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## Report of the Ombudsperson

*Ex officio No. 434/2020*

**With regard to limitations on provision of health services during COVID-19 pandemic  
in Kosovo**

Addressed to: Mr. Avdulla Hoti, Acting Prime-Minister, Government of Republic of Kosovo  
Mr. Armend Zemaj, Acting Minister, Ministry of Health  
Mr. Valbon Krasniqi, General Director, Hospital and University Clinical  
Service of Kosovo  
Parliamentary Committee on Human Rights, Gender Equality, Missing  
Persons and Petitions  
Parliamentary Committee on Health and Social Welfare

Prishtinë, 23 February 2021

## Purpose of the Report

1. The purpose of this Report is to assess the effective accomplishment of health rights during the COVID-19<sup>1</sup> pandemic period in Kosovo, in relation to access to health care and treatment, mainly in secondary and tertiary level institutions, focusing in particular on limitation on provision of health care services (specialist visits and elective surgeries), for persons who were not infected with COVID 19.

Protection of human rights and fundamental freedoms is essential and very important for an effective response in the prevention and treatment of cases with COVID 19, but without leaving aside any citizen who seeks services in health institutions with a special focus on sensitive groups<sup>2</sup> and other persons who need health care continuously. Moreover, this is in function of fulfillment of the Agenda of Sustainable Development Goals (Agenda 2030)<sup>3</sup>, with a focus on fulfillment of objective 3-ensuring a healthy life and promoting well-being for all, and for all ages.

Notwithstanding, this Report takes into account problems inherited over the years in the Kosovo health system and aims, that by focusing on the difficulties that COVID 19 pandemic disclosed, to recommend responsible authorities on steps to be undertaken, in order to gradually eliminate problems in the health sector and make progress in provision of health services. In this regard, National Institutions for Human Rights, such is the Ombudsperson Institution in Kosovo, play an important role on monitoring of state's actions, in achieving application of Universal Health Coverage<sup>4</sup> for these groups.

## Powers of the Ombudsperson

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

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<sup>1</sup> **COVID-19** means labeling for disease CO-corona, VI-virus, D-disease and 19- the year of the disease outbreak 2019 (See Article 3, par 1.1, of the Law No. 07/L-006 on Preventing and Combating COVID-19 in the territory of Republic of Kosovo).

<sup>2</sup> Law No. 02/L-78 on Public Health, defines sensitive groups: “*Families with one parent, orphan children, the extreme poor, victims of trafficking, the chronically ill, elderly, imprisoned, homeless, drug users with injections, mentally sick especially PTSD (post-traumatic stress disorder persons).*”

<sup>3</sup> Agenda 2030 includes 17 Sustainable Development Goals (SDGs). They are urgent call for action for all developed and developing countries for a global partnership in their implementation. Main goals strive to end poverty and other deprivations, through developments and undertaking strategic actions that improve health, education, reduce inequality and promote economic growth. The Assembly of the Republic of Kosovo on 25 January 2018 has unanimously approved SDGs Resolution. .

<sup>4</sup> According to the World Health Organization, Universal Health Coverage means that all people and communities can access the promotional, preventive, curative, rehabilitative and palliative health services they need, of sufficient quality to be effective, while also ensuring that the use of these services does not expose the user to financial difficulties.

- “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 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, subparagraph 5).
- “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 the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation;” (Article 18, par. 1, subparagraph 9).

By delivering this Report to the competent institutions, as well as its publication, the Ombudsperson intends to fulfill the above stated constitutional and legal responsibilities.

### **Description of the case**

4. This Report was drafted as a result of an investigation initiated *Ex officio* by the Ombudsperson, based on information obtained from media and other information admitted from citizens. Since the beginning of COVID-19 pandemic, with the Decision of the Government of Republic of Kosovo (no. 01/11, of 15 March 2020), a State of Emergency was declared for public health and consequently on 16 March 2020, the Ministry of Health (MoH) issued *Information Circular no. 05/2020*, on informing public and private health institutions by which it requested cessation of all elective surgical interventions in the Republic of Kosovo. As a result of the situation created, health services of non-emergency nature in secondary and tertiary health institutions have been terminated, as the scope of the health system was focused on the prevention and treatment of COVID-19 infected patients, therefore citizens with other health problems and with chronic diseases, failed to receive the necessary health services, guaranteed by applicable law.

### **Actions undertaken by the Ombudsperson Institution**

5. On 23 July 2020, representative of the Ombudsperson contacted the Program Director of the Patients' Rights Association of Kosovo (PRAK) to discuss complaints submitted by patients regarding the treatment and provision of health services during a health emergency caused by COVID-19 in the Republic of Kosovo. In this regard, he stated that

during this period of COVID-19 pandemic, PRAK had received seventy-nine (79) complaints regarding the termination of elective surgery interventions, with regard to non-provision of specialist services in UCK ambulances and in General Hospitals, as well as related to testing (impossibility to test without medical indications, delays in testing for those who had indications for testing, as well as delays in publishing test results).

6. Further on, Ombudsperson's representative met with the Director of Abdominal Surgery Clinic in Prishtina, with whom he discussed the progress of surgery intervention cases so far. Ombudsperson's representative was informed that during the given period only emergency cases as well as those with "priority " have been handled, while he pointed out that planned (elective) surgery interventions have not been handled during that time, since they could wait, without endangering citizen's health and life.
7. On 2 September 2020, the representatives of the Ombudsperson met with the Acting General Director of the Hospital and University Clinical Service of Kosovo (HUCSK), with whom he discussed about provision of health services, as well as the challenges encountered by secondary and tertiary level health institutions during the COVID-19 pandemic, in Kosovo. On this occasion the Director emphasized that with the Decision of the Government of Republic of Kosovo (no. 01/11, of 15 March 2020), a State of Emergency was declared for public health and as a result, on 16 March 2020, the Ministry of Health (MoH) issued the Information Circular no. 05/2020, on informing public and private health institutions on cessation of all elective surgery interventions in the Republic of Kosovo. He pointed out that on 29 May 2020, the Committee for Coordination and Assessment of the Emergency Situation with Corona virus, had issued the necessary conclusions, therefore on 31 May 2020, the Ministry of Health (MoH) issued Information Circular no. 11/2020, with intention to inform public and private health institutions on implementation of the Plan for Return to Normal Health Services. According to him, the HUCSK had tried to restore all health services, but deterioration of the epidemiological situation and increase of infected cases has made the Government Decision no. 01/10, of 5 July 2020, to seek reorganization of the health system and again elective surgery interventions have been suspended. According to the Director, among the main challenges during the pandemic period March-September 2020, were the difficulties encountered in supplying gaseous oxygen (liquid oxygen supply had flowed smoothly), providing oxygen cylinders and setting of additional bed Ward for patients hospitalized with COVID-19.
8. On 18 September 2020, the Ombudsperson's representative sent the letter to the acting Secretary of the Ministry of Health, from whom he requested relevant information regarding provision of health services, based on their statistics before and during the pandemic, as well as information regarding the challenges encountered during the pandemic, in financial terms, with human resources, with medical equipment, or other supplies. The letter, among others, contained thirteen (13) questions, the answers to which were more than necessary to clarify the present situation on the ground (advantages, disadvantages, risks and challenges).
9. On 2 October 2020, OI representative received a letter from the Head of the Unit for Monitoring and Evaluation of the Quality of Work in HUCSK, who required additional time in provision of response required, with reasoning: "*Public health system does not*

