



**REPUBLIC OF KOSOVO**  
**THE OMBUDSPERSON INSTITUTION**

**TENTH ANNUAL REPORT**  
**2010**

**addressing**  
**THE ASSEMBLY OF KOSOVO**

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Mr. Jakup Krasniqi  
The Speaker of the Assembly of the Republic of Kosovo  
Prishtina

Dear Mr. Speaker,

Based on the Article 135 of the Constitution of the Republic of Kosovo and the Article 27 paragraphs 1 and 2 of the Law on the Ombudsperson, I am pleased to submit to you the tenth annual report of the Ombudsperson of the Republic of Kosovo.

At the same time, please accept our request for presentation of this report in a plenary session of the Assembly of the Republic of Kosovo, as well as opening of discussions regarding this report.

Sincerely,

Sami Kurteshi



The Ombudsperson of the Republic of Kosovo

Prishtina, 11 July 2011



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## The Ombudsperson's remarks



The Republic of Kosovo faces two controversies that constitute the reality that we all see and touch: large requests and small possibilities! Finding the balance between the requests and social possibilities is exactly the aim of organizing and acting of the state.

Two major challenges, the biggest challenges indeed, which continue to shake the foundation of the political balance of the Republic of Kosovo, are the legal and social state.

For setting up a fair social, human and democratic system, the balance between these two inevitable controversies should be socially acceptable, legally fair and institutionally enforceable. So, such balance will be acceptable when it becomes a general social norm which is legally codified. This may be achieved

and it makes sense only when in the process of creating of country's laws is ensured a broad participation, which provides inclusion of interests of as many as possible social classes and groups, possibly all groups. This presents a serious challenge, but it is necessary in order to be at the same time social and legal justice.

A legal justice, acceptable and applicable in the practical life for all the individuals without any distinction in the entire territory of a state constitutes the base of a legal state.

Is there a legal state? It is a question that everyone may ask each time when facing violations of various natures. As a society, do we believe in what is called justice and fair intervention of the state?

The concept "legal state" in Kosovo is alienated to the extent of an ironic expression and very often to the extent of a term with negative connotation. Loose of confidence in the legal state stretches from the poorest and most powerful classes and groups of the society to the individuals who are at the head of the state. Even when it seems that it exists, the justice of the state grounded on the law is selective! It exists and it is valid only for those who have money and power. By being selective, it opens the eyes in some cases, but it closes the eyes in other cases. Thus, it has lost the confidence of the society as a whole.

The Ombudsperson Institution during 2010 has handled 1233 cases. The largest numbers of them were complaints against judiciary, at all levels. The complaints were lodged due to the excessive duration of the judicial procedures-delayed justice; non-execution of the final judgments of the regular courts-vulnerability of the state to impose justice in the country or due to the unfair decisions with corruptive elements and forgery which imply injustice by those who are expected to put justice in place! In the northern part of Mitrovica, as well as in the Municipalities of Leposaviq, Zubin Potok and Zveçan, the only law that applies is the law of the strongest. In these areas, there is no rule of law and legal justice. The Republic of Kosovo does not exercise its authority at all in this part of its territory.

Many complaints of the citizens are referred to non-execution of the final decisions of the independent state institutions by the state institutions themselves or against unlawful decisions issued by the state institutions. The Ombudsperson's report with recommendations has been approved without any vote against by all present deputies in the session, dated 26 July 2010 of the Assembly of the Republic of Kosovo. But, so far, the Ombudsperson has no information or notification by any institution whether these recommendations have been implemented.

Also, based on the analyses of decisions and other judicial acts and decisions issued by other state institutions, which are offered to the Ombudsperson as an evidence, are noticeable many discrepancies and shortcomings, violations and injustice of substantive and procedural nature. The Ombudsperson does not interfere into the work of judiciary in none of the stages of procedures, neither at decision making stage nor at the stage of amendment of judicial decisions.

The citizens demand the Ombudsperson to put justice in place since they lost confidence on the enforcement of law. Therefore, the pressure on the Ombudsperson is mounting and coming from all sides: from the individuals, politics, civil society, media and various stake holders. Some address the Ombudsperson due to the big difficulties they face, some complain due to the material interest, others have political intentions, some would like to push their agenda forward, while some others simply want to have influence on the Ombudsperson Institution. Almost all forget, intentionally or not, that the Ombudsperson is an independent constitutional institution with a mission and competencies set forth by the Constitution and law. The agenda, actions and decisions of the Ombudsperson are independent and will remain independent since the Constitution and the law set forth such independence.

The Ombudsperson does not administer justice, but it will continue to identify and point out irregular and unlawful actions or inactions of the public authorities aiming to play its role in building up of a society based on the principle that all people are equal before the law.

If the state violates the principles of legal justice, indeed it has violated the necessary confidence for functioning of a democratic society. Losing the confidence on the state ruins the holding pillars of balanced functioning based on the justice for all. This should not happen! Equality before the law shall be provided and ensured, in the first place, by the state mechanisms.

Whatever the birth pangs of the new state are, the hope for a better future has not vanished, although it has been infringed. The efforts to restore order and rule of law are evident. In this regard, more commitment and individual and social responsibility, especially institutional responsibility of the public authorities regarding their actions or inactions is necessary.

A handwritten signature in blue ink, appearing to read "Samir Kutesky".



# 1. Introduction

The protection, monitoring and promotion of the human rights and fundamental freedoms of the natural and legal persons from the unlawful actions or inactions of the public authorities in the Republic of Kosovo are the main operational segments through which is intended the accomplishment of the Ombudsperson's legal and Constitutional mission.

Despite the fact that the Republic of Kosovo has already established a tradition in engaging the legal mechanisms for protection of human rights and freedoms from every aspect and violating segment, its citizens, which in the past faced the most brutal violating measures, individually and collectively, although in other forms and not by the same level and brutality, even today face various violations of their human rights and fundamental freedoms.

These various and numerous violations are a consequence of insufficient engagement of the public institutions in the implementation of law, which has as a consequence violation of human rights and freedoms. The Ombudsperson by acting continuously now is transformed into an institution standing up for the citizens of Kosovo, not only by protecting them, but also by monitoring and promoting their rights and fundamental freedoms.

Coverage of protection, monitoring and promotion of the rights and freedoms of the citizens of the Republic of Kosovo through legal operational mechanisms, summarized in the activity set forth by law and the constitution, is the annual report, now tenth in a row. .

The Ombudsperson's annual report presents at the same time the situation of human rights and the coverage of engagement of the Ombudsperson for protection of human rights and fundamental freedoms from the inactions of public institutions. The entire activity of the Ombudsperson is followed with a highlighted sensitivity since the moment of receipt of citizen's complaint until the final solution of the case. The sensitivity of the Ombudsperson's activity relies especially on the fact that our society is still under transition phase and the state institutions have not yet achieved to establish appropriate mechanisms, which would effectively react in order to improve the situation of human rights and fundamental freedoms in the Republic of Kosovo, respectively, would better understand the suggestions and legal recommendations, which the Ombudsperson is continuously issuing and to act according to these recommendations and suggestions in accordance with the law.

The cases of violation of human rights and freedoms by the public institutions of the Republic of Kosovo also during this reporting period did not result with a decrease of number of violations which would be worth of mentioning and the nature of violations remains the same. The solution to these cases of violation is becoming more and more complicated either due to the disregard of Ombudsperson's requests or due to the delays in solving the problems, which the citizens of the Republic of Kosovo are continuously facing.

The tenth annual report, as the other previous reports, by being an official document, presents in the most approximate manner the real situation of human rights and freedoms, respectively it presents the unpleasant side of their realization and on the other side, it also presents continuous engagement of the Ombudsperson for protection, monitoring and promotion of human rights.

The annual work, respectively the work during the period based on which this report was drafted, is an evidence for seriousness of the Ombudsperson's action, respectively of the staff members of the Ombudsperson Institution. Despite various and numerous difficulties and stumbling, despite situations, sometimes even unpleasant situations in which the staff members were due to the sensitivity of the case and efforts made towards establishing the relationship between the citizen who alleged that any of his/her legal rights have been violated and the institution that allegedly has violated the rights, the Ombudsperson and his associates achieved to accomplish their fundamental mission, to successfully protect human rights. In this regard, during this reporting period, comparing with the past period, the number of positively solved cases increased for 11 per cent. This increase, except effectiveness is also a result of the work quality of the staff members.

This Ombudsperson's annual report has been structured according to the principles, criteria and aspects, which are not only substantive but also formal. The principles, criteria and main aspects for drafting of this report rely on presentation of the annual work of the Ombudsperson Institution, including all its acting levels presented according to a logical order based on the Ombudsperson's Constitutional mission, which is protection, monitoring and promotion of human rights and fundamental freedoms.

In this spirit, the report is structured as whole and composed of three parts. The first part is dedicated to human rights and fundamental freedoms in Kosovo, which in the report have been presented in accordance with the content of the second chapter of the Constitution of the Republic of Kosovo, which means that alignment of human rights, as well as the issues raised, are in accordance with the alignment done by the lawmakers in the Constitution of the Republic of Kosovo. In this part are included also the activities of three groups functioning within the Ombudsperson Institution (the Children's Rights Team, the Anti-Discrimination Team and the Gender Equality Unit), as well as recommendations of the Ombudsperson regarding various cases.

In the second part are included daily activities in the Ombudsperson Institution, starting from the meetings of the Ombudsperson till the professional, technical supporting services (information, translation, information technology, finances, logistics and the content), as well as the elements essential for the progress of work within the institution where various statistics have been included.

The third part contains presentation of annexes as the supporting coverage of the report where the following elements are included: various documents, which illustrate the work of the Ombudsperson, the Law on the Ombudsperson, the Rules of Procedure of the OIK, the Code of Conduct, as well as the photo gallery.

Besides legal obligation, presenting of the annual report on the activities of the Ombudsperson is also evidence that confirms the entire work and engagement of the Ombudsperson Institution in protecting the human rights and fundamental freedoms. So, the annual report is an evidence of efforts put for resolution of the problems, which our citizens are facing when their rights are violated or infringed and when the citizens submit requests for realization of their rights, which are guaranteed by law and the Constitution.

The Ombudsperson, by being a supervisor of constitutional and legal implementation of human rights and fundamental freedoms of the citizens of the Republic of Kosovo, at the same time is also an enlightening factor in the cases when the citizens are deprived of any of the rights, as well as a reproaching factor towards the public institutions in the case they disregard constitutional and legal implementation of their rights and freedoms. This is one of the main postulates that this report

displays, with a sublime intention: to present real situation of human rights and fundamental freedoms in Kosovo and directions of development of this situation.

### ***1.1. General aspects***

The adoption of the Constitution of Kosovo has already provided to Kosovo a solid normative basis in full compliance with international human rights standards. The Constitution of the Republic of Kosovo represents a synthesis of modern international human rights standards.

The Constitutional Court of the Republic of Kosovo by being a supreme arbiter for interpretation of constitutional provisions, as well as for reviewing and implementation of legality of public authorities` actions in Kosovo has marked a decisive step for the assessment and implementation of legality of Kosovo state institutions` actions.

The Law on the Ombudsperson, by being a legal mechanism which sanctions protection, monitoring and promotion of human rights and freedoms when they are not respected by the public institutions, has succeeded to strengthen the voice of the Ombudsperson, as well as to create a new spirit in the interconnecting triangle of the human rights and freedoms: *The Ombudsperson Institution-public institutions-citizens*. .

Despite the existence of the good normative base, as well as of the mechanisms for protection of human rights and freedoms, the public authorities of the Republic of Kosovo, at all levels, still continue to be uninterested, negligent and not rarely displaying disregarding attitude towards implementation of the citizens` rights and freedoms. Such situation is a direct consequence of inadequate implementation of laws.

While, effective implementation of standards for human rights protection, consolidation of judicial and prosecutorial system, as well as combating the organized crime and corruption still remain main challenges that the new state of Kosovo is confronting, but in most cases without scoring a significant success.

For the Kosovo lawmakers and other state authorities, the biggest challenge remains issuance and adoption of the several laws, which directly affect human rights of all Kosovo citizens, such as the Law on Pension and Disability Insurance and the Law on Health Care.

Every lost day without these laws constitutes not only a big lose for the Kosovan society, but also it represents drastic violation of fundamental human rights in the Republic of Kosovo.

Also, a delay in issuing the sub legal acts presents significant difficulty in the implementation of laws. The Ombudsperson in its previous reports mentioned such delays and improving such situation remains as one of the fundamental recommendations. This action of the institutions is in contradiction with the international standards, but at the same time is an additional challenge for our state institutions.

Always in the context of protection of constitutional and legal rights of our citizens it is important to emphasize the issue mentioned in the previous reports, respectively lack of an Administrative Court. Establishment of such Court would impact the improvement of the human rights situation in the country. Based on the law in force, the Supreme Court of Kosovo is competent to decide on

administrative conflicts, but barring in mind difficulties that this court is facing and weaknesses of its functioning, finding other solution is necessary. Therefore, establishment of a functional administrative court with certain competences would improve the standards for effective legal remedies for resolution of administrative conflicts. But so far, no initiative to establish such court has been taken.

Functioning of the judicial and prosecutorial system in Kosovo, which reflects also on sensitivity, respectively sustainability of all state mechanisms and the base of a legal state, still continues to be kind of Achilles' Heel for the Republic of Kosovo. The Judiciary, as one of the three fundamental state pillars continues to be a field identified with the biggest number of complaints lodged with the Ombudsperson Institution by the Kosovo citizens.

Inefficiency of Kosovo Judicial system is extremely worrying for the Ombudsperson. The Ombudsperson has identified three shortcomings, which seriously affect the basis of a legal state. The identified shortcomings are the following: non-implementation of judicial decisions, excessive duration of judicial procedures and the corruption that has gripped the judicial system.

Another problem, which is continuously following the entire judicial system in Kosovo whose roots are in the education system of lawyers in Kosovo, is lack of knowledge on the international human rights standards. Unacceptable shortcomings are noticeable during the interpretation of local legal norms based on the case law of the European Court of Human Rights and European Convention on Human Rights as sanctioned by the Article 53 of the Constitution of the Republic of Kosovo.

The Republic of Kosovo is not a signatory party to the European Convention on Human Rights, but the Constitution in the Article 53 expressly obliges the state authorities to “*interpret the human rights and freedoms guaranteed by the law and constitution in harmony with the judicial decisions of the European Court of Human Rights*”. Also, the Article 22 of the Constitution of the Republic of Kosovo clarifies the obligation and requests the authorities to “*directly implement*” the human rights and freedoms foreseen by international instruments and standards and “*in the case of collision*”, the international instruments and standards are superior over “*legal provisions and other legal acts adopted by the public institutions*” in the Republic of Kosovo.

## 2. The Ombudsperson Institution

The Ombudsperson Institution in Kosovo has been established based on the UNMIK Regulation no. 2000/38 as an independent institution for reviewing the issues referred to alleged human rights violations or the abuse of the authority by the international and local administration in Kosovo. The Institution started its official activity on 21 November 2000. Until 2005 the Institution has been lead by an international Ombudsperson.

After the departure of the international Ombudsperson and till the selection of the local Ombudsperson by the Assembly of the Republic of Kosovo, the Institution has been lead by the Acting Ombudsperson.

By the adoption of the Constitution of the Republic of Kosovo, the Ombudsperson Institution has been set forth as a constitutional category.<sup>1</sup> The Assembly of the Republic of Kosovo on 4 June 2009 elected Mr. Sami Kurteshi for the Ombudsperson of the Republic of Kosovo for a five years term with no right to re-election.<sup>2</sup>

Following the adoption of the Law on the Ombudsperson, the organizational structure of the institution has changed. The Institution's leadership consists of the Ombudsperson and five deputies.<sup>3</sup>

Since it was established, the OIK has paid and it pays a special attention to multiethnic composition and gender structure of the employees.

### 2.1. *The mission of the Ombudsperson Institution*

The Constitution of the Republic of Kosovo and the previous UNMIK Regulations no. 2000/38, no. 2006/06 and no. 2007/15, set out that the mission of the Ombudsperson is to receive and investigate complaints from every person in Kosovo that claims his/her human rights have been violated by the Kosovo public authorities.

The constitution of the Republic of Kosovo sets forth the role and competencies of the Ombudsperson as to monitor and protect human rights and freedoms of legal and natural persons from unlawful and irregular actions or inactions of the public authorities. The Ombudsperson conducts the investigations, issues recommendations, publishes reports, and provides services free of charge and public advocacy to all citizens of Kosovo. In the cases when the investigations conducted by the OIK legal advisers result with the conclusion that the violation of the human rights have occurred, the institution may seek additional information by the public authorities, it may also issue recommendations for the public authorities concerned and to publish reports for different issues. In particular cases, the Ombudsperson may do so through Media.

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<sup>1</sup> *The Constitution of the Republic of Kosovo*, chapter XII, articles 132 – 135.

<sup>2</sup> *The Constitution of the Republic of Kosovo*, chapter XII, article 134.

<sup>3</sup> *Law no. 03/L-195 on the Ombudsperson*, article. 5

The OIK may offer legal services regarding complaints of Kosovo citizens addressing public authorities outside Kosovo by forwarding these complaints to relevant institutions (in most cases to homologues institutions-the Ombudsperson Institution) in the other country or to another homologues institution.

