Personal Data determines that the **Information and Privacy Agency** (the Agency) is an independent agency, responsible for supervision of implementation of legislation for personal data protection and access to public documents in order to protect the rights and fundamental freedoms of natural persons in relation to the personal data processing and ensuring the guarantee for access to public documents

<sup>18</sup> See Law No. 02/L-2 on the Status and rights of families of martyrs, invalids, veterans and participants of the KLA and families of Civil war victims (Article 8, paragraph 8.10)

Veterans, Members of Kosovo Liberation Army, Victims of War Sexual Violence, Civilian Victims and their Families, has defined the KLA War Invalid as: “*KLA Fighter, member and the deported (prisoner) who has suffered wounds, injuries (damages) physical and mental or serious illness during the war or in prisons and enemy camps, during the war period, with a disability rate of at least 10%*”.

78. The Ombudsperson reiterates that as an integral part of the principle of legal certainty, the principle of legitimate expectation is also guaranteed. Under the doctrine of legitimate expectation, those who act in good faith and in accordance with the Law should not be frustrated by their legitimate expectations. This doctrine applies not only to the procedures for promulgation of Laws, but also in the course of issuing of decisions in individual cases by the public authority. Also, legal certainty means that the Law is clear and enforceable and that it is applicable in practice.<sup>19</sup> According to European Court’s case law (see *Kopecky v. Slovakia, Judgment of 28 September 2004, paragraph 45-52; Gratzinger and Gratzingerova v. The Czech Republic (dec.), No. 39794/98, paragraph 73, ECtHR 2002-VII*), “Legitimate expectation” must be of a concrete nature and must be based on legal provisions or legal acts.
79. With regard on the issue of pensions, as a property right, the Ombudsperson on 27 February 2018, published Recommendations Report<sup>20</sup> with regard to contribution-payer pension. The Report aimed to draw attention of the Ministry of Laboru and Social Welfare that citizens are provided with the guaranteed legal and constitutional rights to use pensions as the right to property. Furthermore, the Report analyzed the legal framework in terms of exercising the right to an age contribution payer pension, in relation to the right to exercise other pensions under Law No. 04 / L-054 on the Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian Victims and Their Families and Law No. 04 / L-261 on Veterans of the Kosovo Liberation Army. In this regard, the Report ascertained that the exercise of the right to a pension represents the exercise of the right to property, pursuant to Article 1, Protocol No. 1 to the ECHR, in relation to conditioning on exercising of the right on this pension, based on the Article 8 of the Law No. 04/l-131 on Pension Schemes Financed by the State.

### **Findings of the Ombudsperson**

80. The Ombudsperson finds that there is a violation of the right to a fair trial, which is one of the fundamental human rights, as the relevant authority has not fulfilled its constitutional and legal obligations and international standards applicable in the Republic of Kosovo, against undertaking investigative actions against suspected officials.
81. The Ombudsperson finds that the competent bodies failed to initiate any kind of investigation to make clear the flow of information from DFDLV / MLSW files. What was the purpose of publishing this data? How damaged was their reputation given that

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<sup>19</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE RULE OF LAW Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011) (44-51).

<sup>20</sup> See the link: <https://www.oik-rks.org/2018/02/27/raport-me-rekomandime-a-890-2016-te-drejten-ne-pension-kontribut-pagues-te-moshes-si-dhe-e-drejta-ne-shfrytezimin-e-pensioneve-te-tjera-te-aplikueshme-ne-kosove/>

a significant number of these officials are of high rank and in leading posts in KP? Therefore, in the normal circumstances of a democratic society, such actions would not be passed over without legal consequences for the responsible persons, while the injured party in this process should be offered compensation, as a reward for material and non-material damage as defined by Law No. 06 / L-082 on Protection of Personal Data.

82. The Ombudsperson ascertains that there is a selective approach in the investigation of this case by the Prosecution. In such a comparable situation, persons who gained the status of "*KLA War Invalid*" engaged as Police Officers were treated in different way from other persons working in other state institutions who also are beneficiaries of the "*KLA War Invalid*" status.
83. The Ombudsperson notes that double standards have been used for similar situations. According to the procedure, each person who claims to be entitled to this statutory pension / benefit right applies to be recognized with a disability right and the same must pass through verification in front of MLSW Medical Commissions, which upon deciding on each case separately, provide their assessments, and then the relevant MLSW Department issues a decision notifying the party that on admission or rejection of their request. Therefore, the whole burden of assessment falls upon Professional Commissions, thus in a comparable situation regarding the KLA war veterans, the competent Prosecution had filed an indictment against the Government Commission, while in the case subject of this Report, the Prosecution and the PIK are investigating against the beneficiaries.
84. The Ombudsperson finds that publication of personal data and specifically disclosure of the identity of suspects through the media, without additional care, violates the dignity of the parties in criminal proceedings and violates the principle of presumption of innocence of the defendants.

The Ombudsperson, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo: “...is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed.” within the meaning of Article 18, paragraph 1.2, of the Law on Ombudsperson, the Ombudsperson: “(...) draws 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,” as well as based on what has been stated above in this Report, the Ombudsperson :

## **Recommends**

### **To the State Prosecution of the Republic of Kosovo and the Police Inspectorate of Kosovo that:**

- *In accordance with the powers and legal authorizations to end investigations as soon as*

*possible regarding the case of Police Officers, subject of this Report, so that this case receives a clear conclusion, either by filing an indictment and addressing of the case to the Court, or by ceasing of investigations.*

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

Warmly submitted,

Hilmi Jashari  
Ombudsperson