*own a functional Health Information System (HIS), so in order to summarize our work, we are required to summarize the health work manually using 57 different reports in hard copy, and then the report is delivered to the HUCSK Board for approval, and the same becomes official for other parties".* On the same day, OI representative informed the HUCSK official that they are provided with the necessary time to provide answers on the given questions.

10. On 19 November 2020, OI representative was served with the response from the Head of the Unit for Monitoring and Evaluation of the Quality of Work in HUCSK, jointly with the necessary documents related to the case (answer to eight (8) questions in the Special Report for Ombudsperson Institution in a volume of 20 pages and the HUCSK Work Report for the period January-September 2020, in a volume of 117 pages).
11. On 7 December 2020, the Ombudsperson admitted a response from the MoH, which contained response to other five (5) questions, as well as an attached letter "Special Report for the Ombudsperson Institution", which was sent to the OI representative earlier by the HUCSK (see paragraph above).
12. On 11 December 2020, representative of the Ombudsperson sent a letter to the Head of Licensing and Accreditation Division at MoH, asking for information on the work statistics of private health institutions, in terms of the number of surgery interventions performed, as well as specialist visits for the periods 2018, 2019 and 2020, but no response has been served to him.
13. On 18 December 2020, the OI representative had a meeting with the Public Relations Officer from the Kosovo Agency of Statistics (KAS), from whom he requested information regarding death statistics for 2020. KAS official informed OI representative that based on the 3rd Quarter Bulletin (3QB), published in October 2020, which reflected statistics for January-September 2020, was clear that from July, August and September 2020 there was an increase in mortality, compared to the same period of 2018 and 2019. Based on 3QB of KAS<sup>5</sup> it is observed that in 2018, in July there were 740 deaths (413 males 327 females), in August there were 630 deaths (350 males 280 females) and in September there were 686 deaths (382 males and 304 females). In 2019 in July there were 761 deaths (439 males and 322 females), in August there were 779 deaths (409 males 370 females) and in September there were 770 deaths (424 males and 346 females). In 2020, there were 1,126 deaths in July (620 males and 506 females), in August there were 1,306 deaths (736 males and 570 females) and in September there were 1,216 deaths (678 males and 538 females).
14. On 18 January 2021, the OI representative had a meeting with the Head of the Department of Health Information System (HIS) at the MoH, with whom he discussed the work statistics of private health institutions for 2018, 2019 and 2020. On this occasion he had stated that private health institutions are not reporting on their work in the MoH, therefore the MoH does not possess the required information regarding the statistics of specialist visits and surgery interventions performed for the respective period. He further specified that from 2011 to 2017 efforts have been put HIS into operation, but after this period it had become dysfunctional and as a result this case is now under review by the prosecution. He notified that the Ministry of Health has

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<sup>5</sup> See the link: <https://ask.rks-gov.net/media/5672/buletini-tremujor-tetor-2020.pdf>



recently integrated another information system called "Basic Health Information System" (BHIS) which has already started collecting information on the work of Family Medical Centers, and according to him, the same will be soon supplemented with the work of the HUCSK working units

### Legal bases

15. Article 21, paragraphs 2 and 3, of the Constitution of Republic of Kosovo (henceforward: 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.."*
16. 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."*
17. While Article 24 of the Constitution guarantees the equal treatment. This Article defines: *"All are equal before the law [and 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."*
18. Article 26 of the Constitution guarantees the right of personal integrity. It is defined that: *"Every person enjoys the right to have his/her physical and psychological integrity respected, which includes::*  
[...]  
*(2) the right to have control over her/his body in accordance with law;*  
*(3) the right not to undergo medical treatment against his/her will as provided by law;."*
19. Article 36, paragraph 1, of the Constitution stipulates: *"Everyone enjoys the right to have her/his private and family life respected, the inviolability of residence, and the confidentiality of correspondence, telecommunication and other communication."*; while Article 53 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."*
20. Article 55, paragraph 1, of the Constitution stipulates: *"Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law"*, while paragraph 4, of this Article defines: *"In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation."*

21. The Constitution makes directly applicable a number of instruments and international agreements in the field of human rights in the legal order of Kosovo. It stipulates that these acts are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions, *among them is European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.*
22. Law No. 02/L-78 on Public Health, defines public health as follows: *“Public Health is an independent discipline dealing with identification and solving of all community problems from every health aspects, prevention of diseases, research on the etymology of the diseases, health promotion, rehabilitation and re-adaptation of the handicapped, health education and social issues”* (Article 1, letter a). Further on, defines the epidemic as: *“means occurrence of two or more cases of an infective disease, which are closely related in time and with a certain area-territory, with an enormous cases number increasing of the infectious disease”*(Article 1, letter e); while sensitive groups determines: *“families with one parent, orphan children, the extreme poor, victims of trafficking, the chronically ill, elderly, imprisoned, homeless, drug users with injections, mentally sick especially PTSD (post-traumatic stress disorder persons)”*, (Article 1, letter v).
23. Law No. 04/L-125 on Health since in Article 1 clearly defines its spirit, specifying that: *“This law has the aim of establishing legal grounds for the protection and the improvement of the health of the citizens of the Republic of Kosovo through health promotion, preventive activities and provision of comprehensive and quality healthcare services”*, while paragraph 1 of Article 4 determines: *“Implementation of this law shall be in full compliance with the human dignity, fundamental rights and freedoms set by the Constitution of the Republic of Kosovo, international covenants and legislation guaranteed by the Constitution and directly implemented in the Republic of Kosovo.”* Further, paragraph 5 of this Article stipulates: *“The rights and responsibilities of the citizens, residents, and other healthcare users are regulated by the Law on rights and responsibilities of citizens in healthcare..”*
24. Paragraph 1 of Article 5 of the Law No. 04/L-125 on Health determines: *“Health care is implemented guided by basic principles.”* While paragraph 1.2 determines: *“inclusiveness and non-discrimination: equal healthcare for all citizens and residents by ensuring the standards during fulfilling the needs at all levels of healthcare as well as ensuring healthcare without discrimination on basis of: gender, nation, race, color, language, religion, political preferences, social status, sexual orientation, the level of physical or mental abilities, family status, or age.”* Further, paragraph 1.3 of this Article stipulates: *“Quality: Applying international standards in organization, development and provision of healthcare with respect to all aspects including: patient focused treatment, resources use, organization of: work, training, education, licensing, accreditation, ethical guidelines, and protection of interests of users of healthcare services..”*
25. Paragraph 1 of Article 12 of the Law No. 04/L-125 on Health stipulates: *“Healthcare shall be implemented through the following measures and action [...] early detection of the communicable diseases and elimination of their causes by changing conditions, which cause the epidemics;”* (par.1.2), while paragraph 1.11, of this Article defines: *“measures for prevention and elimination of health consequences caused by emergency*