The OIK is independent in exercising its duty and it does not accept instructions or interferences by the state bodies, institutions or other authorities, which exercise authority in the Republic of Kosovo. The institution has a mandate to commence investigation based on the suspicion of human rights violations even without an individual complaint (*ex officio* investigation). Another task of the Ombudsperson is to monitor policies and laws adopted by the local authorities to ensure compliance of these policies and laws with the international human rights standards and to meet requirements of good governance.

If the Ombudsperson considers that a practice or a general situation is not in accordance with the international or local human rights standards or it impacts an individual or wider, it issues special reports, which include also recommendations addressing the Assembly of Kosovo aiming to improve and harmonize the situation with the local and international human rights standards.

Aiming to identify the problems and to provide data on the alleged violations, the Ombudsperson requests every state body, institution or other authority, which exercises legitimate power in the Republic of Kosovo, to respond to requests of the Ombudsperson and to display to him all documents and data requested, in accordance with the constitution and the law.<sup>4</sup>

The OIK has established three special groups with the purpose to deal with particular issues of few categories of people whose rights in Kosovo are considered as more vulnerable. These categories of people are the following: children, women, ethnic minorities and others. The OIK has established the following groups to deal with the rights of the aforementioned categories: Children's Rights Team (CRT), Gender Equality Unit (GEU) and the Anti-Discrimination Team (ADT).

Although, the OIK conducts investigations and monitors compliance/incompliance of judiciary with the human rights standards, the OIK does not replace the court and it cannot investigate the crime directly, to change court decisions or to issue mandatory decisions. The OIK also does not conduct the investigations on the issues related to contests, which occur between the private persons.

During the nine years of its existence, the OIK has always proclaimed the most important values and principles based on which it functions. In this aspect, the OIK would not have achieved appropriate effect in the scope of its activities if its mission would not be based on the following values and principles: independence, impartiality, professionalism and confidentiality.

The main challenge for the OIK remains establishment of so called culture of good governing, which implies good administration, transparency and accountability of the public administration towards Kosovo citizens, as well as strengthening of the rule of law in generally. The OIK engagement for balancing of a relationship between the citizens and public administration, which intends to help the citizens has exactly the same purpose. Solutions achieved by the Ombudsperson intent to achieve results in the standards and the quality of public administration's services to the citizens.

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<sup>4</sup> *The Constitution of the Republic of Kosovo*, Article 133, point 1.

The intention of the Ombudsperson's efficient activity is to increase the confidence of the people on the institution and administration by providing coherent relation between the citizen and the public administration. This is necessary for the functioning of the normal democracy. For this reason, the Ombudsperson is a part of the institutions, which are regarded as "*guarantor of democracy, legal state and human rights*".

The OIK engagement for improvement of the image of the public administration and judicial system makes the citizens understand that they may count on this institution and may lodge their complaints against the administration based on a simple and free of charge procedure. The complaints lodged with the OIK may be referred to actions, inactions or decisions issued by the public administration, which the complainants may regard as unjust and unfavourable. In handling such complaints, the actions of the legal advisers in charge are related to providing, requesting data and information by the public administration, court and other relevant institutions regarding lodged complaints, as well as monitoring court proceedings. If a certain case requires immediate action, the OIK submits request for interim measures. Regarding this, the way of acting varies based on the nature of individual cases.

## ***2.2. The interim measures and reports***

If the Ombudsperson considers that the public authorities should take immediate measures, he may, in accordance with the law, request the competent administrative body to take or suspend a particular action as an interim measure to prevent irreversible damage to the complainants or their wealth.

If the intervention letters and efforts for mediation are not successful, the Ombudsperson may issue a report by providing analyses and public presentation on the violation of the human rights and violation of the applicable legislation with recommendation for the relevant institution to avoid the violation. The reports are the last method of the Ombudsperson for advocacy. The copies of such reports will be forwarded to the respondent party, indeed to the authority responsible for the violation, to the Assembly of Kosovo and other relevant organizations.

## ***2.3. The Ombudsperson Institution is opened to the citizens***

The doors of the Ombudsperson Institution are opened for the citizens. When the citizens address the Ombudsperson in order to lodge a complaint or a request related to violation of their legal rights or interests, the OIK legal advisers receive the complainants and handle the cases carefully and professionally.

Aiming to facilitate the access of Kosovo citizens to OIK, except the Central Office (headquarters) of the Ombudsperson in Prishtina have been established also the regional offices in Gjilan, Pejë, Mitrovicë, Prizren and Graçanicë. Also, the Ombudsperson has established a sub office in the northern part of Mitrovica. The professional staff at the headquarters of the Ombudsperson and in all regional offices is continuously at the service of the citizens in order to respond to their requests

and complaints, as well as to instruct them regarding protection of their rights, which they claim have been violated.

The Central office in Prishtina receives complaints lodged by the citizens every working day from 09:00 to 15:00. The regional offices accept complaints from Monday to Thursday, from 09:00 to 15:00. In case of emergency, the citizens may address the Ombudsperson after the working hours as well.

The OIK legal advisors pay regular visits to different Municipalities, neighbourhoods and areas in which resides considerable number of various communities. Also, by being aware that the arrested persons, detained and jailed persons have limited access to the Ombudsperson Institution, the officials of the Ombudsperson pay regular visits to all jails and detention facilities in Kosovo.

The OIK representatives in all detention centres deliver forms and leaflets containing the information on the OIK mission aiming at informing all persons deprived of their liberty on their rights, as well as on the right to lodge complaints and requests. Since 2004, the OIK has placed complaint's boxes in all jails and detention facilities in the entire territory of the Republic of Kosovo. Only the authorized representatives of the OIK may open these boxes. This kind of practice proved that boxes placed in the jail facilities helped many prisoners and detainees to establish their first contact with the Ombudsperson.

Thereby, the direct communication with the prisoners is established in cooperation with the Kosovo Correctional Service Authorities and relevant jail authorities. Such post boxes are placed also at the Centre for Social Care in Shtime, which facilitates the access of patients of this institution to the Ombudsperson. The OIK representatives visit this institution in monthly basis.

In order to provide a direct and facilitated access, as well as aiming at getting closer with the citizens, which desire to talk to the OIK officials, the Ombudsperson or his deputies regularly organize the "open days" in many towns of Kosovo. During the "open days" the complainants meet the Ombudsperson or one of his deputies in person. The "open days" are organized once per month in all big towns of Kosovo. The Ombudsperson is also ready to visit the citizens of other towns and neighbourhoods of Kosovo upon their request for such meeting. The regional offices notify the citizens on the open days through publication of the "open days" dates at the relevant Municipalities, through local Media and the OIK official web page.

The citizens may easily access the OIK through the electronic mail, which is in most of cases used for lodging complaints by the citizens living abroad. There is also a phone line at the OIK Central Office for the urgent cases. This phone line is directly connected to the main office of the legal advisers without passing through the OIK switch board.



### 3. The situation of the human rights and fundamental freedoms

As in the previous report of the Ombudsperson Institution, which presented the situation of the human rights, the tenth annual report also, which somehow marks a modest jubilee, achieved to sublimate the situation of the human rights and fundamental freedoms in the Republic of Kosovo not only by presenting the situation based on the complaints of the citizens against the public institutions, but also by making a detailed analyze for the complete situation of human rights and freedoms.

*The right to life* The right to life is a fundamental right and the first condition for existence of all freedoms and other rights. This right excludes arbitrary deprivation of life and it is guaranteed by the Constitution. The OIK did not receive any complaint regarding substantive aspects of the right to life.

The Constitution of the Republic of Kosovo protects *human dignity* as an inviolable and a base of all human rights and fundamental freedoms. The Ombudsperson is committed to have active access to places where the persons deprived of their liberty are held in the entire territory of Kosovo. Also, the Ombudsperson has published a report regarding situation of Roma, Ashkali and Egyptian communities living in the camps in northern part of Mitrovica and Leposaviq. The Ombudsperson has recommended displacement or providing decent living conditions for these communities.

*Equality before the law*-Although, the equality before the law is guaranteed by the Constitution of the Republic of Kosovo and sanctioned by the Anti-Discrimination Law, unfortunately, so far, no improvement has been noticed as regards its implementation. The problems lie in the uncertainty of some of the Articles of this law, respectively on their semantic confusion for which the OIK has expressed its concern, but the relevant authorities did not undertake any measure in this respect.

*The Law on Religious Communities*-Due to the lack of a relevant law, most of the religious communities in Kosovo remain in a discriminatory position. In 2006 has been adopted the Law on Religious Freedom in Kosovo, which neglects regulation of the legal position of religious communities. Lack of a complete legal infrastructure creates interreligious problems, because the other religious communities are discriminated in contrast to the Serbian Orthodox Church, which thanks to the “positive” discrimination enjoys a treatment other than the other religious communities in Kosovo. Regarding this issue, the Ombudsperson has published a report addressing the Assembly of the Republic of Kosovo, but so far, the Ombudsperson did not receive an answer regarding this report.

*The Position of Judiciary*-Comparing with the other powers of the state, the judiciary is still in an inferior position where unfortunately political interference is present. The Special Chamber of the Supreme Court does not respect the rights of the citizens, which are guaranteed by the Constitution and law. The Special Chamber of the Supreme Court still requires the citizens to submit their requests in English language. By requiring the citizens to submit their request in English language and not in the official languages of Kosovo, this Court violates the Article 5 of the Constitution of the Republic of Kosovo, as well as the Law on the Use of Languages.

The Ombudsperson has published a report *regarding age based discrimination* in employment, but such phenomenon continues to be present during the process of employment. Such discrimination is also present in the decisions of the high profile public institutions.

The Ombudsperson has published a report regarding age based discrimination and it has raised the issue of administrative conflict at the Supreme Court of Kosovo, but until 31 December 2010 the Ombudsperson received no answer.

*The persons with disabilities* continue to remain a category vulnerable to every kind of discrimination. The problems raised in the previous report, such as roads and infrastructure of premises in generally, for a free movement of the persons using assisting tools, remain unsolved.

Many families, due to the inability to provide their own housing solutions continue to address the Municipal Assemblies to demand *assistance for humanitarian shelter*. Many Municipalities, even 10 years after the war fail to provide shelter for the families in difficult social conditions and for the homeless people.

*Discriminatory treatment by the Kosovo Property Agency (KPA)*-KPA still continues to work based on double standards during the handling of the complaints. The properties in the northern part of Mitrovica since 10 years have not been released by the illegal usurpers. The failure of the KPA to accomplish its mission, as well as discriminatory treatment of the complainants, especially treatment based on the ethnic background, constitutes violation of the Constitution of the Republic of Kosovo.

Based on the complaints lodged with the OIK, *the gender based discrimination* is present in the public and private sector. Based on the official data, for the reporting period, it is noticeable that the number of girls dropping out of school is marking fall, but is still at the worrying level. The gender equality reflects also in the education profiles, which proves the patriarchal form of separation of professions for men and women.

The complaints lodged by women are referred to discrimination by the Ministry of Health and the Ministry of Finances regarding medical treatment abroad. In the cases when the Ministry of Health decided positively, the Ministry of Finances disregarded issued decision.

The OIK, during this period has received a number of complaints referred to delays of judicial processes. The most of complaints are referred to property relations, in which the female members are damaged.

It encourages the fact that the *family violence* is qualified as a criminal offence and sanctioned by law. The OIK has received several complaints regarding family violence. Another one incomparably greater challenge for the public institutions of Kosovo in the field of gender equality, which needs to be improved, is the family violence and *trafficking in persons*.

The Constitution of Kosovo, Criminal Code of Kosovo and the international instruments for human rights guarantee that “No one shall be subjected to *torture or to inhuman or degrading treatment or punishment*”. During the 2010, the OIK registered 7 complaints as regards violation of this right, which are under proceedings. While, the largest number of complaints lodged by the prisoners were addressed against the Panel on Conditional Release. The prisoners also lodged complaints as regards medical treatment.

*The rights of the accused*-The OIK during this period has monitored detention centres and centres where the persons deprived of their liberty are held for commission of different criminal offences. The OIK paid regular visits to these detention facilities and jails. Based on the report of the Correctional Service of Kosovo 11 prisoners in Dubrava jail are waiting for the final verdict since more than two years, while another two prisoners are waiting for the final decision, one at the detention centre of Pejë and another one at Mitrovicë detention centre.

*The right to a fair and impartial trial* is a fundamental human right protected by the European Convention on Human Rights. This right is regulated also by the Law on Courts, Provisional Criminal Procedure Code and by the Law on Contested Procedure. The OIK has received a considerable number of citizens' complaints regarding violation of the right to a fair and impartial trial, especially violation of the right to a trial within a reasonable time. Most of the citizens complain as regards excessive duration of the judicial procedures in the contests over the property rights and obligations. These procedures, last up to 5 or 6 years till the issuance of the judicial decision.

*The right to legal remedies* is the right guaranteed by the Constitution and it is also a requirement of the international legal instruments. Regarding judicial and administrative procedures during the exercise of the right to legal remedies, the OIK has received 99 complaints, from which 35 cases were closed and another 64 are still open.

Based on the OIK analyses, the largest part of the complaints were lodged against judicial system, afterwards against the Municipalities, Ministries, as well as against the public enterprises.

The complaints lodged against the judiciary are mainly referred to excessive procedural durations and the issuance of judicial decisions regarding the exercised legal remedy.

The complaints lodged against the state bodies are related to issuance of illegal decisions to the detriment of citizens. The complaints were lodged also against authorities as in some cases they do not respect their own decisions and decisions issued by the independent institutions. The state authorities do not respect decisions of the Kosovo Independent Oversight Board. The citizens are asking the Ombudsperson to use its authority and legal competencies for implementation of decisions.

*The principle of legality and proportionality*, as one of the principles of the criminal law is guaranteed by the Constitution and sanctioned by the Criminal Code. The OIK during this reporting period did not receive any complaint regarding violation of the principle of legality.

*Freedom of movement* according to the Constitution implies the right to free movement throughout the entire territory of a state, without restrictions or unlawful interferences. If observed from the general standard in Kosovo, this right is not fully respected. During this reporting period, the number of physical assaults has significantly decreased. Despite reduction of the serious incidents of violence, cases of harassment, intimidation, the feeling of fear is still present in different areas of Kosovo, depending on the ethnic background.

*The freedom of movement for the members of minority communities*-The members of the minority communities, which are small in number, such as Turkish, Bosnians, Ashkali and Egyptians have no problems to move in the entire territory of the Republic of Kosovo excluding the northern part of Kosovo and few Serbian enclaves in the eastern part of Kosovo, for instance in Ranillug and Korminjan. But, such restrictions do not apply for members of Goran community. The members of Serbian and Roma minority feel endangered to freely move in many areas of Kosovo. The biggest improvements in the aspect of freedom of movement and interethnic communication are obvious in the area of Gjilan and Viti Municipalities. The improvement of situation is visible in the region of Prishtina, in a part of Prizren and Pejë Municipalities, but the situation is different in the area of Gjakova and Mitrovica.

*The freedom of movement for the Albanian population and the minority communities*, such as Turkish, Ashkali and Egyptians. Mainly non-Serbian speaking and non-orthodox communities may not freely move in the northern part of Mitrovica. The biggest threats for the Albanian community

living in the northern part of Mitrovica are the organized criminal gangs supported by the Republic of Serbia. There are some restrictions as regards freedom of movement in the Municipalities of Ranillug and Kormijan, but not significant.

The only support for the *public transport* for the Serbian and Roma communities living in the Serbian neighbourhoods in Kosovo is so called humanitarian transport organized and financed by the Government of Kosovo. In the northern part of Kosovo, the public and private transport does not function with the number plate of the Republic of Kosovo. In both cases, such situation constitutes restriction of the freedom of movement for the citizens in different areas of Kosovo.

*The right to privacy* is guaranteed by the Constitution and the European Convention on Human Rights. For the reporting period, as regards the right to privacy, the OIK has received 5 (five) complaints in total, which are referred to various forms of violation of this right.

The Ombudsperson has offered good services to the complaints by helping them to be *furnished with the needed documentation* in the Republic of Kosovo, aiming to respect the human rights set forth by the international standards.

The OIK has expressed its concern regarding unbearable *noise* in the *public places* in Prishtina, as is has also expressed its concern regarding *interception*. During this reporting period, the OIK received two complaints regarding these issues.

*The right to marry and to found the family* is the base for creating a sound society and building up a state. For the reporting period, as it has been also mentioned in the previous reports, is noticeable a tendency of rise of the percentage of divorces in Kosovo. The Ombudsperson also during this reporting period has received a large number of complaints referred to procedural delays related to divorce, non-realization of regular contacts with children, as well as excessive duration of procedures regarding issuance of decisions on custody over children. The Ombudsperson, during this period has published a report related to procedural delays in implementation of a final judgment by a court regarding personal contacts of a mother with her minor children.

