



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

Prishtina, 3 November 2015

Report

Complaint No. 89/2015

Regarding the Right to Life

SHABAN JASHARI

To: - Mr. Shpend Maxhuni, General Director of Kosovo Police,,
- Mr. Imet Rrahmani, Minister of the Ministry of Health,
- Mr. Curr Gjocaj, Director of Hospital and University Clinical Service in Kosovo

The Ombudsperson, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo, Article 16, paragraph 8 and Article 27 of the Law on Ombudsperson No. 05/L-019, on the date 3 November 2015, publishes the following report:

ACTIONS OF THE OMBUDSPERSON INSTITUTION

1. On February 10, 2015 Shaban Jashari (further in the text “complainant”) has lodged a complaint with the Ombudsperson Institution (further in the text "OI") against Kosovo Police, police station in Gjakova, regarding ineffective investigation conducted on the case of disappearance of his son, Mr. Xhemshit Jashari, and the allegations that police in Gjakova has contributed on this issue.
2. On February 26, 2015 the complaint has been registered with OI (Complaint No. 89/2015).
3. On February 26, 2015 OI representatives spoke with Police station commander in Gjakova, who provided the information that the case is the subject of Investigation Unit of the Police Station in Gjakova and explained that until present search and rescue (SAR) operations of have been conducted with the assistance of diving unit, sniffing and tracking dogs (unit K9), but resulted unsuccessfully.
4. On March 6, 2015 OI representatives spoke with the police investigator entrusted with the actual case and obtained information that investigation unit has undertaken all operational measures regarding the case, that the same has searched potential places where, based on complainant’s allegations, the disappeared person might be. Investigation included the following actions: police search with sniffing and tracking dogs, search with diving units, search of border area, search of entrance and departure computer system record but all these actions did not result with positive outcome on detecting the location of the missing person or receiving any information about the direction that the missing person has gone.
5. On March 10, 2015 OI representatives met with the Head of the Psychiatry Ward in Regional Hospital “Isa Grezda” in Gjakova and on that occasion was informed that the patient Mr. Xhemshit Jashari, on 31 January 2015, at 19:30h was brought by the police into his Ward. Head of Psychiatry Ward stated that the patient was given parenteral therapy *diazepam* and was hospitalized and placed in this Ward. Based on claims of the Head of Psychiatry Ward, Mr. Jashari the same night has escaped from the hospital, but the medical personnel was aware of this fact only the next day at 06:30, actually on February 01, 2015. Hospital has notified immediately the Police about the escape but, according to the Head of Psychiatry Ward, the Police arrived to Hospital after two days and requested patient’s medical history. According to his statement, the Ward is of an open type and patients can leave the place without difficulties.
6. On April 2015, the police officer of the Police station in charge with the case of disappeared Mr. Jashari, informed OI representatives that the given case rests within the competencies of the Directorate of Regional Police in Gjakova, Department for homicides and missing persons.

7. Furthermore, on April 14, 2015 investigator in charge of regional police in Gjakova notified the OI representatives that the case has been broadcasted through media and that citizens' assistant was requested regarding information, where eventually missing person might be, an assistance has been requested from other police stations as well as other operational actions have been undertaken but resulted unsuccessful.
8. On June 3, 2015, OI representatives met with the chief of Regional Investigation Unit of the Regional Police in Gjakova and discussed about the complaint lodged by the complainant. Police representatives explained that the Police has undertaken all measures and that investigations on the missing person are still ongoing but until now without a tangible result.
9. On June 17, 2015 the complainant informed OI that he has sent a letter to the Minister of the Ministry of Internal Affairs regarding his son disappearance and complained on the work of the Police in Gjakova.
10. On September 11, 2015 the complainant informed OI representatives that he has lodged a complaint with the Police Inspectorate of Kosovo against competent police department in Gjakova, for the neglect and indecent demeanor towards the complainant (No.03-2004, on September 10, 2015).
11. On September 14, 2015 OI representatives met with the deputy chief of Regional Investigation Unit and the manager of Department for homicides and missing persons in Regional Police Directorate in Gjakova and discussed with him the complainant's case and requested delivering of the hard copy of case file. On this occasion the OI representatives was informed about the flow of investigation and that only a Report about the course of investigation could be delivered to him, while for obtaining the hard copy of the case the request must be provided in written form to the Director of Regional Police in Gjakova. Apart this, during the meeting OI representatives was informed that the Basic Prosecution Office in Gjakova has initiated its investigations regarding the complainant (*2015 EA-164 and 2015 HRGJ-06*).
12. Furthermore, on 14 September 2015 OI representatives met with the chief-prosecutor of the Basic Prosecution Office in Gjakova as well as case prosecutor and gained information that the prosecution did not open case regarding this issue since there is no one suspected in this concrete case and that only Prosecution was contacted by the Police in terms of assisting the police on investigation.
13. The very same day, the OI representatives, based on advises provided by responsible officials in Regional Investigation Unit, sent a written request through e-mail to the director of Regional Police Directorate in Gjakova, requesting delivery of the hard copy of complainant case file.
14. On September 21, 2015 deputy chief of Regional Investigation Unit in Gjakova informed OI representatives that the request has been handed over to the police