conditions.” Further, Article 24 obliges: “In cases when the healthcare institution is unable to provide healthcare within its scope, it is obliged to refer the citizen to other healthcare institutions able to treat the particular case accompanied with respective medical documentation, while respecting the referral system, from paragraph 3 Article 16 of this law.”

26. Paragraph 2 of Article 52 of the Law No. 04/L-125 on Health determines: “Healthcare institution from paragraph 1 of this Article is responsible for regular and safe, collection, storing, and management of the data; provision of the easy access to data, protection and confidentiality of the personal data; and protection of data from abuse, in compliance with the legislation in power”; and: “The health professional and the health institution must report on their services [...] ensuring professional secrecy<sup>6</sup>, in accordance with the law.”
27. Paragraph 1 of Article 3 of the Law No. 02/L-109 on Prevention and Fighting of Infectious diseases defines: “The infectious diseases in the sense of this Law where their prevention and prohibition is in the interest of our country are as follows: [...] J12–J15, J84, Viral and bacterial Pneumonia (including SARS) [...]”, while paragraph 1, of Article 9 defines: “The general measures and specific measures for population protection from infectious diseases are applied in accordance with annual programs, mid and long terms which belong to its activities and responsibilities compiled by KIPH and approved by Ministry of Health..”
28. Paragraph 1 of Article 4 of the Law No. 2004/38 For the Rights and Responsibilities of the Kosovo Residents in the Health Care, stipulates: “Every resident is entitled to the health care that is conditioned by his state of health. The health care should be adequate and continuously accessible to all without discrimination.” While paragraph 5 of this Article determines: “Health care is provided without any discrimination, if, in the course of the medical treatment resident are not discriminated on the basis of their social position, political views, origin, nationality, religion, gender, sexual preferences, age, marital status, physical or mental disability, qualification or on any other grounds not related to their state of health [...].”
29. Paragraph 1 of Article 6 of the Law No. 2004/38 For the Rights and Responsibilities of the Kosovo Residents in the Health Care, stipulates: “In the course of medical treatment, the resident's human dignity, privacy, personal integrity and religious beliefs shall be respected” while paragraph 3, of this Article defines: “In the course of the medical treatment, a resident may, when warranted by his state of health, be restricted in exercising his rights, only for the period of time, to the extent and in the way, as established by law.” Further, paragraph 1 of Article 9 stipulates: “The resident is entitled to receive full information in an individualized form”; while paragraph 2 determines: “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 [...].” Paragraph 1 of Article 20 of this Law determines: “The resident has the right to protection of the confidentiality and

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



*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 defines: *“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.”*

30. Article 1, of the Law No. 07/L-006 on Preventing and Combating of Pandemic COVID-19 stipulates :*“ This law aims to create the legal basis for the state institutions of the Republic of Kosovo, to combat and prevent the COVID-19 pandemics..”*, while Article 2 determines: *“This law defines responsibilities and the role of state institutions, public, private and public-private health institutions in taking measures to prevent, control, treat, monitor, provision of funding and share of responsibilities during the COVID-19 pandemics.”*
31. Law No. 04/-L-027 for Protection against Natural and other Disasters, in paragraph 1.5, of Article 3 (Definitions) plainly stipulates that: *“Natural disasters - earthquakes, landslides, floods, avalanches, heavy snow, strong wind, hail, ice, drought, massive appearance of contagious diseases on people, animals and plants as well as other disasters, which are caused by the nature forces”*. Further, paragraph 3, of Article 113 defines: *“Bodies at central and local levels in accordance with their responsibilities provide financial resources to cover the costs of protection, rescue and assistance necessary to protect the health and life of humans, animals, goods and environment.”*
32. Article 1 of Administrative Instruction 15/2013, Charter of Patients Rights and Responsibilities, defines: *“This Administrative Instruction determines the obligation of health institutions and health professionals in respecting the rights of the patient.”*
33. Article 1 of Administrative Instruction (MoH) Nr. 08/2015 on Clinical Guidelines and Protocol stipulates: *“Through this Administrative Instruction are established and defined organizational structure, tasks, the composition of administrative bodies, deadlines for drafting, revision and revocation of Clinical Guides and Protocols in the territory of the Republic of Kosovo in order to improve the quality and safety of health services..”*

## **Legal analyses**

34. The Constitution of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law. As the highest legal act in the Republic of Kosovo, it protects and guarantees human rights and fundamental freedoms, therefore implementation and practical realization of these rights is in the interest of functioning of rule of law. The Constitution, in Article 21, explicitly defines the obligation of all bodies to respect the freedoms and rights of others, therefore this principle is imperative and must be respected by all, including health institutions.
35. The Constitution, in Article 25, paragraph 1, stipulates: *“Every individual enjoys the right to life ”* This paragraph clearly stipulates that the right to respect citizens’ life is at the centre of the constitutional system for the protection of human rights and the right to life (its inviolability) is an absolute human right, which cannot be limited under no circumstances, and deviation from this right is not permitted. The Ombudsperson notes that the Constitution clearly defines that every person has the right to respect for his / her

physical and mental integrity, which, among others, when it comes to the right to personal integrity, the right to health and the right to life, the state has a positive obligation to take all measures to protect the inviolability of the physical and health integrity of persons, especially when human integrity and life are endangered. The Constitutional Court of the Republic of Kosovo, in Judgment KI. 41-12, found that there were violations of the right to life in cases when the competent state bodies did not provide sufficient protection to citizens and when this was required by the circumstances of the case. The Constitutional Court in the course of reviewing of this category of rights has declared that the right to life is the most important right of all human rights, from which all other rights derive and clarifies<sup>7</sup> that there are positive obligations for the authorities to take preventive and operational measures to protect the lives of all those at risk.<sup>8</sup>