The Constitution of Kosovo and the Law on Religious Rights and Freedoms in Kosovo, guarantee respect of the *religious freedom, the freedom of belief and manifestation of religion*. During the 2010, the lack of legal provisions for regulation of the legal position of religious communities has been particularly highlighted. During the months of May and July various NGOs have been protesting and expressing their disagreement with the denial of the pupils' right to wear scarf during staying in the schools. For the orthodox believers the most important event for this year was the inauguration of the Patriarch Irinej in the Patriarchy of Pejë on 3 October 2010. Unfortunately, this event was accompanied by mutual provocations. The most important event for the Catholic Church in Kosovo in 2010 was ordination of "Mother Tereza" cathedral in Prishtina. The believers of the Kosovo Protestant Evangelical Church emphasized as a problem the lack of legislation for regulation of their legal position and numerous attacks against them.

*The freedom of expression* is guaranteed by the Constitution and European Convention on Human Rights. This right constitutes one of the basic stones of a democratic society. During the 2010, the OIK has not received any complaint regarding violation of this right.

*The right for access to public documents* is also guaranteed. The OIK has received a limited number of complaints during this period. The right for access to public documents has been denied to the representatives of the Ombudsperson during the investigations. The issue of access to official documents, as well as lack of transparency remains one of the main problems which the journalists of Kosovo continue to face.

Despite the guarantees, which provides the legal system of Kosovo and in particular the Constitution, regarding *freedom of Media*, this freedom remains one of the most worrying problems in our society, but the OIK has not received any complain by the Media representatives.

*The right of the citizens to a peaceful gathering* is a universal right, guaranteed by the Constitution. The Ombudsperson concludes that despite its recommendation, the point 3 of the Article 12 of the Law on Public Gathering has not been amended. The Ombudsperson again recommends amendment and completion of the aforementioned Article, aiming at its harmonization with the European standards.

The Constitution of the Republic of Kosovo provides guarantees for the *freedom of association* as a right of every citizen to found an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization. During this period, the Ombudsperson did not receive any complain regarding violation of the freedom of association.

*The freedom of election and participation* is a fundamental right of every citizen and as such is foreseen by the Constitution of the Republic of Kosovo, the Law on the General Elections and the Law on Local Elections in the Republic of Kosovo. As a consequence of the political deadlock created in the country, on 12 December 2010, were held irregular parliamentary elections. The OIK has monitored the elections almost in all Municipalities of the Republic of Kosovo, excluding the Municipalities of Leposaviq and Zubin Potok. The election process has been monitored in the places where the persons deprived of their liberty and persons with disabilities are held. The Ombudsperson issued a recommendation through which it has requested the relevant authorities to undertake appropriate legal actions for starting the investigations on the alleged cases of abuse of vote and to bring before the justice the perpetrators of such abuse.

*The right to property*-According to constitutional guarantees every person living in Kosovo is protected from arbitrary deprivation of property rights. In Kosovo, the property problems still remain a delicate problem.

*The issue of expropriation* in Kosovo is regulated by law. The OIK has registered complaints of the citizens lodged against the public institutions regarding violation of the compensation agreements. The Courts in Kosovo fail to protect the property rights of the individuals and also fail to execute their own decisions.

*The issue of constructing illegally and without permission* and construction of new informal neighbourhoods remains a worrying problem in whole Kosovo. According to the Cadastral Agency of Kosovo, there is a discrepancy between the current owners and situation in the field because the legal property updates were not kept at the appropriate level. This is a consequence of *lack of cadastral documentation*, which has disappeared or has been taken during and after the war by the Serbian state. The problems with the Kosovo Property Agency are still present. So far, this Agency has registered 40.000 requests. From them, 26.000 were reviewed; while in about 17.000 requests have been resolved. The issue of usurpation of properties in the northern part of Mitrovica remains an extremely big and unresolved problem.

*The right to education* is guaranteed by the Constitution. The right to education marked a progress since the adoption of the Law on Education. The Ombudsperson Institution requests adoption of the curriculum for the lower cycles of education because the pupils are overburdened with the textbooks. *The violence in the schools* still remains a worrying phenomenon. The safety in the schools is a responsibility of the MEST, while the initiative in some schools, which implies pupils'

participation in their own safety, is not an action in accordance with the law. Another problem accompanying the education system is the lack of school facilities. In some cases, the number of pupils in a class room reaches up to 47. In the context of implementation of the right to education the *phenomenon of school dropout and illiteracy* remains worrying. The Serbian community, as well as a part of Roma and Goran communities continues to be out of Kosovo education system.

*Freedom of artistic and scientific creativity* is guaranteed by the Constitution and is in accordance with the international instruments. During this reporting period, the OIK did not receive any complaint on violation of the freedom of art and science, even though violations of such right may have occurred.

*The right to work and exercise profession* is one of the fundamental human rights, which is guaranteed by the Constitution of the Republic of Kosovo and protected by the international legal instruments. The issue of *unemployment in Kosovo* continues to be the most serious social issue that the Kosovo citizens are facing. The Ombudsperson estimates that even after the adoption of the Law on Labour in Kosovo, no significant progress has been marked regarding implementation of the legal provisions by the employers in the public and private sector. The most serious violations have been noticed in the employment procedures, interruption of the working relationship, non-compensation for the overtime work, violation of the right to annual leave etc. During 2010, the OIK has registered 51 complaints regarding violation of the right to work and exercise of the profession. From the total number of these complaints, only 3 (three) complaints were positively resolved. The OIK has received a considerable number of complaints regarding non-implementation of decisions issued by Kosovo Independent Oversight Board (KIOB), which is considered as a serious violation of the right to work and exercise the profession. Although, the KIOB is an independent constitutional institution, the relevant institutions do not implement its decisions. Regarding this situation, the Ombudsperson has issued a recommendation for the public institutions.

In the Kosovan reality, protection and respecting of the children's rights still remains a big challenge. Even though, the education has been put on the list of Government's main priorities, *the violence* in the schools remains a worrying issue. The OIK, during these reporting has received period complaints regarding violence in the schools.

Aiming to improve the situation regarding *child labour* within the priorities of the National Plan in the field of social welfare during this reporting period the MLSW continued to undertake activities related to functionalizing the Kosovan Committee for prevention and elimination of the child labour. The hard labour damages children's welfare and health and as such it represents violation of the Constitution of the Republic of Kosovo and European Convention on Exercise of Children's Rights.

*Children with disabilities* are in serious conditions comparing with the other children. In this context, the OIK issued a recommendation addressing the respective authorities regarding the issue of non-payment of a specific amount of money to the families, which have children with permanent disabilities under their care.

The OIK has received a complaint related to *trafficking in persons*, especially the cases when the *children are victims*. Also, the OIK has received several complaints related to non-implementation of the court decisions regarding personal contacts of parents with their children, as well as on procedural delays in issuing decision on the custody over the children, which put the children and their parents in a difficult situation.

Even 11 years after the war, the social policies continue to be a challenge for Kosovo. The people of Kosovo have no *health care and social protection*, while in about 36 thousand families are evidenced as beneficiaries from the MLSW social scheme, but such social assistance does not fulfil even the elementary needs of the beneficiaries.

Many Kosovan families *with children with disabilities*, who have speaking and hearing difficulties or disturbance in mental development may not be beneficiaries of material aid set forth by law because their children are not included in the category of children with permanent disability.

*Pension scheme*, which aims at lowering the level of poverty for certain categories of citizens, still applies in Kosovo. In 2005 MLSW has prepared the *Draft-Law on Pension and Disability Insurance*, which has been forwarded to the Government of Kosovo for adoption. Since 5 years, the Government of Kosovo is dragging the adoption of this law. One of the main requests of the Ombudsperson remains the adoption of the Law for Pension and Disability Insurance. *The lack of such law cannot be justified!*

According to OIK information there are big *problems in the health system of Kosovo*. The citizens of Kosovo complain against medical staff who in almost all cases of treatment during the working hours in the public institutions advise the citizens, sometimes they even force them, to go for treatment in the private sector (these doctors work in these private clinics after the normal working hours in the public sector) despite that the treatment, care and medical equipments are the same. The OIK is investigating such cases.

Aiming at creating a healthy *environment* for the population of Kosovo, as well as for the implementation of the environmental standards of the European Community, the Constitution of the Republic of Kosovo sets forth responsibilities of the state and citizens for a healthy environment. The Ombudsperson received a complaint related to *protection of the environment*. Extraction of stones and gravel from river beds and valleys and rocky parts in a wild manner arouses concern for the Ombudsperson. The citizens complained to the OIK as regards degradation of the environment, creation of noise and dust, flooding and endangering the right to property as a consequence of land sliding, which directly causes breaches in the walls of the houses in the vicinity.

The Constitution of Kosovo guarantees to the citizens *the right to judicial protection*. The Ombudsperson is seriously concerned as regards failure to extend judicial power in the entire territory of the Republic of Kosovo. Since the declaration of the independence of the Republic of Kosovo, the District and Municipal Court, The District and Municipal Prosecution, the Minor Offences Court in Mitrovica, the Minor Offences Courts in Zveqan and Leposaviq continue to be out of jurisdiction of the Kosovo judicial system.

The Ombudsperson is seriously concerned since there are *213.967 unresolved cases in the Courts of Kosovo*, inherited since 2000. The civil and criminal cases pending in the Courts and Prosecutions are at risk of exceeding the period of statutory limitation. The exceeding of the period of statutory limitations is indeed a denial of justice.

During the 2010, the OIK has received in total 180 *complaints against judiciary*, from which 70 of them were declared inadmissible. The largest number of submissions was addressing the Municipal and District Courts and the Supreme Court of Kosovo. The citizens were mainly complaining against *procedural delays*, afterwards against *non-execution of judicial decisions*, as well as doubts on *the objectiveness of the Judge*. After analyzing the complaints it results that the citizens complain on the procedural delays for review of cases by the Courts, which sometimes last several years. During the reporting period, the OIK has received 25 *complaints or requests lodged against*

*the Prosecution* from 25 different individuals. In total, 13 complaints were lodged against District prosecutions, while 12 complaints were lodged against Municipal Prosecutions.

*The rights of the communities and their members* are regulated by the Constitution of the Republic of Kosovo and through the direct implementation of the international conventions for protection of minorities and their rights.

*The Serbian community* preserves its national and cultural identity through a relatively developed system of political parties, non-governmental organizations, humanitarian and cultural organizations. While, as regards religious identity, the Serbian community preserves its identity through Serbian Orthodox Church (SOC). The possibilities to preserve the language, habits, cultural heritage and tradition of the Turkish community are insufficient and regarding this issue not much has been done, indeed very little efforts were done. A similar situation is with *Bosnian community*. Although, some Bosnian political parties and Non-Governmental Organizations have been formed for the first time and teaching in Bosnian language has begun, the possibility to preserve language, habits, cultural heritage and tradition is very difficult and it enjoys no institutional support. From around 40 cultural and artistic Roma societies in Kosovo, nowadays only one deals with the *preservation of Roma tradition and culture*. While, as regards Ashkali and Egyptian community, which are in a similar situation, only the Municipality of Fushë Kosovë has done a positive and modest step by appointing the coordinator for the culture of Ashkali and Egyptian communities.

*The Serbs in Kosovo* and a part of Roma community receive education under a *parallel education system*, which applies the education plans and programs drafted by the Republic of Serbia. *The Bosnians and Turks* can follow the education in primary and secondary education in their own languages, while a problem is the lack of textbooks in the languages of these communities. The majority of Goran community expressed their wish to get education in Serbian language. *The members of Ashkali, Egyptian and part of Roma community* attend the classes in Albanian language.

*Minority communities and Media*. Except the Serbian community, which has three local privately owned TV stations, none of other minority communities have their own TV station. While, there are radio stations broadcasting exclusively in Serbian language. There are three privately owned radio stations broadcasting in Turkish language. RTK is the only state owned medial institution, which except broadcasting the program in Albanian language, also broadcasts TV and radio program in Serbian, Bosnian and Roma language. The Serbian community has the news paper "Jedinstvo" (which is printed in Mitrovica and financed by the Government of the Republic of Serbia). The only news paper in Bosnian language in Kosovo is "Alem". There is no daily news paper or magazine published in regular basis in Roma language. Despite that the Albanian language is native tongue to members of Ashkali and to some of the members of Egyptian community; their access to Medias is very limited.

According to the Constitution of the Republic of Kosovo and *Law on Use of Languages* the Albanian and Serbian, as well as their alphabets are the *official languages* in Kosovo. The Turkish, Bosnian and Roma languages enjoy the status of official languages at the Municipal level based on the conditions foreseen by law.

The Kosovan society is still divided according to linguistic lines. A problem as regards the integration of the minority communities into the society is also their inability to speak Albanian language. The Turkish community is in a better position at this point because most members of this community speak Albanian. The Albanian language is the native tongue of Ashkali and Egyptian communities. A very small number of Kosovo Serbs, Bosnians, Gorans and Roma speak Albanian language.



## **4. Human rights and freedoms guaranteed by the Constitution of the Republic of Kosovo**

### ***4.1. Direct implementation of agreements and international instruments***

The states are obliged to respect and protect the human rights, while implementation of the human rights implies also obligations for the state and its bodies to realize these recognized rights. A number of important international instruments on human rights are incorporated in the domestic laws and the Constitution of the Republic of Kosovo.<sup>5</sup>

The Constitution of the Republic of Kosovo expressly stipulates direct application of the Universal Declaration of Human Rights, European Convention on Human Rights and Fundamental Freedoms and its Five Protocols, International Covenant on Civil and Political Rights and its Protocols, the Council of Europe Framework Convention for the Protection of National Minorities, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment. These international instruments incorporated in the Constitution of the Republic of Kosovo have a particular importance for protection of human rights and fundamental freedoms because even in the case that there are shortcomings or legal void the conventions shall be applied directly.

The Ombudsperson Institution notices that in few cases these conventions are seriously violated. Based on the complaints received by the Ombudsperson Institution it is obvious that most of the violations are related to Article 6 of the European Convention on Human Rights, indeed the right to a fair trial. The courts are overburdened with old and unresolved cases; delays in reviewing new cases, non-execution of the final Judgments, which are some of the issues that have been burdening the judiciary since many years, thus, violating the right of Kosovo citizens for a fair and impartial trial.

Based on the information collected by the OIK, the competent institutions of the Republic of Kosovo have neglected solution of this issue. The Article 6, paragraph 1 of the European Convention on Human Rights obliges the states to organize legal systems in such manner that enables the courts to realize all obligations deriving from the legal system including reviewing the legal matter within a reasonable time. The principle of reviewing the matter within a reasonable time has been violated constantly by the Courts. Such situation in the judiciary shakes the confidence of the people, which is already diminished, on the judicial system and it wakens its role.

However, in this respect, there is a promising move. Continuous recruitment of Judges and Prosecutors, as well as adoption of the Law on Courts based on which shall be organized the judicial and prosecutorial system in the Republic of Kosovo, are a good news. In this context, the Ombudsperson Institution welcomes significant improvement of the material position of the employees of Kosovo courts.

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<sup>5</sup> See the Article 22 of the Constitution of the Republic of Kosovo.

Despite that the Conventions, the Constitution and the laws prohibit use of violence or inhuman and degrading treatment, such events are evident. Based on the complaints of the citizens, it is obvious that a part of these complaints are referred to exercise of violence by the police authorities. In the past year, the OIK has handled few cases in which has been concluded use of torture and violence in the detention facilities, in public and other places. These actions constitute violation of the above-mentioned international acts.<sup>6</sup>

Conducting the investigations in such cases is very complex process since this usually happens in closed premises and there are insufficient witnesses to confirm what happened indeed. The investigation becomes even more difficult in case the relevant authorities refuse to give information on the case, thus, leaving the victims of violence at the mercy of their torturers.<sup>7</sup>

The Article 3 of the ECHR which contains substantive provisions related to torture makes no exclusion as regards torture.<sup>8</sup> In case of doubts that the torture and other inhumane and degrading acts have been used, the effective *ex officio* measures must be taken aiming at the identification and punishment of the authors of such actions. Otherwise, despite the importance of Article 3 of the ECHR and Convention against Torture, their practical implementation would be ineffective because it would provide to the police officials the possibility to repeat such actions without fearing of being punished.

In order to realize effective and comprehensive monitoring of places where persons deprived of their liberty are held, the Ombudsperson deems as necessary the implementation of provisions of the Optional Protocol of the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment. Therefore, the Ombudsperson Institution together with some domestic NGOs held several meetings aiming at establishing a working committee, which would act as a precursor of the National Mechanism against Torture. The Article 3 of this protocol foresees establishment of such mechanism<sup>9</sup>. Establishment of this mechanism would provide a better access and more effective protection of human rights.

The Ombudsperson through this report, once again expresses its concern as regards non-inclusion of the International Covenant on Economic, Social and Cultural Rights in the Constitution of the Republic of Kosovo. Some of the rights foreseen by the International Covenant on Economic, Social and Cultural Rights, such as: the right to adequate housing, the right to work, the right to social security and a number of socio-economic rights continue to lack a legal protection. Inclusion of this Covenant in the Constitution of the Republic of Kosovo is necessary and it would be an additional guarantee for the citizens of Kosovo and for the protection of their rights.

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<sup>6</sup> The Ombudsperson Institution, *ex officio report no. 207/2010* concerning the police intervention at the headquarters of Movement Self-Determination in Prishtina aiming at arresting Mr. Albin Kurti.

<sup>7</sup> See the case *Ribitsch vs. Austria*, application number 18896/91, dated 04 December 2005. The International Court of Human Rights emphasized that in case of confirmation of bodily injuries at the detainee who was under complete police control, the authorities must explain circumstances under which the bodily injuries occurred.