spokesperson (chief of Administration Office of the General Director of Police) for further deeds.

15. On September 23, 2015 the OI representatives met with the chief of Administration Office of the General Director of Police and was informed that the given office through the e-mail has informed Regional Investigation Office in Gjakova that since the case is under investigation, OI can receive only a brief Report on actions undertaken by the police regarding this case while when the investigation is completed, a complete copy will be delivered to the OI.
16. Additionally on September 23, 2015 OI met with the chief and deputy chief of Regional Investigation Unit in Gjakova and was informed that the answer from chief of Administration Office of the General Director of Police has been received (see above given paragraph 15). On this occasion Police officials informed that the request has been sent via e-mail to Legal Department of the Kosovo Police asking for legal interpretation of OI request but the response has not been received yet.

ACCORDING TO FACTS

I. CASE CIRCUMSTANCES

Facts, which until now could have been attested are based on complainant's allegations as well as on the base of other information that the Ombudsperson had on disposal, which can be presented as follows:

17. On January 31, approximately at 10: 00 the son of the complainant Mr. Xhemshit Jashari (an adult who has been diagnosed with "*Schizophrenia*" and "*Pshychosis*"), broke the windows in his apartment and one of his neighbors informed police about this. According to complainant's statement, his son was alone in the apartment and fearing that the police, who came on neighbors call, will mistreat him he tried to avoid them by hiding in the bathroom. When the police entered into complainant's apartment, found the son of the complainant, took him with them and sent to the Psychiatry Ward in Regional Hospital "Isa Grezda" in Gjakova (without preliminary court's decision)
18. On February 1st 2015 complainant 's son after being hospitalized in the Psychiatry Ward of the Regional Hospital in Gjakova ,provided with the given therapy and remained several hours in the hospital, left the premises of the hospital unnoticed in unknown direction and since than no trace of him has been found. He further states that as no one knows about his son's fate and stresses that the Police has intentionally contributed on disappearance of his son.
19. On February 10, 2015 the complainant has lodged a complaint against Kosovo Police, police station in Gjakova.

20. On February 16, 2015 the complainant informed OI that regardless the fact that he has disseminated through media missing of his son (through *TV, radio and daily press*) and requested assistance from anyone that might have any information regarding the his son habitat, he exposed his deep concern since no one until now has any information about the circumstances of his disappearance, finding police officers responsible and charging them for inefficiency in investigation.
21. From February until the date of Report publishing, the complainant has visited on daily bases the responsible police unit in Gjakova requesting to be informed regarding the flow of investigation, conducted on disappearance of his son. Based on complainant's ascertains, several times police officer in reception office prevented him from meeting with responsible investigator of the Investigation Unit but several time he was a subject of assaults of personal nature.
22. Until the date this Report has been published there is no information that the investigation was effective within any phase and that has in anyway contributed on enlightening of the circumstances of complainant's son vanishing.