36. The Constitutional Court on 31 March 2020, announced that it has rendered a Judgment in the case KO 54/20 (which entered into force on 13 April 2020), filed by the President of the Republic of Kosovo, regarding the constitutional review of Decision no. 01/15 of the Government of the Republic of Kosovo, of 23 March 2020, for which the Applicant alleged that it is not in accordance with the provisions of the Constitution of the Republic of Kosovo, with Article 2 of Protocol no. 4 of the European Convention on Human Rights, with Article 13 of the Universal Declaration of Human Rights, and Article 12 of the International Covenant on Civil and Political Rights. The constitutional issue involved in this case was the compatibility of the challenged Decision of the Government with the Constitution, i.e. whether by issuing it, the Government had limited the fundamental rights and freedoms guaranteed or had gone beyond the authorizations defined by law?
37. In this regard, the Constitutional Court found that the Government Decision was not in accordance with Article 55 (Limitations on Fundamental Rights and Freedoms) of the Constitution, with respect to Articles 35 (Freedom of Movement), 36 (Right to Privacy), 43 (Freedom of Gathering) of the Constitution and Article 2 (Freedom of Movement) of Protocol no. 4, Article 8 (Right to privacy and family life) and Article 11 (Freedom of Assembly and Association) of the ECHR, therefore it has decided that the same is repealed. During the case review, the Court found that the limitations contained in the challenged Decision of the Government with regard to the above-mentioned constitutional rights and freedoms, are not "*defined by law*", and therefore are in contradiction with the guarantees contained in Articles 35, 36 and 43 of the Constitution with regard to respective Articles of the ECHR, and Article 55 of the Constitution, which in its first paragraph clearly states that the fundamental rights and freedoms guaranteed by the Constitution may be limited only by law.
38. Furthermore, the Court emphasized the fact that the challenged Government Decision refers to enforcement of two laws,<sup>9</sup> which authorize the Ministry of Health to take certain measures regarding these laws in order to prevent and combat contagious diseases, but do not authorize the Government to limit constitutional rights and freedoms at the level

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<sup>7</sup> See Constitutional Court Judgment KI 41/12, Article 57.

<sup>8</sup> Ibid, paragraph 59.

<sup>9</sup> Law No. 02/L-109, on Fighting and Preventing Contagious Diseases and Articles 12 (1.11) and 89 of the Law No. 04/L-125 on Health.

of the entire Republic of Kosovo and for all citizens of the Republic of Kosovo without exception. Therefore, the Court explained that the Government<sup>10</sup> cannot limit any fundamental rights and freedoms through decisions, if limitation of respective right has not been foreseen by the law of the Assembly. Therefore, in the spirit of this decision, it is specified that the Government can only implement a law of the Assembly that limits fundamental rights and freedom, and only to the specific extent authorized by the Assembly through the relevant law.

39. From what has been stated above, compared to the situation on the ground and the response received from the HUCSK, it is clear that the provision of health services has been limited, actually specialist health services and elective surgery interventions have not been provided in all relevant units of HUCSK<sup>11</sup> and the staff has been reduced according to Government orders. In this regard, the HUCSK specifies that the work in its constituent units has not been terminated, but during this period only services that are considered urgent were provided, based on the findings of health professionals. So, taking into account the fact that Law no. 02 / L-78 on Public Health defines as sensitive groups single-parent families, orphans, persons living in extreme poverty, victims of trafficking, the chronically ill, the elderly persons, prisoners, the homeless, injecting drug users, the mentally ill, etc., the health authority should focus on treating these categories of persons. On the other hand, KAS statistics clearly show that in July, August and September 2020, there was an increase in mortality of up to 100%, compared to the same period of previous years, although no data are provided regarding the age of deaths, types of concomitant diseases, causes of death, etc.
40. The right to health in international human rights law is regulated by acts of a universal character<sup>12</sup>, as well as by the Conventions of the Council of Europe.<sup>13</sup> 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 judicial decisions of the European Court of Human Rights (hereinafter: *European Court*).
41. The right to health, actually protection of this right is not presented as a separate Article of the ECHR, but public health in its text appears to be one of the interests that can justify the "interference" in material rights / rights of eligible (see paragraphs 2, 8, 9, 10

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<sup>10</sup> The Court clarified that the term "limitation" used in Article 55 of the Constitution implies the fact that the Assembly has the right to restrict fundamental rights and freedoms, through law, but only to the level and to the extent necessary, in an open and democratic society, to fulfill the purpose for which the restriction is allowed, specifying that "restriction" means a lighter degree of intervention and this can be done even without declaring a State of Emergency; while "avoidance" means a more severe degree of intervention because it can never be done without declaring a State of Emergency.

<sup>11</sup> HUCSK consists of institutions of secondary and tertiary level of health care in the public health sector such as: University Clinical Center of Kosovo (UCCK) with 36 Clinics, University Dentistry Clinical Center of Kosovo, National Center of Occupational Medicine in Gjakova, National Center of Sports Medicine, National Telemedicine Center, General Hospitals in Mitrovica, Gjilan, Peja, Gjakova, Prizren, Ferizaj, Vushtrri, Mental Health Centers with Homes for Community Integration in Prishtina, Mitrovica, Gjilan, in Prizren, in Peja, in Gjakova, as well as the Center for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime.

<sup>12</sup> Universal Declaration of Human Rights (Article 25), International Covenant on Economic, Social and Cultural Rights (Article 12), Convention on the Rights of the Child, Articles 6, 23, 24, 32, 39), Convention on the Elimination of All Forms of Discrimination against Women of All Forms of Discrimination against Women (Articles 10 (h), 11 (f), 12, (1) 14 (b)).

<sup>13</sup> European Social Charter (Article 11), Convention on the Elaboration of the European Pharmacopoeia; Convention on Human Rights and Biomedicine ( Oviedo Convention).

and 11 of the ECHR, as well as Article 2, paragraph 3, of Protocol No. 4 to the ECHR). The European Court, in dealing with cases of human rights in the field of health, has continuously provided explanations / interpretations of various issues and has enhanced its jurisprudence. In the case of *Calvelli and Ciglio v. Italy*<sup>14</sup>, the European Court has emphasized the obligation of the state to take appropriate measures to protect the lives of individuals living within its jurisdiction, by emphasizing that these measures should also be applied in the field of public health. Further, the jurisprudence of the European Court in dealing with cases of this nature related to Article 2 of the ECHR sets out the obligations of states to materially guarantee a normative framework for the protection of patients' lives (see *Vo versus France* and the case of *Lopes de Sausa Fernandes versus Portugal (GC)*), as well as procedurally requiring states to establish an independent and effective judicial system through which the cause of death can be determined and those responsible held eventually accountable (see cases: *Šilih versus Slovenia (GC)* and *Lopes de Sausa Fernandes v. Portugal (GC)*).