<sup>8</sup> The Article 3, prohibition of torture “*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*”.

<sup>9</sup> The Article 3 of the Optional Protocol of the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment “*Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)*”.

## 4.2. *Human dignity*

The Constitution of the Republic of Kosovo in the Article 23 safeguards and stipulates the Human dignity *as inviolable and as the basis of all human rights and fundamental freedoms*. This article clearly stipulates that the human rights and dignity are indivisible.

Even though, human dignity is treated as moral, religious, social, political and legal category, it is not that easy to define it. As a definition, the human dignity is defined as the entirety of moral values of an individual and as the right of an individual to be respected which belong to each human from its own being. Thus, the human dignity is rooted in his/her creation and as such dignity is inalienable.

Given the general knowledge, the violation of the human rights and human dignity seems to be a more unfavourable situation for an individual, especially when he is powerless to protect, to request and to fight for his rights because of deprivation of liberty or because of older age. The Ombudsperson Institution, aiming at prevention of violation of human rights and human dignity in such situations, is committed to have a practical and active access. Therefore, an inseparable part of its work are visits along Kosovo where the persons deprived of their liberty are kept, as well as periodic visits at the House for Older People in Prishtina. We conduct such visits in order to make sure that in such institutions the human dignity is being respected and protected in accordance with the international standards.

The Ombudsperson Institution during the visits in the correctional institutions noticed irregularities and incompatibility in implementation of rules and policies of the Kosovo correctional institutions with the respective local and international legislation. Such incompatibilities also violate human dignity.

The Ombudsperson Institution commenced investigations on the own initiative (*ex officio*) since it noticed that the prisoners are not being systematized in the holding cells based on the committed criminal offences, length of sentence, the persons punished of imprisonment and persons punished by long term imprisonment are not separated. The Ombudsperson Institution through a special report recommended the Commissioner of the Correctional Service of Kosovo and the Ministry of Justice to undertake necessary measures within their competencies in order to fulfil their legal obligations aiming at improvement of conditions and policies in the jails and in the detention facilities in Kosovo.

Furthermore, the Ombudsperson in its recommendation reminded the institutions that human treatment and respect for the human dignity of all persons deprived of their liberty and adequate systematization of punished person and of those in detention is necessary and it is foreseen by the International Covenant on Civil and Political Rights, as well as by the European Prison Rules. Both instruments are directly applicable in the Republic of Kosovo. Also, having noticed extremely difficult living conditions of Roma, Ashkali and Egyptian communities, residing in the camps in the northern part of Mitrovica and Leposaviq, respectively having noticed lead contamination of residents because they live in an extremely contaminated environment and in poverty, the Ombudsperson Institution published a special *ex officio* report through which it addressed the Assembly and the prime Minister of Kosovo. Through this report, the Ombudsperson Institution recommended the Kosovo institutions to undertake appropriate actions including relocation of the

residents in the safer locations aiming to protect their health and to offer to the residents of these camps conditions for a decent life.

The Ombudsperson Institution reminds the authorities that the situation of the people with disabilities in the Republic of Kosovo is not satisfying at all. The Ombudsperson expresses its particular concern because of non-implementation of the legal infrastructure whose primary aim is alleviation of discrimination of this category. An apparent legal disregard is noticeable during the construction of various buildings and roads of a public character, which in most cases do not coincide at all with the purpose of facilitating the access of this category of people to the public institutions. Even the health institutions are not standing well at this point despite that such infrastructure is necessary.

### ***4.3. Equality before the law***

The main elements of a legal state are the following: constitutionality and legality, equality before the law for all citizens without any distinction, human rights and freedoms, separation of powers, independent Judiciary etc. The Constitution of the Republic of Kosovo<sup>10</sup> and international instruments<sup>11</sup>, which directly apply in Kosovo guarantee the equality before the law.

In February 2004 has been adopted the Anti-Discrimination Law<sup>12</sup> which aims at providing to the subjects the right to equality before the law and equal protection, equal possibilities to enjoy and exercise equal protection and rights from every discriminatory action or an action that encourages discrimination.

Unfortunately, so far, there is no significant improvement as regards implementation of this law. The problem is that the law does not contain clear description in the second chapter, which regulates procedures for initiation of discriminatory cases and it does not specify sanctions.

Article 7.1 of the law is not clear. It is not clearly regulated whether the discriminatory cases shall be handled and decided by the regular courts or by the administrative bodies. Even if we reach the conclusion that discriminatory cases will be handled by an administrative body, the law does not specify which body will handle such cases.

Also, the Article 7.1 and Article 7.2 have been drafted in an incomprehensible form. The manner of commencement of the procedure and the form of initiation, with a complaint or by a submission, is not clear. There is the same problem in the Article 7.3. At the same time, the law with such denomination, to whom Article 7.1 refers, does not exist.

Article 9 of the Anti-Discrimination Law, in the point 4 stipulates that the incomes gained as a result of imposition of punishments, which are foreseen by this law, shall be collected in a special fund which shall be dedicated for the legal aid which would be offered free of charge to the legal and natural persons, which complain as regards violation of the right to equal treatment. This Article is also unclear. There is no instruction for legal and natural persons whose discriminatory

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<sup>10</sup> The Article 24, Constitution of the Republic of Kosovo.

<sup>11</sup> The Article 22, Constitution of the Republic of Kosovo.

<sup>12</sup> The Anti-Discrimination Law no. 2004/3.

treatment is confirmed by a court decision and by which procedure they shall initiate request for indemnity.

Consequently, based on the current provisions of this law, it is not possible to understand how and where a certain procedure will start regarding alleged discrimination. All these factors contribute to practical non-implementation of the law, neither by administrative bodies nor by regular courts.

After the adoption of this law, the Ombudsperson Institution expressed its concern regarding aforementioned Articles of the Law, but no action has been taken towards amendment of these articles or issuance of administrative instructions, which would clarify procedures and sanctions related to the cases of discrimination.

Revision of the Anti-Discrimination Law, as well as amendment of the aforementioned Articles would provide a possibility that this law does not remain only a letter on the paper, indeed a law inapplicable in reality. Such action, which is urgently necessary, would prove the commitment and efforts of the authorities in charge, respectively efforts and commitment of the Assembly and Government, in providing equality and non-discrimination for all citizens of Kosovo, as it is guaranteed by the Constitution.

The rule of law is a basic principle for action of the domestic institutions. The existence of the clear and understandable laws for all is a precondition for rule of law. Even though, in Kosovo there is a sufficient legal base by which certain issues can be regulated; there are many cases of discrimination of certain categories, which come out as a consequence of this law. Lack of a meaningful law for regulation of issues in a right manner creates legal vacuums as a consequence of which certain categories remain discriminated and mistreated by the law itself.

#### ***4.3.1. Lack of law on religious communities***

In such a discriminatory position continue to remain also religious communities in Kosovo. The status of the religious communities before 1999 was regulated by the Law on Legal Position of the Religious Communities. After this period, in order to realize their rights and to exercise their function and activities in accordance with the legal status, the religious communities were recommended to be registered as non-governmental organizations based on the UNMIK Regulation no. 1999/22.

The recommendations for the religious communities to be registered as non-governmental organizations based on the UNMIK Regulation no. 1999/22 are in contradiction with the Law on Freedom of Association in Non-governmental Associations, which excludes the right of religious communities to be registered as non-governmental organizations.<sup>13</sup>

In the Republic of Kosovo, in 2006 has been adopted the Law on Freedom of Religion in Kosovo. But, this law regulates only religious freedom in the country, thus, leaving apart the issue of regulation of the legal position of the religious communities.<sup>14</sup>

In all regional countries, the legal position, competencies and activities of the religious communities are regulated by the Law on Legal Status of the Religious Communities. The Republic of Kosovo

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<sup>13</sup> The Law no. 2009/03-L-134 on Freedom of Association in Non-Governmental Associations, Article 1, point 2.

<sup>14</sup> The Law no. 02/L-3, on Freedom of Religion in Kosovo.

lacks such law. Non-regulation of the legal position of religious communities in Kosovo causes comprehensive lose. The religious communities are unclear of their rights. By regulating their legal subjectivity, all religious communities registered would have the right to manage financial matters through bank accounts; they would be allowed to own property and premises, and to carry out other legal actions.

Except religious communities, such legal vacuum brings to an unpleasant position also the local public institutions, which in the absence of the complete legal infrastructure are confused at how to solve numerous requests of the religious communities. As a consequence of this, the public institutions are forced to offer informal and unlawful solutions.

Lack of a legal instrument for regulation of the legal position of the religious communities presents a discriminatory act and is in contradiction with the Article 38 of the Constitution of the Republic of Kosovo. Given that in Kosovo there are different religious communities; lack of complete legal infrastructure creates interreligious problems. The situation aggravates even more since the other religious communities feel and indeed are discriminated in contrast to the Serbian Orthodox Church, which thanks to “positive” discrimination enjoys a treatment other than the other religious communities in Kosovo. Regarding this issue, the Ombudsperson Institution has published report no. 145/2010<sup>15</sup>, through which it addressed the Assembly of the Republic of Kosovo. But, until now, the Ombudsperson Institution did not receive an answer regarding this report.

#### ***4.3.2. Discrimination of judiciary and discrimination from judiciary***

The separation of powers is a main pillar of a functional democratic state. This separation is manifested in three forms: legislative power, the executive power and judiciary, which are balanced and limited based on the responsibilities guaranteed to them by the Constitution. Unfortunately, in the Republic of Kosovo the position of judiciary comparing with the other two pillars of the state is still in an inferior position. Despite that the judiciary is listed as equal constitutional category, there is a political interference in Kosovo judiciary.

The judicial system is stipulated by law and it relies on unique functioning and organization of the functional hierarchy of a state. In the judicial system of Kosovo, for this reporting period, has been done re-nomination of Judges in order to provide better performance and effectiveness at work. Despite the improvement of the financial situation of Judges, which is to be welcomed, the judiciary still faces a big lack of the professional Judges, as well as lack of infrastructure. As a consequence of this, there is no significant improvement yet. Still, the Kosovo citizens face problems such as procedural delays in handling and issuing decisions on the cases, as well as lack of effective justice.<sup>16</sup>

Except aforementioned material and infrastructural problems, unfortunately we must emphasize that also in the judiciary itself there are cases of violation of the principle of the effective justice by the courts, which by issuing Decisions based on the inexistent facts damage citizens of Kosovo, which address these courts in order to demand justice. The cases of the Supreme Court of Kosovo are of extraordinary concern. These cases were related to pensions of the Kosovo Energetic Corporation

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<sup>15</sup> Report no. 145/2010, the Ombudsperson Institution - [www.ombudspersonkosovo.org](http://www.ombudspersonkosovo.org)

<sup>16</sup> For additional information on this topic please read the part of report on judiciary.

workers. The Supreme Court of Kosovo had approved revision filed by KEC (KEK), thus, it abolished the decisions issued by the District and Municipal Court, reasoning its decision based on an inexistent law.

The Constitutional Court of Kosovo approved the appeal of KEC (KEK) employees filed against the Decision of the Supreme Court of Kosovo, as grounded. The Constitutional Court found that there have been violations of the Constitution; therefore, the Constitutional Court issued a decision returning these cases for retrial in accordance with its Judgment.<sup>17</sup>

The Special Chamber of the Supreme Court of Kosovo during its work does not respect the rights of the citizens which are guaranteed by the Constitution and law. Despite that the use of Kosovo official languages is regulated by Article 5 of the Constitution of the Republic of Kosovo and the Law no. 02/L-37 on the Use of Languages, the Kosovo citizens are obliged to submit their requests with the Special Chamber of the Supreme Court in English language. By refusing to accept lawsuits and documentation filed by the citizens of Kosovo in official languages of Kosovo, this Court violates Article 5 of the Constitution of the Republic of Kosovo, as well as the Law no. 02/L-37 on the Use of Languages.<sup>18</sup>

Given that the translation of documentation from official languages of Kosovo into English language is expensive, many citizens of Kosovo do not address this Court to request realization of their lost right. In such case, the Kosovo citizens are not only discriminated as regards use of languages, but also are deprived of exercising the right to appeal which is guaranteed by the Constitution. In the context of this, it is worth mentioning the cases of so called “20 percent” of the amount of money gained from the privatization of public enterprises, which should have been delivered to the employees, as well as other property contests where many citizens due to the high costs of translation of documentation were not able to raise their issue with the Special Chamber of the Supreme Court.

#### *4.3.3. Age based discrimination in the field of employment*

The right to be free from all kind of discrimination constitutes one of the fundamental principles of the human rights. The discrimination happens when a person based on his/her age is treated less favourably than another person of a different age range under the same or similar circumstances.

Despite the fact that the Ombudsperson Institution has published a report concerning age based discrimination in cases job vacancies, such phenomenon continues to be present in the field of employment. It is surprising that such discrimination today encounters even in the decisions of the high level governing bodies of the public institutions. In this case, it is very important to mention the Decision of Prishtina University Senate on lowering the age limit on recruitment of professors at the University of Prishtina. In relation to this, the Ombudsperson Institution, except publication of the report,<sup>19</sup> based on its competencies in accordance with the Law on Administrative Conflicts

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<sup>17</sup> Decision no. KI 40/90, the web site of the Constitutional Court of Kosovo. The violations are related to Article 46 of the Constitution of the Republic of Kosovo, in conjunction to Article 1, Protocol 1, European Convention on Human Rights, as well as Article 31 of the Constitution of the Republic of Kosovo, in conjunction with the Article 6 of the European Convention on Human Rights.

<sup>18</sup> The Law no. 02/L-37 on Use of Languages.

<sup>19</sup> Report no. 170/2010- the Ombudsperson Institution-[www.ombudspersonkosovo.org](http://www.ombudspersonkosovo.org)

initiated the administrative conflict with the Supreme Court of Kosovo. By 31 December 2010 the Ombudsperson Institution did not receive an answer regarding this administrative conflict.

During the process of privatization in Kosovo many citizens who were employed in the public enterprises lost their jobs. They are discriminated because they do not have any legal or institutional support. High rate of unemployment, their older age, and health situation are the impassable objective obstacles to find a job. On the other side, most of them do not meet the criterions for older age pension, premature pensions for persons with disability or any other form of assistance, which would at least reduce their basic needs for living.

The Ombudsperson Institution raised this issue with the Ministry of Labour and Social Welfare, but until now the Ombudsperson did not receive any information on the measures taken in order to improve their situation. The only possibility offered to this category is application for the social welfare, and they will gain such assistance only after meeting the criterions for inclusion in the social scheme.

#### ***4.3.4. Discrimination of the persons with disabilities***

The persons with disabilities still remain a category vulnerable to all forms of discrimination. There are no signs of progress regarding the establishment of any infrastructure aiming to make them independent in the everyday's life.

The problems mentioned in the earlier reports, such as establishment of the infrastructure for easier movement of persons with disabilities remain unsolved. This kind of infrastructure is not regulated even in the most frequented public institutions such as: hospitals, schools, courts and Municipal Assemblies.

For concern is also the fact that even in the places where there are paths dedicated for movement of persons with disabilities, as the building in which the OIK is located, the paths were not build based on the standards, thus, the movement of persons with disabilities is impossible without help of the companions. As a consequence of this many persons with disabilities who depend on means for movement are prevented from enjoying their basic rights, which are guaranteed by the Constitution and laws, such as: education, health care, access to justice etc. Without their fault they remain illiterate, ill and without access to justice etc.

Many families, which are not able to provide shelter for themselves still, address the Municipal Assemblies asking for humanitarian shelter. Many Municipalities, especially the Municipality of Prishtina, even ten years after the war are failing to provide solution for the issue of sheltering for homeless families and the families living in poor economic conditions.

Since the beginning of 2010, the building with 60 apartments which is located in Prishtina remains abandoned. In September 2010 the Commission for housing issues of the Municipal Assembly of Prishtina declared vacancy for out-giving of the apartments for the social cases. This building contains only 60 apartments, but only within the first 15 days after the vacancy was declared the Municipal Assembly received 180 requests. Although, the Municipality of Prishtina received for handling the requests filed by the families under social assistance, it's still failing to establish a commission for delivery of the apartments.



In order to provide transparent process and based on the requests of the citizens of Prishtina who applied for humanitarian shelter at the Municipal Assembly of Prishtina, the Ombudsperson based on its mandate and competencies requested the Municipal Assembly of Prishtina to enable the Ombudsperson Institution to monitor the process of delivery of these apartments.

#### ***4.3.5. Discriminatory treatment by the Kosovo Property Agency***

Kosovo Property Agency (KPA) continues to apply double standards in handling and reviewing the cases on which it decides based on its competencies. The properties in the northern part of Mitrovica have not been released by the illegal usurpers since ten years. In this case, the KPA fails to realize its mandate. The Albanian owners of the properties in the northern part of Mitrovica are not yet included in the rental scheme, while the properties of Serbians and properties of the members of other communities are included in such scheme.

The citizens of Albanian ethnic background from the northern part of Mitrovica whose properties are usurped have filed requests with the Kosovo Property Agency. They are obliged to pay rent to the Kosovo Property Agency for using the properties of the Serbian owners, which are located in other parts of the town or other areas of Kosovo, which are under the administration of the above mentioned agency. The KPA does not provide such right for the Kosovo citizens of the Albanian ethnic background whose properties are usurped illegally in the northern part of Mitrovica.