II. RELEVANT INSTRUMENTS

23. Article 21, paragraph 2 and 3 of the Constitution of Republic of Kosovo (further in the text "Constitution") stipulates 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."

24. Article 25, paragraph 1 of the Constitution determines as follows:

"Every individual enjoys the right to life."

[...]

"Capital punishment is forbidden."

[...]

25. Article 2, paragraph 2 of the Law on Police No. 04/L-076, (further the text of "Law on Police" states:

"Police officers shall exercise their authorizations and perform their duties in a lawful manner, based on the Constitution, on other applicable laws, and in the Code of Ethics compiled by the Police of Republic of Kosovo and approved by the Ministry of Internal Affairs."

26. Article 10 of the Law on Police, which determines overall liabilities and responsibilities of the police, as a crucial tasks determines as follows:

“To protect the life, property and offer safety for all people [...]”

27. Article 19, paragraph 1 of the Law on Police determines as follows:

“A Police Officer has power to issue verbal, written, visual or other warnings to any person who is posing a danger to personal or public safety, posing a danger to public or private property, disturbing the public law and order, posing a danger to traffic safety, or is reasonably suspected to be committing or preparing to commit a criminal act or to be forcing another person to commit a criminal act”.

28. Article 4, paragraph 1 of the Law on the rights and responsibilities of the citizens in the health care No. 2004/38, (further in the text “Law on Health Protection” states:

4.1. Every citizen 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.”

4.2. The health care is adequate if it is in compliance with the professional and ethical rules, and the guidelines relating to the given health care service.

29. Article 78,79 and 82 of the Law on Uncontested Procedure” no. 03/L-007, (further in the text “Law on Law on Uncontested Procedure” determines:

Article 78: “When the health institution accepts for recovery the mentally ill person without his consent and without a court judgment, is obliged immediately to inform the court of the same location where the institution is for the matter with a document within 24 hours.”

Article 79: “The written notification from article 78 of this law has to consist of the data of the person held in institution, and also of the person who brought him in the health institution. With the notification document the health institution, if possible, sends to the court also the data of the nature, level of sickness and the available medical documentation.”

Article 82: ” If the acceptance in the health institution is not according to the judgment of the competent court, the court in the location in which is the health institution immediately after the arrival of the notification from article 78 or 80 of this law, and also when in another way is notified for the maintenance of the sick person in the health institution without his approval is obliged according to the official assignment to start a procedure for his further maintenance in the health institution.”

30. Article 2 of the European Convention of human rights and fundamental freedom (November the 4th, 1950), (further in the text” European Convention of Human Rights”, or “Convention) stipulates:

“Everyone's right to life shall be protected by law [...].”

31. Article 5, paragraph 1 of the European Convention of human rights”:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law [...].”

Analyses

32. Constitution, as the highest legal act of a state, protects and guarantees human rights and fundamental freedoms, thus implementation and practical accomplishment of these rights is on the interest of functioning of rule of law state. Constitutional guarantees serve to protect human dignity and functioning of rule of law state. Constitution in Article 21 explicitly stipulates the responsibilities of each body to respect rights and freedoms of others, thus this principle is imperative and ought to be respected by all parties including here the police and health institutions.
33. Paragraph 1 of Article 25 of the Constitution, determines: *“Every individual enjoys the right to life”*. This paragraph denotes that the right to respect citizens’ human life is set forth in the core of constitutional system for human rights protection and the right to life (its inviolability) is absolute human right which cannot be limited in no circumstances, evasion from this right is restricted.
34. The Ombudsperson observes that Article 26 of the Constitution defines that each person enjoys the right to have his/her physical and psychological integrity respected, which among others include the right:

“ Not to undergo medical treatment against his/her will as provided by law “

As per the demeanor of police authorities the Ombudsperson also states that when talking about the right to personal integrity and the right to life, state has **positive obligation** in undertaking all measures to protect the inviolability of physical and mental integrity of persons, especially when integrity and human life is endangered. Constitutional Court of Republic of Kosovo in the judgement KI.41-12 has found violation on the right to life, in cases when judicial bodies or other state authorities do not provide sufficient protection to its citizens when case circumstances require so. Constitutional Court states that the right to life is most important right of all human rights from which all other rights arise and explains that positive obligations exists for state authorities to undertake preventive and operational measures to protect life of all those exposed to danger.