42. In the case of *Valentin Câmpeanu versus Romania*, the judgment of 17 July 2014 (GC), the European Court found that *Valentin Câmpeanu* had been admitted to medical institutions which were not equipped to provide adequate care for his health, that he had been transferred from unit to unit without providing the proper diagnosis, that the authorities failed to provide appropriate treatment to him with antiretroviral drugs, that the authorities were aware of the difficult situation (lack of staff, lack of heating, insufficient food) in the psychiatric hospital where he had been admitted, they had unreasonably put his life in danger, that no effective investigation had been carried out into his death. From European Court of Human Rights point of view, the human rights-based approach with regard to persons with pathologies of carcinogenic nature of the disease, who require special and continuous medical supervision for the diagnosis and treatment of recurrent cancer, has been clarified in the case *Popov versus Russia*<sup>15</sup> (case no. 26853/04, of 13 July 2006), which has enabled the European Court to address the relation between the provision of health services of this nature and the ECHR. In this case, the European Court had concluded that the applicant had not been provided with the necessary information, accurate diagnosis of his health condition, as well as recommendation of adequate therapy, therefore his rights had been violated, as he had not been provided with medical assistance that his state of health needed, therefore, the European Court found that fundamental human rights and freedoms, as well as the relevant ECHR Articles had been violated.
43. In such comparable situations regarding the health status of human rights in Kosovo in the period March-September 2020, caused by COVID-19 in Kosovo, the relevant authorities did not provide basic health services exactly specialist / diagnostic visits and elective surgeries to a category / large number of citizens. During this period this category of persons did not have the possibilities and information regarding the necessary diagnosis for their diseases, treatment of diseases / surgical interventions and recommendation of adequate therapy for their health needs, which under the perspective of the Court cases presented here, is a violation of respective Articles of the ECHR, actually violation of human rights and fundamental freedoms guaranteed in our country.

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<sup>14</sup> See: *Calvelli & Ciglio v. Italy* (Application no. 32967/96).

<sup>15</sup> See: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-76341%22> }

44. Failure to provide these services (specialist visits / early and accurate diagnosis of diseases, as well as recommendation of adequate therapy by specialists of the field) to a number of people who could not be visited in specialist clinics, has increased the real risk for following consequences on their health, if eventually this has not already happened. From the statistics provided by HUCSK we found that during the period January-September 2018, in all units of HUCSK were accomplished 1,071,957 outpatient / specialist visits, in the same period in 2019 were accomplished 1,257,190 visits, while the situation had changed radically in 2020, in which case for the same period only 725,930 visits were made, which means that compared to the previous year (2019) we have 531,260 or over half a million less visits.
45. With regard to statistics concerning surgeries for the same period, there are also major changes, since in 2018, from all HUCSK surgery units, it was reported that 30,439 surgery interventions performed, in 2019 were reported 33,525 surgeries realized, while in 2020, only 21,310 performed surgeries were reported, which compared to the same period of the previous year (2019) we have 12,215 less surgeries accomplished. On the other hand, the MoH does not have statistics from private health institutions regarding the number of specialist visits and elective surgeries, so that we can have a clear comparative picture of the situation.
46. Article 2 of the ECHR sets out the general obligations of the state to protect the right to life and includes the positive and negative aspects: *a)* the positive obligation to protect life; and *b)* the negative obligation to refrain from depriving illegally life. Positive obligation imposes obligations of prevention and investigation. Preventive obligations (*see Osmani v. Great Britain, 28 February 1998*) oblige state governments to prevent and combat criminal offences. If it is recognized that governments had knowledge, or should have had knowledge at the time of the existence of a real and direct risk to the life of an identified person, of the criminal offenses of third parties and if they have not taken appropriate action within their competencies, which, according to a reasonable assessment, could be expected, in order to avoid risk to life, they should be responsible for the failure to implement positive obligations. The ECHR must be understood from the perspective of its "objective and purpose", as set out by the European Court, to protect individual human beings within the meaning of the values of a democratic society, which means that its provisions must be interpreted and applied to ensure practical and effective protection.
47. Judging by European Court's jurisprudence in cases of health care provision, it is clear that the state has an obligation to provide appropriate working systems with well-qualified employees to protect life, e.g. in hospitals, which must take adequate measures to protect patients' lives,<sup>16</sup> not to deny provision of health care (provide them with health care)<sup>17</sup> and must provide them with appropriate (suitable)<sup>18</sup> medicines. The Court found violation of Article 2 in the case when a child died in the ambulance upon not admission in the hospital and was transferred to other institutions, due to lack of specialized<sup>19</sup> equipment, and in cases when due to malfunction of hospital departments the outcome

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<sup>16</sup> *Vo v. France*

<sup>17</sup> *Cyprus v. Turkey*

<sup>18</sup> *Panaitescu v. Rumania*

<sup>19</sup> *Asiye Genç v. Turkey*



was lack of urgent medical care, which resulted with death. Therefore, in this case as well, the Court found that this action constitutes a violation of Article 2.<sup>20</sup> By analogy, during the COVID-19 pandemic, it has been observed that Kosovo did not have a appropriate health system for all its citizens and for treatment of all diseases. The focus on prevention and treatment of patients with COVID-19 left aside hundreds of thousands of citizens who had health needs of other natures, including chronic ones.

48. Law no. 04 / L-125 on Health clearly stipulates that its implementation must be done by respecting the dignity, human rights and fundamental freedoms, defined by the Constitution of the Republic of Kosovo, by agreements and international instruments, guaranteed by the Constitution and which are directly applicable in the Republic of Kosovo. Article 5 of Law no. 04 / L-125 on Health, in its paragraphs, defines the basic principles on which health care should be applied in health institutions guided by the principle of inclusiveness and non-discrimination, in order to ensure equal standards in health care for all citizens. The law, through this Article, stipulates that, while meeting the requirements of citizens in the provision of health services at all levels of health care, health care will be provided without discrimination on any grounds. Also, provisions of this Article stipulate that citizens will be provided with quality health care and during their treatment, international standards will be applied in the organization, development and provision of health care regarding all aspects, including: patient focused treatment, resources use, work organizing, training, education, licensing, accreditation, ethical guidelines, and protection of interests of users of healthcare services. From this perspective, we note that the health authorities in the country, had not acted in accordance with equal standards of health care, but, given the circumstances created by COVID-19, without legal basis had selected provision of health services, and consequently, citizens who have potentially needed health services which have been limited.
49. Article 13 of Law no. 04 / L-125 on Health clearly defines the positive obligations of the health authorities, which have the obligation to implement various measures and actions during the health care of citizens, depending on the situation, where, among other things, prevention and treatment are required. Furthermore, Article 24 defines the cases when the health care institution is not able to provide proper health care within its scope, it is obliged to instruct the citizen in another health institution, which is able to handle that specific case, accompanied by the relevant medical documentation, respecting the referral system from paragraph 3 of Article 16 of this law. So, in the situation created by the COVID-19 pandemic in Kosovo, the relevant authorities should have taken into account to direct the citizen to another public or private health institution, which would be able to handle the case, but such actions on the ground have failed to be taken.
50. Law no. 02 / L-109 on Prevention and Fighting against Infectious Diseases stipulate that the purpose of the law is to define infectious diseases and to regulate activities for their timely discover, emergence recording, prevention, spreading prohibition and their treatment. The term "*infectious disease*", according to this law, *is defined a disease which is caused by micro-organisms and infectious disease parasites that are transmissible directly or indirectly from a sick person or the causer bearer to a healthy*