As regard the above-mentioned situation, the KPA reasons its actions on the political reasons and lack of support by the Kosovo Police. Such reasoning does not justify failing of the KPA to realize its mandate for ten years, as well as to treat the complainants unequally, especially treatment based on the ethnic background which constitutes violation of the Articles 24 and 46 of the Constitution of the Republic of Kosovo.

Based on the aforementioned facts, the presence of discriminatory forms in the public institutions of the Republic of Kosovo is obvious. The public institutions, firstly the Assembly and the Government of the Republic of Kosovo, must have in their mind that the safeguarding the equality is one of the main principles of the rule of law. Therefore, this principle implies simultaneously legal restriction of the arbitrary power, not only through legal guarantees but also through concrete actions.

#### ***4.3.6. Gender equality***

The concept of gender based discrimination includes every distinction based on the gender, which may cause exclusion, restriction, endangering or prevention from enjoying and using, human rights and fundamental freedoms in the political, social, cultural, civic and other fields of life.

The constitution of the Republic of Kosovo emphasizes equality before the law for all citizens and the right to legal security without discrimination, despite the gender, language, religious and political orientation, cultural and ethnic background, social and economic status, sexual orientation

or any other citizen's status.<sup>20</sup> Also, the Constitution of Kosovo obliges all institutions to ensure implementation of the international conventions for human rights, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).<sup>21</sup>

Protection against discrimination in Kosovo, especially gender based discrimination, is regulated by the Law on Gender Equality. This law, at the same time, represents the legal base for the activities of the Unit for Gender Equality within the Ombudsperson Institution in Kosovo.<sup>22</sup>

Given the specifics of the Kosovan transition phase and based on the submitted cases and the investigations carried out by the OIK in the field of discrimination, it has been noticed that there are certain factors, which hinder the implementation of these legal and constitutional norms.

The position of the women in the labour market is very important for gender equality. The gender based discrimination in the labour market, especially during the employment phase is widespread phenomenon. The discrimination starts at the moment of publication of the job announcements when the gender is emphasized as one of the employment criteria or as a criterion for other positions. Unlawful dismissals, obstructing the women's improvement at work and lack of possibility for professional and continuous build up are just some of other aspects of discrimination.

Based on the registered complaints in the OIK, during this period, the discrimination is present in the public and private sector. The cases of discrimination at work are not often reported because of the fear of losing the job, lack of proper knowledge of own duties, as well as lack of case law for the cases of discrimination.

As regards discrimination of women in the field of education, the OIK in its previous reports has emphasized the big disproportion in gender sensitive data. According to the gender data, the number of illiterate women was much greater than the number of illiterate man. Based on the official data, for the reporting period, it is obvious that the number of children, respectively the number of girls dropping out of the schools, although is marking fall, remains very worrying. Also, the gender inequality is reflected in the education profiles, which prove the patriarchal form of separation of occupations on those for male and female.

The situation in the field of healthcare is also difficult. Inability to enjoy the right to health care and social security due to the poor economic conditions in generally and also due to the legal requirements creates the possibility for occurrence of discrimination in this field.

The OIK received complaints filed by women. The complaints are related to discrimination by the Ministry of Health and the Ministry of Finances regarding medical treatment abroad. In the cases when the Ministry of Health decided positively, indeed it has given the instructions that the female patient should be treated abroad; the Ministry of Finance did not implement such instruction reasoning that there are no financial means. The lack of coordination between these two Ministries represents violation of the right to health care protection to the persons to whom such right has been recognized by the same Government.

Regarding gender discrimination, even the judiciary is not immune. The OIK, in this period, has received a number of complaints related to delays of judicial processes. The largest number of them was related to property problems. Indeed, given the tradition in Kosovo regarding the property

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<sup>20</sup> The Constitution of the Republic of Kosovo, Article 3.

<sup>21</sup> The Constitution of the Republic of Kosovo, Article 22.

<sup>22</sup> The Law no. 2004/2, on Gender Equality, adopted by the Assembly of the Republic of Kosovo on 7 June 2004.

rights within the family, it is known the fact that the women in Kosovo waive from their property rights in the favour of male family members. While, in the cases when the female family members receive their part of inheritance, this in most cases becomes a cause of disruption of family relationships in the Kosovan patriarchal family.

A positive and encouraging movement for this reporting period is organizing several round tables and seminars. Except actualization of the issues related to this filed, the experts have been demanding amendment of some legal provisions of the Law on Inheritance aiming at the improvement of the women's position in the process of inheritance and enjoyment of the rights to property.

Regarding from the aspect of gender equality, unfortunately, there is still a big distinction regarding information and awareness between the women living in the rural areas and those living in urban areas. This is noticeable based on the complaints lodged with the OIK. But, such distinction is noticeable in all other fields of life. The manner of education and establishing the family relationship in the Kosovan society, especially in the rural areas, which is based on the patriarchal tradition, represents the fundamental obstacle for raise of the awareness of the women in the society.

Family violence is not an unknown phenomenon. Such phenomenon has always been present in every society. Such phenomenon is present in the Kosovan society as well. After the war, the family violence has been qualified as a criminal offence and sanctioned by law. Such qualification is encouraging for the positive movements in the future.

The family violence represents one of the worst violations of the human rights and it constitutes the base for discrimination of women. The concept of violence primarily is associated with physical violence. But, it is encouraging that lately the violence is being regarded and treated from the economic, psychological, sociological and cultural aspect. Very often, the victim's economic dependence and emotional link with the perpetrator of the violence hinder victim's position. Thus, the victim very often does not report the case to the relevant institutions.

Another important problem and serious obstacle as regards reporting the cases of family violence to the relevant authorities is the fact that the family violence in these areas is recognized as a private issue, not as a public issue and as such it must remain within the family.

The OIK has registered several complaints related to family violence. The worst case has been reported by the Centre for Protection of Women and Children (CPWC) in Prishtina. CPWC has requested from the OIK cooperation and monitoring of the judicial process in this case. The victim of the family violence in this case was an 18 year old girl, who was sexually abused by her own father from 2004 until 2008, indeed till the moment when the girl appeared at the Kosovo Police. The girl has been placed in a safe house. The OIK has monitored the judicial process in regular basis. The OIK representatives monitoring this case have contacted the Prosecutor, the Judge, and the victim. The trial ended in December. The perpetrator of the criminal offence has been sentenced to 15 years of imprisonment.

Another, new phenomenon of the family violence in the Kosovan society is the family violence where the men are victims. Of course, the number of men victims is much lower comparing with the number of cases of family violence in which the women are victims. The OIK registered two

cases of such violence. OIK has reacted at the relevant state bodies, respectively at the Police and Court regarding investigation of these cases.

Another one incomparably greater challenge for the public institutions of Kosovo in the field of gender equality, which needs to be improved, is the family violence and trafficking in persons.

Therefore, based on the current situation in the field of gender equality in Kosovo and based on the aforementioned, it is an obligation of all public institutions, especially the obligation of the Government of Kosovo to take into account the following recommendations during the drafting of the plans, action programs and allocation of budget:

### **Recommendations:**

- *To implement the quote established by the Law on Gender Equality, which states that the percentage of women in the decision-making positions in the governing bodies at all levels should be at least 40 %,*
- *The Government of Kosovo to develop the programs and affirmative measures for involvement of women in the labour market;*
- *The Ministry of Social Labour and Social Welfare, the Ministry of Education, Science and Technologies to encourage educational programs for continuous qualification of women in accordance with the needs of labour market;*
- *To implement the program for training the employees of the institutions, at the local and central level, which deal with the human rights and the issue of gender equality;*
- *To organize the additional trainings for the employees, which deal with the issue of family violence, the issue of women who are in charge of taking care of their own families, especially the issue of older women, who live alone;*
- *The Government of Kosovo to initiate immediately adoption of the Law on Social and Health Care in Kosovo;*
- *To activate the issue of financing safe houses and SOS phone calls for the victims of the family violence;*
- *To make operational the Units for Gender Equality in the Municipalities and to strengthen these units at all levels;*
- *To provide inclusion of the gender statistics in the state bodies and institutions of the Republic of Kosovo.*

#### 4.4. *The right to life*

The right to life is a fundamental right and the first condition for existence of all freedoms and other rights. The human and the rights are born together. The right is not given or donated. Such right is protected since the moment of conception. This right excludes arbitrary deprivation of life.<sup>23</sup>

ECHR strengthens this right by emphasizing the general obligation of the state for legal protection of life. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary.<sup>24</sup> Regarding the use of term “*absolutely necessary*”, a deep and convincing analyze in relation to necessity of acting and regarding the means used is necessary comparing to what is usually applicable by a state in a democratic society.<sup>25</sup>

A democratic society, which Kosovo is aiming to achieve, outlines the right to life in a broad sense towards liberty, security, welfare, as well as a number of social conditions. In this respect, it is encouraging the fact that there is continuous raise of security and freedom of movement for development of political, economic and social activities, except in the northern part of Kosovo.

However, in Kosovo the crime appears in various forms, grave forms which affect the right to life. Some of the forms affecting the right to life are crimes committed based on retaliation or blood feud, conflicts based on the property problems, crimes against moral, crimes related to various forms of trafficking, as well as to drug trafficking and trafficking in persons. Such a worrying phenomenon calls on the authorities to take the immediate measures of legal character, aiming at combating and preventing such phenomenon.

The particular concern for the Ombudsperson represents the lack of investigation of reported cases in relation to violation of the right to life. OIK during this reporting period did not receive any complaint regarding substantive aspect of the right to life. While in the procedural issues, were noticed obvious problems. The complaints are related to lack of investigation by the public authorities to shed light on the cases. OIK during this year has published an individual report regarding lack of effective investigation by the public authorities.<sup>26</sup>

The Ombudsperson, after reviewing this case reached the conclusion that the violations of the right to a fair and impartial investigation have occurred. The Ombudsperson reminds that ECHR expressively states “*Everyone’s right to life shall be protected by law.*”<sup>27</sup>

The European Court of Human Rights (ECHR), considered that “the fact that the authorities are aware of committed crime obliges the states to carry out effective investigation under article 2 (ECHR) on the circumstances regarding the case of death”<sup>28</sup>, and any investigations conducted should have been capable to lead to the identification and punishment of those responsible.<sup>29</sup>

The essential aim of such investigation is to ensure effective implementation of the domestic laws which protect the right to life, even in the issues where the agents or state bodies are involved and to

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<sup>23</sup> *The Constitution of the Republic of Kosovo*, Article 25.

<sup>24</sup> *ECHR*, Article 2.

<sup>25</sup> *ECHR*, Articles 8 and 11.

<sup>26</sup> *The case Q.B., A. 1546/2004.*

<sup>27</sup> *ECHR*, Article 2, paragraph 1.

<sup>28</sup> The case of *Tanrikulu vs. Turqisë*, on 8 July 1999 and the case *Denizi et alia against Cyprus*, on 23 May 2001.

<sup>29</sup> The case *Ogur vs. Turkey*, dated 20 May 1999).

ensure their accountability for the deaths, which accrued under their responsibility. The form of the investigation that will fulfil these goals can vary depending on the circumstances. However, despite the form of the investigation, the authorities should undertake legal actions at the moment that the issue occurs.

The investigation must be efficient in order to conclude whether the force used in such issues is justified or not, as well as to identify and punish responsible persons. This is not only an obligation to extract results. This is a mean to shed the light on the case. The authorities should undertake all necessary steps and means at their disposal to provide evidence related to incident including amongst others: eye witnesses, forensic evidence and when necessary to carry out autopsy in order to provide precise and complete data on injuries and to make an objective analyse of clinic findings including the cause of death. Any failure to carry out the investigation which damages the determination of the cause of death would risk falling in contradiction with this standard.

For the same reasons ECHR also requests a sufficient element of public surveillance in regard to the investigation and results in order to provide practical accountability. The level of such public surveillance may vary from case to case. However, in all issues, the relative of the victim should be included in the procedure to the extent which ensures a process that protects his/her legitimate interests.<sup>30</sup>

The role of the Ombudsperson is only to sensitisation and to encourage the public and state administration of the Republic of Kosovo to fulfil its duties in protecting the rights of affected persons.

The Ombudsperson notices that even 10 years after the end of the war, the complainants which are affected by the lack of the investigation of the relevant authorities do not have at their disposal adequate means which would provide to them compensation of damage for the suffering caused to them.

Based on the aforementioned, the Ombudsperson recommends significant improvement of transparency and quality of legislation process, not only to offer to Kosovo a sound legal framework, but also to improve confidence on the legal system.

Active and effective management of criminal proceedings is essential for the rule of law. When the Courts and Prosecutions fail to protect the rights of the parties in an adequate manner during the administration of these procedures then this is not only about fall of efficiency of the judicial system but also about the loose of confidence of citizens in the legal system in generally.

The Ombudsperson also recommends providing all necessary conditions for efficient implementation of investigations for protection of the rights of victims, avoiding the unnecessary procedural delays and approval of legal requests of the complainants in legal proceedings.

The Kosovo Judicial Institute should continue training Judges and Prosecutors on criminal issues regarding investigation of criminal offence and trials related to such offences.

To provide to the citizens adequate legal remedies for realization of compensation for damages caused in the cases of failure of the competent public institutions to investigate and to shed the light on the criminal cases and to identify and punish the perpetrators of such criminal offences.

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<sup>30</sup> The case *Guleç against Turkey*, Decision, dated 27 July 1998, paragraph 82. The victim's father was not notified on decisions not to proceed legally; *Ogur vs. Turkey*, decision, date 20 May 1999 paragraph 92, the victim's family had no notification for the investigation and Court documents; *Gal vs. Turkey*, decision, date 14 December 2000, paragraph 93.

Up to the establishing such mechanisms, the legal system of the Republic of Kosovo will not be in accordance with the internationally recognized standards in relation to implementation of the Article 2 of the ECHR, as well as Article 25 of the Constitution of the Republic of Kosovo.

#### ***4.5. Prohibition of torture or inhumane or degrading treatment***

The Constitution of Kosovo, the Criminal code of Kosovo and other international instruments guarantee that “*No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment*”.<sup>31</sup>

The term torture implies any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed.

Also during the past year the Ombudsperson Institution has continued monitoring implementation of local and the international legal provisions related to protection from torture, which are applicable in the Republic of Kosovo. During the 2010, regarding violation of this right OIK registered 7 (seven) cases which are under proceedings. Based on the registered complaints and situation in Kosovo in generally, the Ombudsperson notices no obvious changes; indeed it notices an unsatisfactory stability as regards this issue.

On 5 July 2010 the Ombudsperson published a report, regarding the events that occurred as a result of police intervention at the Headquarters of the Movement “Self-determination” in Prishtina aiming at arresting Mr. Albin Kurti. The ex officio investigations were focused on behaviour of the Kosovo Police during and after the intervention. Based on the conducted investigation, the Ombudsperson pointed out that the Kosovo Police has violated local and international provisions which are applicable in the Republic of Kosovo.<sup>32</sup> The report addressed the high level state officials, such as: the President of the Assembly, the Prime Minister, and the Minister of Interior, Parliamentary Committee on Human Rights Gender Equality Missing Persons and Petitions, and the Kosovo Police Inspectorate.

The Ombudsperson recommended<sup>33</sup> to the relevant authorities to start urgent investigations and to bring before the justice the persons who were exceeding their competencies and who violated human rights. On 9 November 2010 the Ombudsperson has been informed in written by Kosovo Police Inspectorate that an investigation is going on in accordance with the Law on Police.

Also, during the reporting period the OIK has continued to monitor in regular monthly basis places where the persons deprived of their liberty are held; detention centres, correctional centres and jails. The representatives of the Ombudsperson met with the persons held in such centres. They received

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<sup>31</sup> See Article 27 of the Constitution of the Republic of Kosovo, Provisional Criminal Code of Kosovo, Convention on Protection of Human Rights and Fundamental Freedoms, Rom, 4.XI.1950; Universal Declaration on Human Rights, 10.12.1948, the International Covenant on Civil and Political Rights, 2200 A (XXI), 16.12.1966.

<sup>32</sup> See the Articles 23 and 27 of the Constitution of the Republic of Kosovo; Article 2.1 section b and Article 12.2 of the Law no. 03/L-035 on Kosovo Police, Article 5 of the Universal Declaration on Human Rights, Article 3 of the European Convention on Human Rights, Articles 7 and 10 of the Covenant on Civil and Political Rights.

<sup>33</sup> The *Ex officio* report no. 207/2010, regarding the police intervention at the Headquarters of Movement “Self-determination” aiming at arresting of Mr. Albin Kurti.

their written complaints that were placed in the complaining boxes placed in these centres. Accesses to these boxes have only staff members of the Ombudsperson. Recommendations made based on the received complaints and their concerns were forwarded directly to the authorities of these institutions by the Ombudsperson staff members. The cooperation of the OIK and its representatives who monitor such places with the authorities, as well as reception of recommendations was at a satisfactory level.

Within the monitoring of the National Elections in the Republic of Kosovo, an OIK team monitored the election process in the Jails and detention centres. The process went without problems and there were no serious remarks regarding election process, except remarks as regards voting at Peja detention centre. At this polling station, initially the prisoners were allowed to vote with expired identification documents, but after the intervention of OIK observers at the Office of Municipal Election Commissioner such uncertainty has been avoided.