35. Based on the provision of Article 2 and Article 5, paragraph 1 of the Convention, the Ombudsperson reminds that in compliance with Article 53 of the Constitution, human rights and fundamental freedoms guaranteed with this Constitution are in compliance with the judicial decisions of the European Court of human rights (further in the text “European Court”).
36. Article 2 of the Convention presents state’s overall liabilities to protect the right to life and includes **positive** and **negative** aspects: a) **positive obligation** to protect life and b) **negative obligation** to refrain from illicit deprivation of life. Positive obligation imposes obligation of **prevention and investigation**. **Prevention obligation** (see case *Osmani* against *Great Britain* of the date February 28, 1998) forces states governments to prevent and fight criminal offences. In case it is ascertained that the state was acknowledged or should have been notified when the real risk and direct threat of the identified person has existed from third parties criminal offences, and if they failed to undertake appropriate measures within their competencies to prevent them, which based on reasonable assessment could be expected in order to evade the risk to life, the same should be responsible for failure to apply positive obligation.
37. Article 2 of the Convention also imposes the liability to the state to investigate mortal incidents determining key investigation elements of investigation in compliance with Article 2 are as follows:
- *to be initiated from the state to owns will*
 - *be independent*
 - *be effective*
 - *that the public have sufficient knowledge regarding the same investigation (open for the public);*
 - *be pretty fast, and*
 - *the family be involved*
38. Based on European Court’s decisions the scope and the task’s nature to investigate mortal/fatal incidents are explained specifically in the case of *Tarnikulu against Turkey*, judgement of July 8, 1999. The European Court has estimated that responsibility to investigate mortal cases does not refer solely to death cases for which state officials were responsible but all death cases for which authorities have been informed, which means that they have been acknowledged about. Authorities ought to undertake reasonable/necessary steps to ensure relevant proves (including eyewitness testimonies and forensic evidences), in order to have useful and effective investigation. Thus, failure to proceed further with the apparent flow of examination during the investigations can lead in finding of Article 2 violation. Actually, European

Court has come to the conclusion that: “*any deficiency during the investigation that undermines the ability to identify the perpetrator or perpetrators of criminal offense would be at risk of violation of this standard*”, which at most may refer to complainant’s case in the case against the Kosovo Police regarding investigations conducted on the case of his son disappearance.

39. European Court on the case *Ramsahai and others against Netherlands*, judgement of May 15, 2007, found that: ***those who are responsible for conducting of investigation must be independent from those involved in incident, either in terms of hierarchical and institutional independence as well as in terms of practical independence***. The Court has determined the fact that police officers from the same police unit as well as police officers involved in this incident have taken significant steps on commencing of investigations, prior that the State Department for Crime Investigation initiate investigation, fifteen hours and a half after death of the person from police shooting. In accordance with this the Supreme Court Body ascertained procedural violation of Article 2 has occurred due to the fact that police investigations were not sufficiently independent. When the authorities are informed about the case of death, or such information has been delivered to from any other source, they are obliged to conduct investigation regardless whether the family of a deceased person submitted or not a formal request and investigation bodies ought to act promptly and on reasonable manner. Analysis of this case shows that the investigation unit of the police station in Gjakova has acted contrary to Article 2 of the Convention (on the basis of European Court cases), since in the current case we cannot talk about the independence, since investigators could have been under the influence ***of persons involved in incident, either in terms of hierarchical and institutional independence, or in terms of practical independence***. The Ombudsman recalls the fact that the complainant has previously filed a claim against police officers of this station, who exercised physical violence against his son and refused to provide information to the complainant about the course of investigation regarding his son's disappearance and the same officials were under investigation by Kosovo Police Inspectorate, institutes even more sound doubts that ***no independent investigation was conducted***.