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<sup>20</sup> See *Mehmet Şentürk and Bekir Şentürk v. Turqisë*

*person as well as from animals and farming products.* This law, in Article 3, defines the list of infectious diseases, according to the International Classification of Diseases, which states that their prevention and avoidance is in the interest of our country and, among others, there are viral and bacterial pneumonias including SARS- in (Severe Acute Respiratory Syndrome). Further, this Law sets out the measures to be taken to detect in time the sources of infection and the routes of transmission of the infection. Therefore, health institutions are obliged to perform the necessary actions for the examination / testing of the presence of pathological agencies, as well as to receive rigorous professional information about their behaviour and actions in order not to spread the disease or the transmission of the infection. In this regard, a number of measures and actions have been taken by authorities, both in order to detect in time the sources of infection and the ways of its transmission, or in the treatment of those infected with COVID-19. However, the chronically ill and other patients, who are not few in number, were left without specialist visits, as well as the rest of the population, with the emphasis on the part of the population living in poverty, which does not have the financial means to receive health services in private health institutions.

51. Law no. 2004/38 on the Rights and Responsibilities of the Residents of Kosovo in Health Care, in Article 4, paragraph 1, defines the rights of every citizen for health care, which is conditioned by his state of health, emphasizing that health care must be adequate and continuously accessible to all without discrimination; while the next paragraph clarifies that health care is adequate if it is in compliance with ethical and professional rules, as well as with the guidelines relating to the given health care service. Further, paragraph 3 of Article 6 defines the situation when during the provision of health services the resident may be restricted from exercising his / her rights, but specifying that the restriction can be done for a period of time, to the extent and in the manner determined by law, and conditioned by his state of health. From the review of given paragraphs it is understood that the health authorities in the country had not acted equally for all citizens in the field, but without legal basis, have selected categories of patients to whom health services have been denied, violating the principles of inclusion, non-discrimination and insurance of equal standards in health care for all citizens, without distinction.
52. Law no. 07 / L-006 on Prevention and Combating the COVID-19 Pandemic in the Territory of the Republic of Kosovo,<sup>21</sup> which entered into force on 25 August 2020, defines responsibilities and the role of state institutions, public, private and public-private health institutions in taking measures to prevent, control, treat, monitor, provision of funding and share of responsibilities during the COVID-19 pandemics. Further, this Law defines the situation when the limitation of human rights is allowed, but the limitation must not affect the essence of the right or freedom that is limited, it must be temporary, well-reasoned and accessible to the public within a reasonable time. According to this law, the Government of the Republic of Kosovo shall reserve the right to control internal lawfulness, in the first instance, of actions and activities undertaken by the MoH from paragraph 1 of this Article, especially if the measures taken limit the freedoms and rights under Article 55 of the Constitution for a period longer than thirty (30) days.

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<sup>21</sup> See: Official Gazette of Republic of Kosovo, No. 3, 25 August 2020.

53. Administrative Instruction (MoH) No. 08/2015 on Clinical Guidelines and Protocols, which derives from Law no. 04 / L-125 on Health, aims to establish organizational structures, to define the tasks, composition of administrative bodies, deadlines for drafting, revision and revocation of Clinical Guidelines and Protocols in the territory of the Republic of Kosovo, in order to improve the quality and safety of health services. From the legal analysis of this case, it was found that there are many shortcomings in the regulation of standard operating procedures, especially during the health emergency in the Republic of Kosovo. The focus of the health system in the fight against COVID 19 does not legitimize denial of provision of health services to potential patients, with other needs and health requirements of those with COVID-19, at all levels of the health system. Despite the fact that treatment of patients with COVID-19 was not the subject of this Report, it cannot be disregarded the finding that during the investigation for the purposes of this Report, the Ombudsperson become aware of many difficulties and challenges faced not only patients and their families, but also the medical staff themselves, the managerial staff and responsible authorities of all levels, many of whom have been at the forefront of dealing with the consequences of the pandemic. It should be noted that the health emergency has reviled the responsibility and dedication of a part of health staff, as there have been those who have avoided duties and responsibilities in created circumstances.
54. Based on the HUCSK Work Report for the period January-September 2020, sent to the OI, it is understood that the average HUCSK capacity utilization was 42 percent.<sup>22</sup> According to this source, the period of health emergency is defined as follows: *“The first cases with clinical diagnosis for COVID-19 were hospitalized in the Clinic of Infectious Diseases on 12 March 2020 and were confirmed in the Laboratory of Microbiology NIPHK the next day on 13 March 2020. Shortly after all beds within this Clinic were occupied, on the recommendation of the HUCSK Committee, new spaces dedicated to these patients were enabled. On 12 March, a decision is made to expand the capacity for central intensive care in the premises of the Sports Medicine facility, where the first case is hospitalized on 23 June 2020. Capacity extension has continued in other premises, on 17 March it was decided that Pulmonology Clinic is allocated for the admission of patients, first those suspected of COVID, and then also confirmed patients. After capacities in this Clinic were filled, the HUCSK Committee has decided to further expand the spaces, by freeing the Dermatology Clinic for the placement of patients. On 27 March 2020, on Committee’s recommendation, a Ward at the Pediatric Clinic is set for treatment of children suspected and confirmed with COVID-19. With the filling of these spaces, the Committee on 8 July 2020 has decided to vacate the spaces, that is, one floor in the Neurology Clinic, which Ward has served for the hospitalization of suspected cases with COVID. The first cases were admitted on 14 July. Subsequently, the same Committee decided to vacate the premises of the Surgery Department at the Gynecology Clinic, where the suspected patients were also placed. Treatment of suspected and confirmed patients with COVID-19 was also performed in General Hospitals. On 13 July 2020, the HUCSK Committee has decided that the General Hospital of Vushtrri is transformed into a COVID-19 hospital, which will treat patients from Mitrovica, Vushtrri and Skenderaj region. On 31 August, the Neurology Clinic and the Surgery Ward in Clinic of*

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<sup>22</sup> See: HUCSK Work Report January- September 2020, page 10.