The most of complaints received at the detention centres were related to Court Decisions; respectively these were cases waiting for final Court verdict. While, the largest number of complaints received in Jails were addressed against the Panel on Conditional Release and complaints regarding medical treatment.

Based on the information provided from Jail authorities at the reporting moment, the number of prisoners against which the indictment is filed and who are waiting for a Decision is 152, while the number of cases pending a final decision for sentences from 5 (five) months to 3 (three) years is 111. On 13 October 2010 the representatives of the Ombudsperson Institution met the Chairmen of the Judicial Council. They expressed to the Chairmen their concern regarding this situation. The same concerns were continuously pointed out at the relevant authorities, especially during the meetings with the Presidents of the respective Courts.

On 8 September 2010, the Ombudsperson received in a visit the leader of the Kosovo Jail health system and his deputy. According to the leader of the health system the treatment of the prisoners in the aspect of health is approximately the same as in the public institutions.<sup>34</sup> But, he raised the concern regarding weaknesses of the Law on Execution of the Penal Sanctions<sup>35</sup> and the need for completion of this law. Continuous cooperation with this service is a good example of cooperation between public institutions.

On 15 September 2010, the Ombudsperson visited Correctional Centre in Smrekovnicë. This centre started functioning on 28 November 2009 after the handover procedure between the French KFOR troops and local authorities. Despite the big efforts of jail directorate, especially the director in charge of this centre to improve the situation, this centre continues to face various functioning problems, especially numerous infrastructural shortages.

During the regular jail visits, the representatives of the OIK noticed renovations that were done in these centres. Renovations in the sectors 5, 7 and 8 in Dubrava jail are of a satisfactory level. Also, it is worth mentioning the construction of a new premise for the convicted – protected witnesses. While, setting up the system of observation cameras in order to prevent negative phenomenon's is to be welcomed.

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<sup>34</sup> See the annual work report of the jail health system of Kosovo for 2010, *Correctional Service of Kosovo*.

<sup>35</sup> The Law RA 2004/46 on the Execution of Penal Sanctions.



The regular visits were done also at Lipjan Correctional Centre. All the problems and concerns raised by the prisoners and received complaints were forwarded to the authorities of Lipjan Correctional Centre and other relevant authorities as well. Most of the concerns are related to decisions of the Panel on Conditional Release. In this respect, except remarks raised by the prisoners, also the jail authorities and OIK had continuous remarks.

Also at the Lipjan Correctional Centre were done some renovations, such as: the kitchen, observations posts, new room for visitors and recreation hall in the female sector.

On 6 December 2010, the representatives of the OIK met with the coordinator of the Panel for Conditional Release aiming at forwarding to him the concerns and numerous complaints that OIK receives. The purpose of the meeting was to forward to him our interest to monitor their sessions, similar to monitoring the Court sessions. Although the meeting was considered as successful, and we are waiting to see how this Panel will act in the future, but so far there was no concrete action taken.

Within the Optional Protocol of the United Nations Convention against Torture–OPCAT the signatory states are obliged to create a national mechanism for the prevention of torture (NPM), to perform independent inspections in the places where the persons deprived of their liberty serve their sentence including jails, detention centres, centres for juvenile offenders, police stations, emigration centres and all other places where the persons deprived of their liberty are held. This mechanism should be a public, independent institution established by the National Assembly of the state. As a part of a mechanism, depending on the form and manner of organization can be one or more organizations from the civil society which deal with the protection of human rights. NPM should be established in order to improve monitoring of all public premises where the persons deprived of their liberty are held and there can be no justification for avoiding an active and effective actor of the civil society engaged in this aspect. Establishing such mechanism would improve Kosovo's situation as regards respect of human right in accordance with the international standards for protection of human rights. By establishing such mechanism, Kosovo would have a regular, independent and permanent controlling mechanism, which would be independent from local and international political influences.

The Ombudsperson is working very closely with the civil society regarding this issue. In cooperation with the Kosovo Rehabilitation Centre for Torture Victims (KRCTV)<sup>36</sup> and Council for Defence of the Human Rights and Freedoms (CDHRF)<sup>37</sup> the OIK is engaged in establishing the working committee which would proceed to the establishment of the NPM in the aspect of establishing necessary legal infrastructure and establishing the functional action policies in the spirit of the international instruments. So far, this working committee supported by OSCE<sup>38</sup> and the Office of UNHCHR has prepared the cooperation agreement.<sup>39</sup>

Given the current situation in this field, the Ombudsperson **recommends**:

- *Organising the seminars or training courses for the institutions where the persons deprived of their liberty are held aiming at expanding the knowledge on human rights, especially the field of*

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<sup>36</sup> Web site: [www.krct.org](http://www.krct.org)

<sup>37</sup> <http://www.cdhrf.net>

<sup>38</sup> <http://www.osce.org/kosovo>

<sup>39</sup> On 10 May 2011 in the presence of the representatives of the Assembly and the Government of the Republic of Kosovo the OIK, KRCTV and CDHRF signed a cooperation agreement for establishment of a working committee.

*protection from torture which are guaranteed by the international instruments who are directly applicable in Kosovo.*

- *To respect and implement without any delay recommendations of the Ombudsperson addressing the relevant authorities on the respecting of the known standards on human rights and the rights of persons deprived of their liberty.*

#### **4.6. The rights of the accused persons**

The rights guaranteed by the Constitution expressly demand that every person accused of a criminal offence enjoys minimum rights, such as: to be informed promptly in a language which he understands of the nature and cause of the accusation against him; to be informed on his rights based on the law; to have adequate time and facilities for the preparation of his defence; to have the free assistance of an interpreter if he cannot understand or speak the language used in court; legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free, not to be forced to testify against oneself or admit one's guilt.<sup>40</sup>

The international and regional instruments in the field of human rights, which are directly applicable in the Republic of Kosovo<sup>41</sup>, guarantee the rights of the accused.<sup>42</sup>

The Provisional Criminal Procedure Code of Kosovo (PCPCK) in several Articles sets forth the rights of the accused.<sup>43</sup> Starting from fundamental provisions, Article 5, of the Criminal Procedure Code sets forth the right of the accused to be entitled to fair criminal proceedings conducted within a reasonable time; Article 11 sets forth that the accused shall be informed in an language that she/he understands and in detail, of the nature and details on the reasons of accusation against him; Article 73 and 74 set forth details for engagement of a defence counsel<sup>44</sup>.

The Ombudsperson during this reporting period has monitored detention facilities where the persons accused of committing various criminal offences are being held and it has paid regular visits to these detention and jail facilities, such as: detention centres of Lipjan, Dubravë, Gjilan, Prishtinë, Mitrovicë and Prizren.

During the regular visit to Lipjan detention centre on March 2010, the OIK officials were informed by the Detention Centre Director on his decision to put in one holding cell three detainees, although the holding cells are foreseen for two persons only. Such action has been taken by reasoning that in such manner, the social control would be increased and would impact decrease of self injury cases, or even cases of suicide, which occurred in the past. Such action is in contradiction with the volume and surface of the holding cell space allowed by law, but his reasoning had a pragmatic logic. The

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<sup>40</sup> The Constitution of the Republic of Kosovo, Article 30.

<sup>41</sup> The Constitution of the Republic of Kosovo, Article 22.

<sup>42</sup> The Universal Declaration on Human Rights, Article 11; International Covenant on Political and Civil Rights, Article 14; European Convention on Human Rights, Article 6.

<sup>43</sup> The Regulation no. 2003/26.

<sup>44</sup> The European Court on Human Rights, the *Case of Luedicke, Belkacem and Koç v. Germany* (Application no. 6210/73; 6877/75; 7132/75) on 28 November 1978, regarding the right of the accused to have free assistance of an interpreter in case he cannot understand the language of the court, concluded that the Republic of Germany has violated Article 6 paragraph 3 (e) of the European Convention on Human Rights when it ruled that the accused must pay the translation services fee.

practical implementation of this decision will prove its effectiveness. The situation in this centre will be monitored regularly and based on the results we will act in accordance with the law.

Due to the unsolved cases by the Courts, many detainees are forced to stay longer in detention centres in which they do not have sufficient space and activities. Such conditions may impact their rehabilitation possibilities. Several persons are being held in detention on remand even few years after the indictment. Lipjan Detention Centre works with almost full capacity. This centre has the capacity to accommodate 150 persons. There were 148 detained persons placed in this centre.

The Ombudsperson registered a case no. 271/2010 on 26 October 2010 in Dubrava jail. The Ombudsperson notices that the complainant since several years has been waiting for his case to be reviewed by the Supreme Court of Kosovo and for the decision to enter into force. As a consequence of lack of issuing the final Judgment, he had no possibilities to enjoy none of the benefits, which are provided by correctional service. The Ombudsperson received incomplete answer from the Supreme Court regarding this case. Several meetings were held with the Chairman of the Judicial Council and the President of the Supreme Court, but except the promises that the “case will soon be reviewed”, so far, no action has been taken towards reviewing this case.

Unfortunately, this is not the only case. Based on the report of the Correctional Service, in Dubrava jail, since more than two years, 11 detainees are waiting for the final decision, another two detainees are waiting for a final decision, one in Pejë and one in Mitrovicë.<sup>45</sup>

The Ombudsperson, notices with concern that the Kosovo Police and some audiovisual Medias, electronic and written, in few cases of arrests have violated the principle of presumption of innocence.<sup>46</sup> The TV stations broadcasted images of arresting moments, images of police operations, in which were seen the handcuffed arrested persons accompanied by the police officers. These unlawful actions damage the prestige of the accused persons and cause serious social burdens and traumas, especially for a closed family circle. For this reason, the Ombudsperson addressed the RTK and Kosovo Police by a letter drawing their attention not to repeat such actions in the future.

The Ombudsperson, as in the previous reports notices that defence counsels, appointed *ex officio* and even those chosen by the accused in few cases do not offer effective legal representation. Such behaviour is accompanied with serious consequences for the entire judicial process, it even reflects on the Court’s decisions in the detriment of the accused.

Unreasonable failure of the legal representative of the accused person to participate in a Court session or unreasonable requested for adjournment of the sessions constitute violation of the professional obligation of defence counsel towards his client and the Court. By acting in such manner, they directly impact the right to a fair trial within a reasonable time in terms of Article 6, paragraph 1 of the European Convention on Human Rights.

Based on the aforementioned, the Ombudsperson recommends the following:

- The Government of Kosovo, respectively the Ministry of Justice to draft a project for construction of the new detention centres and correctional centres or to extend the existing

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<sup>45</sup> Kosovo Correctional Service report “Report for the period of time January-September 2010”, Mr. Resmi Hoxha, Correctional Service of Kosovo Commissioner.

<sup>46</sup> See ECHR, Article 6 paragraph 2, “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”.

centres in order to provide sufficient space for accommodation of the accused persons as required by law.

The current number of the accused in most of the detention centres is not in accordance with the UN Standard Minimum Rules for Treatment of Prisoners and European Prison Rules, which request the authorities to keep the prisoners in the individual holding cells.<sup>47</sup>

- The Kosovo Police and Medias to pay more attention to respect of the principle of presumption of the innocence, because broadcasting images of the arresting moments of the accused affects their dignity and somehow it prejudices their innocence.

#### ***4.7. The right to a fair and impartial trial***

The right to a fair and impartial trial is a part of fundamental human rights safeguarded by the European Convention on Human Rights.<sup>48</sup> The right to a judicial procedure in the criminal and civil issues is the key element of definition of the rule of law in a state.

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Publication of the judicial decisions may be restrained in accordance with the law and in the case that such publication would damage interests of justice.

The right to a fair and impartial trial is foreseen also by the Constitution of the Republic of Kosovo, as well as by penal and civil legislation. The Kosovan lawmaker in the Constitution of the Republic of Kosovo has made an extensive and comprehensive interpretation of this right in terms of Article 6 of ECHR.<sup>49</sup>

Since the Republic of Kosovo is not a signatory party to the ECHR, the citizens of Kosovo who believe their right to a trial within a reasonable time has been violated, may not submit their complaint to European Court of Human Rights (ECHR).

The right to a fair trial is also set forth by the Law on Courts of the Republic of Kosovo,<sup>50</sup> Provisional Criminal Procedure Code<sup>51</sup> and by the Law on Contested Procedure.<sup>52</sup> According to the provisions of the aforementioned laws, the OIK concludes that the right to a trial within a reasonable time protects the rights equally, in the criminal and civil proceedings.

The right to a fair and impartial trial is a widespread concept which has evaluated by the time in progressive sense and from the case law of the European Court of Human Rights, which in the interpretation/implementation of the Article 6 of ECHR creates the positive sense of human rights.

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<sup>47</sup> In the case of *Kallashnikov vs. Russia* (application no. 47095/99), the Court found that “the applicant's conditions of detention, in particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in such conditions, amounted to degrading treatment”.

<sup>48</sup> The European Convention for the Protection of Human Rights, Article 6, paragraph 1.

<sup>49</sup> The Constitution of the Republic of Kosovo, Article 31.

<sup>50</sup> The Law no. 03/L-199 on Courts, Article 7, Official Gazette of the Republic of Kosovo no.79, 24 August 2010.

<sup>51</sup> Provisional Criminal Procedure Code no. 03/L-199, Article 7 paragraph 2.

<sup>52</sup> The Law no. 03/L-006 on Contentious procedure, published in the Official Gazette of the Republic of Kosovo, no. 38, 20 September 2008, Article 10, paragraph 1.

It is not enough to guarantee these rights only formally through legal acts, but they must also be guaranteed in such manner that could be implemented in practice and at every moment.

In this reporting period, OIK has received a considerable number of complaints. The largest number of complaints was related to the alleged violations of the right to a fair and impartial trial, especially the right to a trial within a reasonable time.

There were also complaints related to doubts as regards fairness of Court decisions, as well as complaints regarding non-execution of the Court decisions and delays on issuing the Court decisions.

Most of complaints filed by citizens were related to procedural delays in contests related to property rights and obligations. In these cases, it takes to the relevant Court 5 to 6 years to issue a decision. In all of these cases occurred such violations. The Ombudsperson commenced investigations and requested information from different Court instances, regarding actions taken for resolution of these issues.

Based on the responses received from various Court instances, the Ombudsperson is not satisfied with the level of treatment of its recommendations by the judiciary. The Courts, in most of their responses in written, emphasize that “the case will be reviewed based on the scheduled time” or that “the case is in the schedule to be reviewed”. The Ombudsperson is very concerned as regards reaction of Courts regarding correspondence between the institution and Courts, in particular as regards such responses stating that the timings of reviewing the issues of citizens are unknown. Of course, the Ombudsperson is aware and it takes in to account the fact that the Kosovo Justice is overburdened with old cases, as well as that the judiciary is lacking the necessary staff for speeding up the procedures.

As a consequence of difficult situation in judiciary, there are many cases when the issues raised by the citizens were rejected without being reviewed as a consequence expiration of the statutory limitation period. The Municipal Prosecution of Ferizaj, in the case of citizen XH.R from Ferizaj filed a lawsuit with the Municipal Court of Ferizaj on 19 February 2005. The damaged citizen XH.R in January 2011 was informed by the Court through a decision that his lawsuit has been rejected. The number of cases whose period of statutory limitation expired is not known precisely since there are no published data. This should be done by the Kosovo Judicial Council as a Constitutional institution in charge of managing the judiciary.

The citizen R.G, from Prishtina on 24 August 2010, filed a complaint with the OIK because the Ministry of Transport has taken his land in March 2009 for construction of the road M2 Fushë Kosovë-Arllat. This Ministry expropriated the land without considering the procedures for expropriation and compensation based on the law.

On 17 September 2010, the Ombudsperson aiming to investigate the case sent a letter to the Ministry of Transport. On 18 October 2010 the Ministry of Transport informed the Ombudsperson that the case is under compensation procedure and has been forwarded to the Ministry of Economy and Finances (MEF) for estimation and compensation. On 19 October 2010 and 27 October 2010 the representative of the Ombudsperson contacted the Director of Property Tax Department within the MEF regarding situation of complainant's case. The MEF official declared that the complainant's file has not been completed by the Ministry of Transport in accordance with the law, therefore, on 20 October 2010 the case has been returned to the Ministry of Transport for

completion. Since the compensation of property has not been done through the administrative procedure, on 21 November 2010 the complainant has been informed that based on the law<sup>53</sup>, he may realize compensation through a judicial procedure.

The complainant, faced with such delay and negligence of the public authorities hesitates to do so, due to the lengthy procedures in the courts for reviewing the cases and unpleasant experience with the judiciary, since he already had one property contest filed with the Municipal Court of Prishtina, which lasted 5 years.

Difficult situation in judiciary and unsatisfactory situation as a consequence of unlawful procedural delays and unreasonable negligence by a part of the executive power have negative impact on the confidence of citizens in the justice system and the citizens put efforts for solution of their contests in non-institutional and unlawful forms.

Lack of sufficient number of Judges, financial motivation, assisting staff to ensure execution of Court decisions and low infrastructure are the main factors impacting increase of unsolved cases in the Courts of Kosovo. The situation in judiciary has led to a loss of citizen`s trust in the institutional and social justice and taking the justice by some individuals in their own hands. But, at the same time it constitutes one of the most serious violations of human rights.