40. While interpreting Article 2 of the Convention, European Court in the case *Branko Tomasiq and others against Croatia*, of January 15, 2009 as per positive obligations ***has concluded*** that the ***authorities*** were aware of threats ‘gravity, ***but have failed on their positive obligations***, primarily because ***of insufficient psychiatric treatment*** considering that recovery lasts short and is unclear whether the person was a subject of proper and due healing process, which can be applied in the current complainant’s case.

41. The Law on Police in Article 2, paragraph 2 defines

“Police officers shall exercise their authorizations and perform their duties in a lawful manner, based on the Constitution, on other applicable laws, and in the Code

of Ethics compiled by the Police of Republic of Kosovo and approved by the Ministry of Internal Affairs”

While paragraph 3 determines:

“The Code of Ethics should be in accordance with the above mentioned principles and with the European Code of Police Ethics”

Actions of the Police of Republic of Kosovo under this law are guided by the principles of equal treatment, respect of human rights and fundamental freedoms, impartiality and neutrality regarding beliefs and peoples’ political views, integrity, sincerity and accountability in public service etc., thus police behavior in accordance with these principles in performing of official duties comprise the core basis for cooperating with citizens.

42. The Law on Police in Article 19, paragraph 1, determines: *A Police Officer has power to issue verbal, written, visual or other warnings to any person who is posing a danger to personal or public safety, posing a danger to public or private property, disturbing the public law and order, posing a danger to traffic safety, or is reasonably suspected to be committing or preparing to commit a criminal act or to be forcing another person to commit a criminal act”*. Based on what has been disclosed above, the police officer is authorized to conduct a reasonable control of persons and of the property within own powers and authorizations provide and implement orders and legal advices, which are directed to society members in general with the intention of achieving police legal objectives. Authorizations listed in this law define general powers and limitations of the police officer in performing of his duties relating danger prevention and maintenance of public order and safety. The law authorizes the police, when undertaking preventative measures to restrict person's freedom; maturity of that person should be taken in consideration as well as the degree of risk and the gravity of the offense in a given situation in order to determine the degree of freedom restriction of the person in accordance with the law. This law further reasons that the police officer is authorized to detain the person temporarily, when it is necessary, in compliance with legal deadlines and in accordance with the Code of Criminal Procedure but when the person in custody is **incapable to act**, the police officer shall struggle to notify a family member or any other reliable person, unless doing such will be to the detriment of the person incarcerated. From analysis of these articles it is obvious that in current case, police officers have acted contrary to the Law on police and have entrusted to themselves the role of the court as without any authorization have sent complainant’s son in psychiatric treatment.

43. Article 4, paragraph 1 of the Law on Health Protection defines:

“Every citizen 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 the same law in paragraph 2 states:

“The health care is adequate if it is in compliance with the professional and ethical rules, and the guidelines relating to the given health care service.

The purpose of this law according to legislators is to define rights and responsibilities of citizens in health care as well as placement of mechanisms for protection and safeguarding of these rights and responsibilities. The law requires that health care institutions have due consideration for patient’s health all times while he/she is placed in health institutions, in accordance with ethical and professional rules. Law itself comprise more rights in relation of healthcare services provision by forcing health institutions **to respect citizens’ rights** to quality healthcare, the right of choose health professional, the right to human dignity, the right to communication, the right to leave the institution, the right to be informed, the right to decide on own will, etc.

Article 8 of this Law determines:

“The citizen is entitled to leave the health care institution. This right may only be restricted in cases when he threatens the physical safety or health of others by doing so, as regulated by law.”

While Article 8, paragraph 3 defines:

“If the citizen leaves the health care institution without announcing the fact, the attending physician shall indicate this fact in the citizen's health documentation, and if it is warranted by the citizen's condition, shall notify the competent authorities of the citizen's departure from the institution, and, in the case of citizens with legal incapacity or with reduced disposing capacity, the authorized representative”

From analyses conducted to these Articles it derives that the Law requests ethical and professional approach towards the patient, while in the current case it can be observed that health institution has failed to provide mandatory care to the patient, who used the carelessness of medical crew on this occasion left the premises of the hospital unnoticed.