*Gynecology were released from the admission of suspected cases and returned to normal work. As of 21 September, the Vushtrri Hospital was vacated from the COVID premises and the Hospital returned to providing health services to patients. After this period of work, COVID-19 services are provided in the Clinic of Infectious Diseases, Pulmonology Clinic and COVID Intensive Care, Hospital of Prizren, Peja, Gjilan and Gjakova.*” From what has been stated above it can be easily concluded that during the reporting period health capacities were not overloaded, but on the other hand, provision of specialist outpatient services and elective surgeries were avoided, and thus without a proper legal basis, a large number of citizens were deprived of their rights to health.

55. Step-by-step Action Plan for Return of Health Services in the Health Sector which defined to return health services to normal by 15 June 2020 failed to be implemented due to the deteriorating epidemiological situation. Despite the established legal infrastructure in Kosovo, the health authorities, at least until publication of this Report, failed to draft clear protocols with standard operating procedures for the treatment and management of chronic cases in health institutions, both for specialist visits and for elective surgeries. When it comes to elective surgeries, it should be noted that professional guidance on accurate categorization of cases of this nature has lacked, but this issue has been entrusted to specialists of the field to assess which cases can wait and which cases must undergo surgeries. This has left room for arbitrariness and unequal treatment, moreover given that control mechanisms were lacking.

56. However, in the whole situation created and in the ongoing analysis of the issue addressed by this Report, special attention deserves the budget allocation<sup>23</sup>, for the health sector, respectively for the MoH and the HUCSK. Based on the total budget planned for 2018, from the total amount of 2,080,480,837 Euros, for HUCSK was allocated 80,915,714<sup>24</sup> Euros or 3.8% of the total budget. From the total budget planned for 2019, from the total amount of 2,378,231,797 Euros, HUCSK has been allocated 121,171,263<sup>25</sup> Euros or 5.09% of the total budget. From the total budget planned for 2020, from the total amount of 2,356,860,915 Euros, HUCSK has been allocated 118,714,402<sup>26</sup> Euros or 5.03% of the total budget and based on the total budget planned for 2021, from the total amount of 2,454,209,105 Euros, HUCSK was allocated 104,236,139<sup>27</sup> Euros or 4.24% of the total budget. From the budget statistical data it can be seen that the health sector has not been a priority, despite the growing needs and the difficult situation in the health sector. The budget allocation for HUCSK, in amount of 16,935,124 Euros (13.97%) less than the 2019 HUCSK budget, does not have a logical explanation, given the pandemic and aspects related to public health needs. On the other hand, based on the HUCSK

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<sup>23</sup> HUCSK consists of institutions of secondary and tertiary level of health care in the public health sector such as: University Clinical Center of Kosovo (UCCK) with 36 Clinics, University Dentistry Clinical Center of Kosovo, National Center of Occupational Medicine in Gjakova, National Center of Sports Medicine, National Telemedicine Center, General Hospitals in Mitrovica, Gjilan, Peja, Gjakova, Prizren, Ferizaj, Vushtrri, Mental Health Centers with Homes for Community Integration in Prishtina, Mitrovica, Gjilan, in Prizren, in Peja, in Gjakova, as well as the Center for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime.

<sup>24</sup> See: Tables of Law no. 06 / L-020 On the Budget of the Republic of Kosovo for 2018 page 60.

<sup>25</sup> See: Tables of Law no. 06 / L-133 On the budget Appropriations for the Budget of the Republic of Kosovo for 2019, page 61.

<sup>26</sup> See: Tables of the Law No. 07/L-001 On the budget Appropriations for the Budget of the Republic of Kosovo for 2020, page 68.

<sup>27</sup> See: Table of the Law No. 07/L-041 On the budget Appropriations for the Budget of the Republic of Kosovo for 2021, page 64.

document "*Financing and Health Services*" in Chapter no. 3, "*Budget and Real Requirements HUCSK 2017*" points out: "*In all budget categories there is a budget projected in 2017 in a value of 85.7 million Euros (including drug and consumable categories as well as capital category). Based on the real requirements received from HUCSK constituent units, we have a budget request of 162 million Euros or the difference of 76 million Euros less*".

57. Furthermore, the situation is similar with regard to allocation of the budget for MoH. Based on the overall budget planned for 2018, from the total amount of 2,080,480,837 Euros, the MoH was allocated a budget in the amount of 65,526, 649<sup>28</sup> Euros, or 3.14%, of the total budget. In the total budget planned for 2019, from the overall amount of 2,378,231,797 Euros, the MoH was allocated a budget of 39,863, 808<sup>29</sup> Euros or 1.6% from the total budget of 2019. From the overall budget planned for 2020, from the total amount of 2,356,860,915 Euros, the MoH was allocated a budget in the amount of 50,855,125<sup>30</sup> Euros, or 2.15%, from the total budget of 2020. From the totally planned budget for 2021, from the overall amount of 2,454,209,105 Euros, the MoH was allocated a budget in the amount of 71,683,493<sup>31</sup> Euros, or 2.92%, from the total budget of 2021. This trend of budget allocation for two authorities on which the burden of management and work falls with regard to health sector does not seem to take in consideration the real needs on the ground. This analysis is based on the initial budget laws for the respective years; therefore the Ombudsperson does not exclude the possibility that these Laws might have undergone amendments in later stages or during budget reviews, but finds that the situation in the health sector has remained aggravated and has not been priority year after year.

## **Findings of the Ombudsperson**

58. The Ombudsperson, based on findings disclosed and facts gathered as well as review of relevant laws, which define the right of provision of health services in Kosovo, finds that during the Health Emergency in the Republic of Kosovo, in respect of selective health services provision, without a legal basis, violation of human rights and fundamental freedoms have occurred. Relevant authorities failed to meet their constitutional and legal obligations towards citizens and this had direct negative implications for the health and lives of persons who potentially had a need for health services. The Ombudsperson finds that despite the fact that the MoH had drafted COVID-19 Preparedness and Response Plan and that the Government had allocated additional funds, Law no. 04 / -L-027 on Protection from Natural and Other Disasters, failed to be enforced. As a result, the MoH reported that in the initial phase there were difficulties in the supply of protective equipment, tests, drugs, respirators and other necessary materials, as a similar situation was in the region and beyond and that in addition to prices were high, there were also

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<sup>28</sup> See: Tables of the Law No/. 06/L-020 on Budget of the Republic of Kosovo for 2018 page 36.