Such serious violations of this right occur in the criminal proceedings. In these cases, the trials are delayed to an unreasonable and unlawful extent. Such delays impact more the cases pending for the trial in detention on remand, delays for confirmation of charges, scheduling the hearing sessions and issuing the Court decisions etc. The situation is very serious and difficult in Mitrovica region since the Court there does not function.

The implementation of the Law on Courts, in particular raise of the salaries of Kosovo Judges<sup>54</sup>, as well as promises to increase the number of Judges in accordance with the European standards, which implies that a state should have 23 Judges in 100 thousand residents, as well as big material and human capacity investments as promised by the judiciary are promising signs for improvement of realization of this right of the citizens based on the legal provisions.

The current situation in the local justice in the qualitative and quantitative aspect is also based on the request of the European Court of Human Rights for national authorities. The states must organize their legal systems in such manner that they function in accordance with the human rights standards. In the Republic of Kosovo such criterion has not been met yet, despite declarations and wishes.

Therefore, the Ombudsperson considers that the establishment of an independent judicial system, as well as its strengthening is the best guarantee for rule of law in Kosovo. A reform of judicial system, significant improvement of institutional and social position, as well as material position of the judiciary is necessary and inevitable.

The Judges in Kosovo must enjoy institutional and material security in order to carry out their legal obligation in a fair and complete manner, and without external influences. Also, the Judges must have the opportunity to make qualitative and independent interpretations aiming at restoring the confidence of citizens in the judiciary of Kosovo, which presents one of the three pillars of functioning of a democracy and a legal state.

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<sup>53</sup> The Law no. 031/1-139 on Expropriation of the Immovable Property, article 35, paragraph 2.

<sup>54</sup> The Law no. 03/L-199 on Courts, Article 29, Official Gazette of the Republic of Kosovo, no.79, 24 August 2010.

#### 4.8. *The right to legal remedies*

The right to legal remedies is a right set forth by domestic legislation,<sup>55</sup> which is also a request of the international legal instruments as well.

The Constitution of the Republic of Kosovo and in generally the penal, civil and administrative legislation guarantee to the citizens the exercise of the right to legal remedies against judicial and administrative decisions, which affect their rights or interests, in a manner set forth by law.

The right to legal remedies, which is also set forth by ECHR,<sup>56</sup> especially as regards time limits, should be guaranteed by the Courts and Administrative bodies at all levels.<sup>57</sup> Administration of justice within a legal limit time creates legal security and it contributes to rule of law.

Every citizen is entitled to legal remedies against every decision issued by the state public authorities. The exercise of the legal remedies is good opportunity for the public authorities to review issued decisions, to correct errors or eventual discrepancies, which can occur during the various proceedings.

In the judicial procedures, legal remedies and legal limit times for review of appeals against detention, determination of detention or extension of detention on remand, the appeal against court decisions, as well as exercising the irregular legal remedies are regulated and set forth by law.<sup>58</sup>

Also, the legal remedies, the legal limit time for proceedings and issuance of decision in the administrative cases are foreseen by the Law on the Administrative Procedure. According to this law, if upon the expiry of 30 days, no decision on the appeal has been issued by the competent administrative body, the interested party shall be given the right to address the court in accordance with the Law on Administrative Procedure.

Determination of the legal remedies and legal limit times enables prevention of injustice, abuse of authority and guarantees the principle of rule of law.

In this reporting period regarding judicial and administrative procedures, during the exercise of legal remedies the OIK has received 99 complaints filed by the citizens, from whom 35 are closed and 64 are still opened.

Based on the analyses of the complaints filed, based on the subjects, the OIK reached a conclusion that the largest part of them are related to Judiciary, Municipalities, Ministries and Public Enterprises. The complaints are filed due to the inefficiency of the legal remedies, respectively failure to review the complaints within the legal limit times and non-implementation of the administrative decisions.

A part of complaints of the citizens are indeed requests to the OIK to draft legal remedies, such as requests, appeals and lawsuits, aiming to protect their rights for which the complainants claimed have been violated. Also, some complainants requested the Ombudsperson to represent them in the

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<sup>55</sup> *The Constitution of the Republic of Kosovo*, article 32.

<sup>56</sup> *ECHR*, article 13.

<sup>57</sup> *The Law on Contested Procedure*, article 10.

<sup>58</sup> *Criminal Procedure Code of Kosovo*.

contests at the competent institutions. These requests came out due to the lack of knowledge on the Ombudsperson's competencies and as a result of citizens' trust in this institution. But, for the Ombudsperson is worrying the lack of citizen's trust on the work and justice offered by the competent institutions, especially by the judiciary and defence counsels of Kosovo.

In these cases, the complainants were advised to address the competent institutions of the state, such as the Commission for Legal Aid and CLARD Non-Governmental Association, which offers legal aid services.<sup>59</sup>

Based on the lodged complaints against judiciary related to legal remedies, they were mainly lodged against all Court instances, as well as against the Special Chamber of the Supreme Court regarding cases with the Kosovo Privatization Agency. The complaints of the citizens are mainly related to excessive duration of Court procedures for issuing a decision after exercising the right to legal remedies. This makes the legal remedy inefficient for protection of the human rights guaranteed by legal acts. Indeed, in this case there is no adequate normative instrument or an effective procedural legal instrument for protection of the right to legal remedies for review and issuance of decision within a reasonable legal limit time.

Also, a number of complaints were lodged against the state administration, such as the Ministries, Municipalities, but also against the public enterprises. The complaints lodged against the state administration are related to issuance of unlawful decisions to the detriment of citizens. The complaints were also lodged due to failure of the authorities to respect their own decisions, as well as due to non-compliance or non-implementation of decisions issued by the independent administrative institutions. The decisions issued by the Kosovo Independent Oversight Board have not been implemented by the state bodies at the central and local level. The citizens requested the Ombudsperson to use its legal authority and competencies to ensure implementation of decisions.

The Ombudsperson when it reached the conclusion that there have occurred violations of the right to legal remedies due to the unlawful actions or inactions of the public authorities commenced investigations in all cases of complaints lodged with the Ombudsperson related to administrative and judicial procedures. The Ombudsperson commenced investigations and requested information from the bodies of the administration and Courts of various instances regarding reasons for such delays.

The Ombudsperson, in accordance with the legal competencies after reaching the conclusion on violation of the right addressed through a letters the relevant public authorities requesting them to implement its recommendations aiming at elimination of human rights violations guaranteed by the Constitution and law.

The Ombudsperson concludes that in order to provide efficient legal remedy in terms of Article 13 of ECHR and to avoid violations of human rights and freedoms, the competent institutions should respect the legal limit time regarding the case or otherwise the state should provide the effective remedy when such violation occurs. This right has not been realized in accordance with the international and local standards. Therefore, the Ombudsperson recommends consequent implementation by the public authorities of the local and international instruments for exercise of legal remedies.

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<sup>59</sup> CLARD is a local NGO, established in 2007 as a successor of activities of Spanish NGO MPDL-The movement for peace has been active in Kosovo since 2002, financed by the Spanish Agency for Development and International Development (AECID), which were granted to the Agency by the Government.



#### **4.9. The principle of legality and proportionality in the criminal cases**

The principle of legality and proportionality in the criminal cases in all modern legal systems is raised to the rank of Constitutional principles. The principle of legality and proportionality as one of the principles of the criminal law is foreseen by the Article 33 of the Constitution of the Republic of Kosovo, as well as by the Criminal Code of Kosovo. This guarantees legal security and rule of law, so that the society and its values are protected by law, while the citizens and their rights, at the same time, are protected from arbitrary implementation of law. Thereby, is provided the base of a legal state, rule of law and democracy.

The principle of legality (*Nullum crimen sine lege, nulla poene sine lege*) is a fundamental principle of the criminal law from the perspective of protection of human rights and fundamental freedoms, justice and impartiality, which guarantees that no person can be punished in a arbitrary and retroactive way. This means, no one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence at the time when it was committed. In this respect, the European Convention on Human Rights in the Article 7.1 is very clear “*No punishment without law*”<sup>60</sup>.

The OIK is encouraged by the fact that the principle *nullum crimen, nulla poena sine lege* is adequately recognized in the legal system and during its practical implementation in Kosovo. Up to the date of this report, the OIK had not received any complaints with regard to the violation of this principle.

#### **4.10. Freedom of movement**

The freedom of movement is one of the fundamental rights, which belongs to an individual as a human being and it is guaranteed by the international instruments, such as Universal Declaration on Human Rights<sup>61</sup> and the European Convention on Human Rights and Fundamental Freedoms.<sup>62</sup> The Constitution of the Republic of Kosovo<sup>63</sup> in accordance with the guarantees of the personal integrity, safeguards the freedom of movement and choosing the place of residence, as well as the right to leave the place of residence<sup>64</sup>. The right of every citizen to change the place of residence, as well as freedom to leave and return to the territory of Kosovo is regulated in details by the special laws.<sup>65</sup>

Also, by the Constitution is foreseen that the citizens of Kosovo shall not be extradited from Kosovo against their will except for cases when otherwise is required by law or international

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<sup>60</sup> The ECHR, Article 7. 1 “*No punishment without law*”, “*No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed*”.

<sup>61</sup> The Article 13, the Universal Declaration on Human Rights.

<sup>62</sup> The Article 2 of Protocol no. 4, the European Convention on Human Rights and Fundamental Freedoms.

<sup>63</sup> The Article 35, the Constitution of the Republic of Kosovo.

<sup>64</sup> The same source of reference.

<sup>65</sup> The Law no. 02/L-121 on Dwelling and Emplacement.

agreements, while the rights of the foreigners to enter and stay in the territory of the Republic of Kosovo are regulated by special law.<sup>66</sup>

The freedom of movement implies the right to free movement in the entire territory of a state, without restrictions or unlawful interference. Regarding Kosovo in generally, this right is not fully enjoyed by the citizens.

During this reporting period, the number of physical assaults has significantly decreased. Despite reduction of the serious incidents of violence, cases of harassment, intimidation, the feeling of fear is still present in different areas of Kosovo, depending on the ethnic background. Harassment and intimidation does not cause bodily injury. It is very difficult to prove such case and very often is not taken seriously. But such incidents have negative impact in enjoyment of fundamental human rights, especially freedom of movement. Except this, the negative, cumulative and psychological impact on the citizens should not be skipped because these factors have also negative impact on the perception of security.

#### ***4.10.1. The freedom of movement of members of minority communities***

Although, the freedom of movement in the entire territory of Kosovo has improved significantly, in the aspect of quality and sustainability the situation varies depending on the location and region, ethnicity and on the political and security situation.

The members of the minority communities, which are small in number, such as Turkish, Bosnian, Ashkali and Egyptians have no problems to move in the entire territory of the Republic of Kosovo excluding the northern part of Kosovo and few Serbian enclaves in the eastern part of Kosovo, for instance in Ranillug and Korminjan. But, such restrictions do not apply for members of Goran community. As regards Roma community, besides the fact that they were totally displaced from many settlements in Kosovo during and after the war, they still feel endangered to move freely in many areas of Kosovo.

During the meetings with the members of the Serbian community, no matter enclaves where they live and improvement of freedom of movement, they always emphasize the feeling of insecurity and fear when moving along Kosovo.

The biggest improvements in the aspect of freedom of movement and interethnic communication are noticed in the area of Municipalities of Gjilan and Viti. The Serbians in this part of Kosovo move more and walk on the streets, visit shops, they go out for their daily needs and visit public services, they travel, trade in the market and sell their products and the people in the area have good interethnic relations. The improvement of situation is visible in the region of Prishtina, part of Prizren and Pejë, but the situation is different in the area of Gjakova and Mitrovica.

However, in few parts of Peja and Prizren regions (the Municipality of Klina, Istog and Suharekë) there is no complete freedom of movement for the members of the Serbian and Roma community. In these regions occurred even physical assaults against returnees.

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<sup>66</sup> The Law no.03/L-126 on Foreigners.

During this reporting period, in the Municipality of Klina accrued several incidents in which victims were Serbs. An old lady has been stoned two times. The Kosovo Police found the perpetrators of the incident. In the same area occurred robbery against Serbian properties. A house of one of the Serbian family in the village Petriq has been robbed and set on fire. Two busses carrying out humanitarian transport of minorities have been stoned.<sup>67</sup>

In the Municipality of Istog during the reporting period, in March occurred an incident in which the returnees of the village Zhaç were attacked and there are also many cases of usurpation of the agricultural land. The chairman of the community office in the village Osojan in the Municipality of Istog emphasized that despite the above-mentioned incidents, the freedom of movement in this Municipality is much better than in the past.<sup>68</sup>

In the region of Prishtina in October on the main road has been bitten up a Serbian men, age 52, because he was driving a vehicle with old number plate of Prishtina. He has been attacked while he was attempting to recover a technical problem in his vehicle. The incident has been reported to the Kosovo Police.

Attacks occurred also against believers and parsons of the Serbian Orthodox Church during travelling out the area of the Monastery. In October, in the region of Pejë were stoned busses and cars of the believers, which were returning from the inauguration ceremony of patriarch Irinej.<sup>69</sup>

However, the current situation and often incidents in various areas of Kosovo impact the commitment of the members of Serbian minority to stay, live and return to their own houses in these areas.

The Ombudsperson concludes that, threats of violence or the perception of insecurity is still present, which significantly hinders building the confidence of the Serbian minority towards majority community.

#### ***4.10.2. Freedom of movement of the Albanian community***

The situation in the north on Kosovo, in the region of Mitrovica continues to be difficult and unsustainable also during this reporting period. The Albanians and members of Turkish, Ashkali, Egyptian community and mainly those whose native language is not Serbian or those who are not of orthodox believe may not move freely in the northern part of “Ibër” river.

Such situation continues since 11 years. Such situation brought big consequences for the general stability of the security situation in the Republic of Kosovo. The security situation has deteriorated, especially in the recent months because of the murders committed by criminal gangs in the northern Kosovo.<sup>70</sup> Such situation continues to present a biggest political and security problem in the

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<sup>67</sup> The information was obtained from the meeting held on 23 November 2011 in the Municipality of Klina, at the community office.

<sup>68</sup> The information was obtained from the meeting with the official of the community office in village Osojan held on 23 November 2010, in the Municipality of Istog.

<sup>69</sup> Portal of the Serbian Orthodox Church <http://www.spc.rs/sr/>.

<sup>70</sup> On 7 September 2010 in “Kodra e Minatorëve” neighbourhood in Mitrovica has been killed on the front of his door the citizen Hakif Mehmeti.

Republic of Kosovo. The biggest threat to the Albanian residents in the northern part of Mitrovica present the organized criminal gangs supported by the Republic of Serbia<sup>71</sup>.

The OIK expressed its concern concerning the issue of freedom of movement for the residents in the northern part of Mitrovica, in the neighbourhood “Kodra e Minatorëve”. The Albanian residents of the above-mentioned neighbourhood complained as regards lack of freedom of movement.<sup>72</sup> In this case, the freedom of movement is directly linked to the right to freedom and security in terms of Article 29 of the Constitution of the Republic of Kosovo. The difficulties occur for the pupils to attend the classes, especially for those pursuing the lessons in the class 9 (ninth) since their school is located in the southern part of Mitrovica and they live in the northern part of the town. The same problems are facing also the medical staff working in this neighbourhood. Due to the security reasons they work only until 12:00 hours, after this period of time, for the Albanian residents there is no medical care till the next day.

Also, the freedom of movement and lack of physical security, amongst others, were the main complaints of the Albanian residents living in the villages Bistricë, Cerajë and Koshtovë, in the area of the Municipality of Leposaviq during the meeting between them and the Ombudsperson held on 15 July 2010. These residents complain that they may not use their land, which is located along the main road Mitrovicë-Leposaviq and that they cannot travel with their cars with number plate of the Republic of Kosovo. The only possibility for them to travel to Mitrovica is a bus, which often drives towards the town of Mitrovica escorted by Kosovo Police. In June this year, in the village Koshtovë entered in a provocative manner about 60 Serbian bikers.

The Ombudsperson expressed its concern addressing in written the Minister of the Public Administration and the Minister of Interior regarding lack of freedom of movement and security, as well as regarding inadequate living standard of the residents living there.

The President of the Municipality of Mitrovica also expressed his concern in written, as well as during his meeting with the Ombudsperson on 18 March 2010 regarding the risk of travelling for the Albanian residents despite cooperation with the Kosovo Police, EULEX and KFOR.<sup>73</sup>

On 1 September 2010 the Ombudsperson staff members visited “Kodra e Minatorëve” neighbourhood. They were informed by the residents on the lack of security, restriction of the freedom of movement, damages caused to their properties, physical assaults committed by the organized groups of persons of Serbian ethnic background. Also the school and medical staff working in the northern part of Mitrovica were in a difficult situation.

Regular reports of the officials of Mitrovica Municipality regarding security situation for the first quarter of 2010 mention lack of security and incidents caused by the Serbian parallel structures in the northern part of Mitrovica.<sup>74</sup>

The vice President of Mitrovica Municipality Mr. Riza Haziri during his meeting with the Ombudsperson on 6 December 2010 within the “human rights week” confirmed his concern as regards lack of security and restricted freedom of movement in the northern part of Mitrovica and Kosovo.