44. Law on Uncontentious Procedure, in Article 78 determines: *“When the health institution accepts for recovery the mentally ill person without his consent and without a court judgment, is obliged immediately to inform the court of the same location where the institution is for the matter with a document **within 24 hours**.*

The Ombudsperson, from the investigation conducted on this case, observes that Regional Hospital “Isa Grezda” in Gjakova, still continues as before to deal with admission of patients with mental disorders, who are brought by police in this hospital (without court’s decision), but this health institution has never informed the court as well, in accordance with Article 78 of the Law on Uncontentious Procedure reasoning that they were unaware of such legal liabilities.

45. Article 79 of the Law on Uncontentious Procedure clearly defines that written notification of the health institution directed to the court needs to contain data of the person placed into the institution as well as of the person that brought the patient in health care institution. Jointly with written notification document the healthcare institution provides to the court also the data of the nature, level of sickness and the available medical documents. This Law further burdens the competent court, within the same location where the healthcare institution is located, that immediately upon receiving the notification according to Article 78 or 80 of the Law on Uncontentious Procedure) or any other form is informed about keeping of mentally disordered person without his/her consent within the healthcare institution, to initiate **ex-officio** procedure for keeping further that person.

46. The Ombudsperson, based on overall evidence and facts presented, as well as relevant laws, which determine the right to life, **finds that the complaint of the complainant is reasonable and lawful**. In the current case, **the Ombudsperson ascertains that there has been violation of Human Rights and Fundamental Freedoms**, as police officers have sent the person, now missing, on mandatory psychiatric treatment without court's decision, they have acted contrary with constitutional principles and the legislation on force by exceeding powers entrusted to police and have taken actions that are inconsistent with the Constitution, the European Convention, the Law on Police and the Code of Police Ethics.

47. The Ombudsperson considers that the healthcare institution that admitted for recovery the person with mental disorders, to the same has not been provided with compulsory professional aid, *since from the moment of his admission in healthcare institution and the moment he escaped from it, he was never visited by psychiatrist but only by on duty medical staff* (see above paragraph 5). It is very upsetting that as a result of inadequate treatment and ongoing surveillance of the patient, the patient has manage to escape from the institution without being noticed by anyone thus the circumstances of patient's disappearance from the institution remain unclear to some further notice, leaving room for different interpretations. The Ombudsperson during the investigation of the case gained information that there were other cases as well of escaping of mentally disordered patients from this institution, thus such cases have happened in the past as well. Based on claims of prosecution office in Gjakova a similar case occurred four years before and nothing ever was heard about that case.

48. The Ombudsperson considers that Article 78 of the Law on Uncontentious Procedure has been violated due to the failure to inform the court by the healthcare institution while the reasoning provided by this institution that they have been unaware of their legal liabilities, is ungrounded. The Ombudsperson has evidence that similar actions have occurred in the past as well, even mistreatment of the complainant's son by the police¹

¹ 1. See complaint lodged with OI of Sahaban Jashari against Kosovo Police (C. No. 58/ 2014) of the date February 10, 2014 where the complainant claims that police officers have physically mistreated his son Mr. Xhemshit Jashari.

and continues with the same practices towards third parties, requiring emergency in terms of final abolishing of such practice since in this way the impression of judicial instability is created. In terms of what was said above, it is imperative that responsible health authorities without further delays publish guidelines on legal obligations of health institutions and the same be distributed to all health institutions, so that violations of human rights and freedoms as per this and similar issues, be eliminated in the future.

49. The Ombudsman finds that competent authorities failed to take measures regarding the **positive obligations**, namely protection of the inviolability of physical and psychological integrity of a person, especially when the integrity and human life are jeopardized, while in actual case as a result of disregard to undertake such measures the consequences of such neglect is grave. Ombudsperson finds that earlier complainant's complaint filed against police officers of this police station in Gjakova regarding allegations that his son was a subject of physical violence exercised by the police (*the case is filed with the Police Inspectorate, Ministry of the Internal Affairs and EULEX - it*) makes the investigation unworthily for the complainant, therefore it should be stated that investigation should be entrusted to another body outside the station and in accordance with the European Court findings and opinions (see paragraph 32).