<sup>29</sup> See: Tables of the Law No. 06/l-133 On the Budget Appropriations for the Budget of the Republic of Kosovo 2019, page 37.

<sup>30</sup> See: Tables of the Law no. 07/L-001 On the Budget Appropriations for the Budget of the Republic of Kosovo for 2020, page 51.

<sup>31</sup> See: Tables of the Law no. 07/L-041 On the Budget Appropriations for the Budget of the Republic of Kosovo 2021, page 38.



delays in supplying.<sup>32</sup> The Ombudsperson ascertains that the Government of the Republic of Kosovo, year after year, did not give priority to the health sector, the sufficient budget for the Kosovo Health (HUCSK and MoH) and the health rights of its citizens guaranteed by applicable legislation.

59. The Ombudsperson notes that among main challenges during March-September 2020 pandemic period, the difficulties encountered in the supply of gaseous oxygen were mentioned, as the supply of liquefied oxygen flowed smoothly (see paragraph 9), but during that period it was reported that only the University Clinical Center and PH in Prizren possessed oxygen tanks. So, the main problem was encountered in the insufficiency of oxygen cylinders and setting of additional spaces with beds for COVID-19 patients, as the demand for oxygen was extremely high and there were not enough cylinders available, in relation to the number of patients' requests. It should be noted that, in the meantime, the HUCSK has started with the installation of the oxygen tank in the PH in Gjakova.
60. The Ombudsperson finds that decision of health authorities in respect of termination of elective surgery interventions and specialist visits, except that lacked legal basis, left no alternatives as to where these persons could be treated and the state failed to assume the responsibilities that belong to it, including financial costs if these services could eventually be obtained in private health institutions. In such situation, the responsible authorities have not managed to activate all health capacities, including the private ones.
61. Furthermore, the Ombudsperson finds that the MoH has failed to provide the necessary information regarding the work / statistics of private health institutions, therefore when this Report has been drafted, we lacked necessary comparisons with respect to the issue on the ground, whether we have an increase in the volume of specialist visits and elective surgeries to private health institutions, or not. Responsible officials of the MoH admitted that private health institutions had not reported to the MoH, as it was well known that they should have done that. As a result, we have not been able to understand where the problem rests. However, lack of a Health Information System is obvious. It is also evident non-transparency, non-accountability, non-operation of control mechanisms, lack of cooperation between relevant departments, etc. From the communication with the MoH (see paragraph 16) it is understood that the HIS was removed from operation in 2017. Furthermore, the Report of the National Audit Office on "*Efficiency and Effectiveness in Implementation of Unified and Integrated Health Information System*", had also found that the process of managing implementation of this system was characterized by irregularities.<sup>33</sup> The Auditor General, on the occasion of publication of the Report, pointed out that implementation of HIS in the country is worrying, not only that this system is not functioning properly, but the situation is deteriorating and if no measures are taken for its improvement, this system can be completely out of function.<sup>34</sup>

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<sup>32</sup> See the document: "Response to the Ombudsperson Institution", of 7 December 2020.

<sup>33</sup> Accessible at the following link: <http://www.zka-rks.org/news/sistemi-informativ-shendetesor-ballafaqohetme-veshtiresi-gjate-zbatimit/>

<sup>34</sup> The Auditor had emphasized that the lack of planning and coordination of activities at the appropriate level by the Ministry of Health, delays in establishing inter-institutional coordination and monitoring mechanisms, delays in procurement procedures for provision of hardware and software, lack of system maintenance, lack of human capacity, inefficient and insufficient training for the use of the system, delays in the timely provision of the database, delays in providing citizens' civil registry and a host of activities not carried timely, are the main causes in the inefficient and inefficient functioning and implementation of this system

According to him, use of HIS is crucial for health in the country and as such should provide equal services to all citizens. On the other hand, the MoH claims that it has integrated another information system called "*Basic Health Information System*" (BHIS), which has just started collecting information on the work of Family Medicine Centers with the aim of completing with the work of HUCSK units, but how efficient this system will be, remains to be seen in the future.

62. The Ombudsperson ascertains that Kosovo has a strong constitutional framework for health protection of citizens, as well as a relevant number of laws and policies, and in this context, some progress has been achieved. However, a number of challenges hinder adequate implementation and represent shortcomings in the health system: low budget allocations for health, poor enforcement of laws and policies, poor coordination between sectors, lack of monitoring, lack of accountability and participation of key populations, etc.
63. Law no. 04 / L-249 on Health Insurance, adopted in 2014, has not been still enforced. The purpose of this law was to provide citizens with universal access to quality basic health care services, in order to improve health indicators and provide financial protection for health care, through establishment and regulation of the public health insurance system. Therefore, no justification can reason the failure to implement this law for such a long period of time (six years) and the consequences, especially financial ones, are borne by the citizen of the Republic of Kosovo.

The Ombudsperson, based on what has been stated above, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo: "*The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed*". Within the meaning of Article 18, paragraph 1.2, of the Law No. 05/L-019 on Ombudsperson, the Ombudsperson: "*(...) has responsibility to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases (...)*"; and: "*recommends (...) promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo;*" (Article 18, paragraph 1.7).

Therefore, the Ombudsperson:

## **RECOMMENDS**

1. To the Government of Republic of Kosovo:
  - ***To increase the budget for the needs of HUCSK and MoH, so that lack of financial means does not reflect on the provision of services, at all levels of the health system.***
  - ***Until implementation of the Law no. 04 / L-249 on Health Insurance, in situations where health services cannot be provided by the public sector, citizens to be enabled to receive these services in the private sector and the government to bear the expenses.***
2. To the Ministry of Health:

- *To put in function the Unified and Integrated Health Information System, in accordance with paragraph 1, of Article 49 of the Law no. 04 / L-125 on Health.*
  - *To undertake all legal measures to force private health institutions to collect health data, store and report them to the Health Information System, pursuant to Administrative Instruction (MoH) no. 11/2013, Health Information System and Reporting of Health Statistical Data.*
3. To the Hospital and University Clinical Service of Kosovo:
- *To undertake all necessary actions and enable all preconditions that specialist visits in Specialist Clinics and elective surgery interventions in Surgery Wards are carried out unobstructed in relevant HUCSK units, so that situations of avoidance from these rights, without any legal bases, are not repeated in the future.*
  - *To continue with placement of oxygen tanks in General Hospitals where necessary, so that situations of lack of oxygen for patients is not repeated again.*

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,

Naim Qelaj

Ombudsperson