50. The Ombudsman considers that, when the complainant's son was sent on psychiatric treatment by the police, the police did not inform the family about this in conformity with duties and responsibilities that it has while the complainant claims that he was notified about it two days later. Based on complainant's statement, in case he was notified about the place where his son was, he would look after him and in this way the situation resulted would have been avoided. The Ombudsperson also puts a considerable blame on complainant as well, since he has neglected advices provided by Ombudsperson Institution to request from the court withdrawal of his son's ability to act and designate of the custodian (see C. No. 58/2014). But, the Ombudsperson considers that irresponsibility exposed by institutions is to be blamed as well, which have ex-officio mandate to initiate the request for withdrawal of ability to act with the competent court.

51. When it comes to the cooperation of the Kosovo Police with the OI (see paragraph 15 and 16) the Ombudsperson considers that the failure of the police to send a copy of case file, requested by OI is **unconstitutional and unlawful action**. The Ombudsperson considers that inability to have access on case files of the police regarding complainant's disappeared son has hindered OI to verify claims for other rights violations of the missing person, which were stressed by the complainant in his complaint and pledges that are accurate. As the OI does not have a clear picture of events of the concrete situation according to the police file, while as per police behavior in this case, suspicion exist that inability to have access on case file is done intentionally to with the purpose to cover illicit actions of the police.

52. The Ombudsperson recalls that the Article 132, paragraph 3 of the Constitution determines: *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.

Further, the Law on Ombudsperson No. 05/L-019, in Article 18, paragraph 6 determines:

“The Ombudsperson has access to files and documents of each authority of the Republic of Kosovo, including medical files of the people deprived from liberty, in accordance with the law and can review them regarding the cases under its review and according this Law, may require any authority of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including full or partial file copy and documents upon request of the Ombudsperson.

Article 25, paragraph 2 of the Law on Ombudsperson determines:

“Refusal to cooperate with the Ombudsperson by a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body initiation of administrative proceedings, including disciplinary measures, up to dismiss from work or from civil service” while paragraph 3 of this Article determines: In case when the institution refuses to cooperate or interferes in the investigation process, the Ombudsperson shall have the right to require from the competent prosecution office to initiate the legal procedure, on obstruction of performance of official duty.

RECOMMENDATIONS

53. The Ombudsperson recommends to the Kosovo Police that:

- **In compliance with powers and authorizations derived by the law as well as in cooperation with all other security agencies (including Intelligence Agency and international assistance) to undertake prompt measures for finding the missing person.**
- **In compliance with legal powers and authorizations to increase the professional capacity of the Kosovo Police concerning the right to life and procedural aspects for effective investigation for such cases.**

54. The Ombudsperson recommends to the Director of Kosovo Police:

- ***To issue a written guidelines and inform all police stations and units that their tasks and obligations is to cooperate with OI and submit all requested documents and information, including full or partial case files in accordance with the Constitution and the Law on Ombudsperson.***

55. The Ombudsperson recommends to the Ministry of Health and ***Hospital and University Clinical Service in Kosovo***

- ***Hospital and University Clinical Service in Kosovo*** to issue a guideline through which all health institutions would be informed on duties and responsibilities that they have when admitting persons with mental disorders into their institutions without their consent as well as to force them to act in accordance with Article 78 and 79 of the Law on Uncontested Procedure. Furthermore, **Hospital and University Clinical Service in Kosovo** to undertake all compulsory measures for increasing professional and ethical level of the health workers as well as request from them to treat patient with utmost responsibility and professionalism while offering professional healthcare services as well as ongoing monitoring of patients during the working hours, while such persons are placed within healthcare institution.

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo and Article 25 of the Law on Ombudsperson No.05/L-019, we would like to be informed about the steps that the Kosovo Police, Ministry of Health and Hospital and University Clinical Service in Kosovo will take in this direction as response on recommendations given above. Furthermore, we would kindly ask you to submit your response regarding this issue within a reasonable time frame, but not later than 23 November 2015.

Sincerely,



Hilmi Jashari

Ombudsperson

Copy: Mr. Skender Hyseni, Minister of the Ministry for Internal Affairs