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<sup>71</sup> The Web page of the Municipality of Mitrovica, information published on 6 December 2010.

<sup>72</sup> The case filed with the OIK.

<sup>73</sup> The memorandum of Mitrovica Municipality no. 220, dated 20 August 2010.

<sup>74</sup> “Report on security situation during the three last months, situation until 8 November 2010.

Blasts, physical assaults, scrambles and a murder case that accrued on 7 September 2010 brought the situation to a critical and unbearable point. Such situation raised the concern of authorities, which as a response to this situation increased the number of mobile security patrols.

The officials of the UNMIK administration in the northern part of Mitrovica present a problem of particular nature. The UNMIK officials took an arbitrary and politically bias decision demanding interruption of fixing the road towards the village of Vidimiriq, as well as demolition of a house in this village, which is a private property of a Kosovo citizen.<sup>75</sup>

#### ***4.10.3. Public transport***

When speaking of public transport, there is no urban and interurban transport for all citizens of Kosovo. Public transport does not function in the areas with majority of Serbian and Roma community. They are still forced to use minivans, which transport travellers in the enclaves, as well as to use their own vehicles.

The only support for Serbians and Romas is so called humanitarian transport, which is organized and financed by the Government of Kosovo, the transport functions in the entire territory of Kosovo and serves for travelling of these communities. The members of Turkish, Bosnian, Ashkali and Egyptian community have no problems regarding freedom of movement and they can use public transport freely.

In the northern part of Kosovo, the public and private transport with number plate of the Republic of Kosovo does not function. This is a wild restriction of the freedom of movement for the Albanian residents in the northern part of Kosovo and other areas.

The Albanian residents face the problem of travelling by public and private transport with the number plate of the Republic of Kosovo in the northern part of the country, which legally is a part of the Republic of Kosovo. The same restriction is valid for citizens of the Republic of Kosovo who cannot travel on their own vehicles with the number plate of the Republic of Kosovo in the territory of the Republic of Serbia. But, the residents of the Serbian ethnic background from the Republic of Serbia or Kosovo may freely travel with number plate of the Republic of Serbia or with older number plate. The older number plates are not only unlawful but also are being used in a provocative manner.

Disrespecting the right to freedom of movement affects and restricts access to series of economic and social rights, especially the right to health care, education, employment possibilities, and access to property, social security, access to public and municipal services etc.

Based on the aforementioned, it is an obligation of the public authorities in Kosovo to provide to every individual the freedom of movement as required by law. In this aspect, efforts to develop protection measures must be put, which would give obvious results, so that all citizens of Kosovo without any restriction would completely realize the right to freedom of movement, which would on the same time contribute to building of confidence of all citizens on the institutions as regards providing protection, calmness and security.

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<sup>75</sup> Directorate for defence and rescue at the Municipality of Mitrovica, "Report on security situation during the three last months, situation until 8 November 2010"

#### ***4.11. The right of privacy***

The right of privacy is guaranteed by the Article 36 of the Constitution of the Republic of Kosovo and Article 8 of the European Convention on Human Rights. The right of privacy implies respect for private and family life, inviolability of residence, the confidentiality of correspondence, telephone calls and other communications.

On 29 April 2010, the Assembly of Kosovo adopted the Law no. 03/L-172 on Protection of Personal Data. The main purpose of this law is determination of the rights, responsibilities, principles and measures with respect to the protection of personal data and sets up an institution responsible for monitoring the legitimacy of data processing. But, as regards the right to privacy there is a lack of law which would provide legal security for the citizens.

For this reporting period, 1 January 2010-31 December 2010, as regards the right to privacy, the Ombudsperson Institution has received 5 (five) complaints in total which are related to various violations of this right.

##### ***4.11.1. Providing the documents related to acquiring the citizenship***

The Ombudsperson of the Republic of Kosovo paid a visit to his counterpart, the Ombudsperson of Macedonia. During the meeting the Ombudspersons of Kosovo and Macedonia discussed the problem of acquiring the citizenship, which are facing some of the residents of the Republic of Macedonia who are by origin from the Republic of Kosovo. The Law on citizenship of the Republic of Macedonia, currently in force, requires the persons applying for citizenship of this country to provide additional documents. Several requests for citizenship filed by the citizens of the Albanian background were rejected reasoning that they need to provide additional documentation.

In regard to this, the Ombudsperson of the Republic of Kosovo offered its good services to the complainants helping them to get furnished with needed documents in the Republic of Kosovo aiming to respect the human rights set forth by the international standards.

##### ***4.11.2. Avoiding the noise in the public places***

After the complaints of citizens of neighbourhood “Ganimete Terbeshi”, in Prishtinë, the OIK expressed its concern regarding unbearable noise caused by the OSCE ventilation devices. On 1 September 2010, the complainants addressed the Municipality of Prishtina.

After the intervention of the OIK representative at the Municipal Inspectorate and Directorate for Urbanism of the Municipality of Prishtina, the OSCE ordered silent ventilation devices. After the intervention of the Ombudsperson and quick reaction of the Municipality of Prishtina, this case has been solved based on the right request of residents of the neighbourhood concerned.

#### ***4.11.3. Inviolability of apartment and domicile***

One of the forms of expression of the right of privacy is also the issue of inviolability of apartment, based on which is regulated the right to access and use the apartment and domicile.

The Ombudsperson Institution received a complaint of a citizen, which complains that through his yard and property passes a channel of black atmospheric waters of Xerxa mill, which presents a high danger, especially for the children who every day go to school in the village and they must pass over the channel through an improvised and unsafe bridge. The Ombudsperson representatives visited the scene. As regards this problem, the Ombudsperson has expressed its concern by addressing the President of the Municipality of Rahovec by a letter. The Ombudsperson received a response from the Directorate for Urbanism, Municipal Services, Cadastre, Geodesy and Property of the Municipality of Rahovec stating that the opened channel, which collects atmospheric waters and flows into the “Drin i bardhë” river, also passes through the complainant’s property. The dislocation at this period (the response, dated 37 April 2010) is impossible because these surfaces are not a part of urban development plan and dislocation cannot be done until the detailed solution is reached for this complex-channel. Despite expression of our concern through letters and drawing attention, so far, regarding dislocation of channel or avoiding the pollution, the situation remains the same.

#### ***4.11.4. Control and interception of communication tools-telephony***

During this reporting period, the OIK has received 1 (one) complaint regarding the issue of interception. In generally, the issue of interception, especially of cell phones in Kosovo is not regulated by a special law. In the following laws of the Republic of Kosovo are included the provisions regarding interception: the Law no. 03/L 063 on Kosovo Intelligence Agency and the Criminal Procedure Code 26/2003.

Given this fact, the non-regulation by law of the issue of interception and other forms of controlling phone conversations as a grave interference in the private life and interference in correspondence is of particular concern for the Ombudsperson. Regarding this issue there is no special law which should contain clear and detailed provisions on interception and controlling of the phone conversations. This is necessary, especially in the era of modern interception and controlling technology, which are increasingly sophisticated.

Also this year, the OIK paid a particular importance to protection of confidentiality and correspondence to the places where the persons deprived of liberty are held by installing OIK mail boxes in all jail and detention facilities in the Republic of Kosovo, which may be open only by OIK staff members.

Based on the complaints lodged with the OIK, as well as current legal weaknesses related to the right of privacy the Ombudsperson recommends the following:

- *The relevant public institutions to engage seriously, aiming at avoiding violations of the right of privacy when such cases are evident and when such action is required by the Ombudsperson.*

- *To adopt as soon as possible special and complete legal provisions for protection of the right of privacy in all forms.*

#### **4.12. The right to marriage and family**

The right to marriage and family is the base for creating a sound society and building up a state. Based on the free will, everyone has the right to marry and found a family based on the law.<sup>76</sup> The marriage and its dissolution are regulated by law and based on the principle of the equality of spouses. The family enjoys a particular protection by the state and it is regulated by law.

The marriage implies a unity between two persons of different sex, registered based on the law, which freely decide to live together and found a family. The men and women, without any limitation due to race, nationality or religion, have the right to marry and found a family; they are equal during the marriage and at its dissolution.<sup>77</sup>

The basic principles, which regulate the mutual rights and obligations, are the equality of spouses in obtaining the rights and undertaking the obligations during the marriage, respecting the human rights within the marriage, as well as cooperation for the interest of family and cohabitation.

According to the ECHR, spouses enjoy equal rights and responsibilities of civil character between them and the relationships with their children during the marital relationship and its dissolution. This right also implies the obligation of the state to respect this right and to provide mechanisms for its protection. This shall not prevent the states to take necessary measures in the interest of children.<sup>78</sup>

ECHR expressly requests respect of “everyone’s right to his private and family life”. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of criminal offences.<sup>79</sup>

In the reporting period, as it has been also mentioned in the previous reports, a tendency of raise of the percentage of divorces is noticeable in Kosovo. In the case of divorces appear problems over the custody over the minor children, as well as regarding contact of parents with children. This damages the children who through no fault of their own are in situations where they should live separately from one of the parents; this negatively impacts especially their development, education and welfare.<sup>80</sup>

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<sup>76</sup> *The Constitution of the Republic of Kosovo*, article 37.

<sup>77</sup> *Law no. 32/2004 on Family* article 14.

<sup>78</sup> *ECHR*, Article 5 of the Protocol no.7.

<sup>79</sup> *The same source of reference*, Article 8.

<sup>80</sup> The information obtained from the Department of Labour and Social Welfare (MLSW) on 20 December 2010. The total number of requests for divorce, desolation of marriage during this period in the entire Kosovo is 559, while the number of minor children in these cases is 262. Some of couples requesting divorce do not have children, while most of the couples requesting divorce do have minor children. The total number of divorces for this reporting period is 95, while the number of minor children in these cases is 122. The number of minor children reported in these cases is worrying for the entire Kosovan society.



The Ombudsperson also during this reporting period has received a large number of complaints related to procedural delays related to divorce, non-realization of regular contacts with children, as well as procedural delays regarding issuance of decisions on custody over children.

The Ombudsperson, during this period has published a report related to procedural delays in implementation of a final judgment by one of the courts regarding personal contacts of a mother with her minor children. After reviewing this case, the Ombudsperson reached the conclusion that a violation of the right to a fair and impartial judicial process has occurred.<sup>81</sup> The prolongation of judicial procedure and non-implementation of the proposal for implementation filed by the complainant is in contradiction with the principles of rule of law, good governance and the principle of respecting the human rights. OIK reminds that the European Court of Human Rights ruled that the right to a fair trial and the right to proceed according to submitted request within a reasonable time is a part of the right for an adequate judicial proceeding, which is guaranteed by Article 6 of the ECHR.<sup>82</sup>

The Ombudsperson Institution is concerned about the failure of the courts to request advices from the experts of Social Work Centres (SWC) in the cases when their expertise is essential and a legal requirement guaranteed by the international human rights standards.<sup>83</sup> The Ombudsperson is also concerned as regards failure of the SWC to respond within a reasonable time to the requests of courts for a professional advice.

In the context of the right to family and marriage is also the issue of adoption. The Ombudsperson during this reporting period did not receive any complaint regarding this issue. But, according to an OSCE report the court proceedings related to adoption disclose confusing variety of policies. The courts are not the only institution, which decide on the issues of adoption as foreseen by the Family Law. The administrative bodies and SWC decide in most cases of adoption.<sup>84</sup>

The Law on Family makes no difference between the procedures that should be applied in the case of child abandoning and the procedure in the case of the child whose parents are known (except the special parts of the law related to initiation of adoption procedure).<sup>85</sup>

The judging role of SWC and decision-making role of the Panel, which provides to the children the possibility to make their choice in the cases of adoption, represents violation of domestic and international law on the children's rights. If the expertise of these bodies is important to fulfil the function of professional assistance for the courts in the cases of adoption then no one can justify usurpation of the judicial competencies, which are reserved competences of judiciary based on the Law on Family.

According to the Law on Family there are two key procedural steps concerning issues of adoption cases if decided by the courts as it is foreseen by the Law on Family. Firstly, the issue of court instance with the original jurisdiction over the adoption procedures. Secondly, the issue of the procedural law, which shall be applied in the adoption procedures. The lack of clarity regarding these issues damages the efficiency of courts in issuing decisions in the cases of adoption. The Law

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<sup>81</sup> Report A. 485/2009.

<sup>82</sup> The case *Golder vs. the United Kingdom*, published A 018, on 21.02.1975.

<sup>83</sup> *Convention on Child Rights (CDR)*, Article 12, paragraph 2, foresees providing to the child the possibility to be heard at any stage of judicial procedure.

<sup>84</sup> See *OSCE report in Kosovo*, August 2010.

<sup>85</sup> *The Law on Family*, Article 182.

on Family does not specify whether the district or municipal court is competent with the first instance jurisdiction in the adoption cases. Some of the Municipal courts declared themselves incompetent in the cases of adoption due to the lack of jurisdiction.

Furthermore, the Family Law does not specify which procedural law the court shall apply in the cases of adoption. Therefore, in the absence of particular instructions, some Municipal courts implement the Law on Out Contentious Procedure (LOCP) and other courts implement the Law on Contested Procedure (LCP).<sup>86</sup>

According to Family Law, only the courts can decide in the cases of adoption. SWC can help in the cases of adoption by providing professional opinion, if such opinion is requested by the courts during the process of issuing decision on the adoption.

As a conclusion, the legal framework in Kosovo foresees that the courts decide in the adoption cases. If the administrative bodies continue to decide in the adoption cases, despite the lack of legal mandate then the rule of law fades greatly.

## **Recommendations**

*The Ombudsperson considers that the Assembly of Kosovo should consider amendment of legal norms in the fifth part of the second chapter of the Family Law in order to provide more clarity in the field of adoption and clarification of jurisdiction during the application of procedures;*

*The Ombudsperson recommends that the Judicial Institute continues organizing specific trainings for judging the cases, which treat family issues, especially those related to divorces and adoption by focusing specially on the terms and conditions set forth by the Family Law and the advisory role of the social work centres.*

### **4.13. Freedom of religion, belief and conscience**

The Constitution of Kosovo and the Law on the Religious Freedoms in Kosovo ensure respect of the religious freedoms and the freedom to manifest religion. The equality of the religious communities, secular character of the state and impossibility to promote a state's religion is stipulated in the Article 8 of the Constitution. Also, the Constitution of Kosovo provides superiority to the international instruments in case of conflict with the laws of the Republic of Kosovo<sup>87</sup>.

#### **4.13.1. Analyse of the situation in Kosovo**

During the 2010, particular emphasis was put on the lack of legal provisions by which the legal position of the religious communities in Kosovo would be regulated. In continuity, the religious

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<sup>86</sup> OSCE report 2010. OSCE during the monitoring of the courts noticed irregularities, especially irregularities in the adoption procedures applied by Kosovo Courts.

<sup>87</sup> The Constitution of the Republic of Kosovo, 2008, the Article 19, paragraph 2.

communities in Kosovo, such as Islamic Community and the Evangelical Community of Kosovo have highlighted the need to adopt the legal provisions that would govern this field.

On 29 April 2010, the Ombudsperson has published *ex officio* report regarding lack of legal acts by which the position and legal status of the religious communities in Kosovo would be regulated. The Ombudsperson drafted this report based on the collected information after its meeting with the mufti of the Islamic Community.<sup>88</sup>

Indeed, before 1999, the legal status of the religious communities of Kosovo has been regulated by law<sup>89</sup>. After 1999, no legal norms for regulation of this issue were adopted in Kosovo. By the UNMIK Regulation no. 1999/22, the religious communities were recommended to be registered as Non-Governmental Organizations. This Regulation is in contradiction with the Law on Freedom of Association in Non-Governmental Organizations because “...*this law does not apply to political parties, trade unions and unions` organizations and religion centres or temples and other fields regulated by special laws*”<sup>90</sup>.

In 2006 has been adopted the Law on Freedom of Religion in Kosovo<sup>91</sup>. However, despite that this law regulates the issue of freedoms and rights of the religious communities in a just manner, and in accordance with the International and European standards; unfortunately the law does not contain provisions for adjustment of the legal status of the religious communities.

Lack of legislation to regulate this field opens a big number of issues, for example, regulation of property issues (movable and immovable property), bank accounts, and construction of premises and realization of the rights granted to religious communities by the same manner as they were granted for the other organizations and associations to whom the status of legal person has been recognized.

Except legal problems, which arose as a result of recommendation to the religious communities to regulate their legal status as Non-Governmental Organizations based on the UNMIK Regulation no. 1999/22, the religious communities are put in an unpleasant position because by this recommendation their continuity and cultural, traditional and historic importance is ignored.

Also, non-regulation of this issue by law creates among various religious communities persuasion that some religious communities are in a better or worse position than the others or that they are discriminated. The discrimination of some religious communities comparing with the Serbian Orthodox Church is obvious. The Serbian Orthodox Church thanks to “positive discrimination” as a result of political agreements is the only religious community in Kosovo, which enjoys the status of a legal person. This deepens even more the trench, which in some way exists among the religious communities in Kosovo and it does not favour the wellbeing of the multiethnic and multi-confessional society.

Regarding this issue, aiming at completing the legal vacuum in this field, the Ombudsperson on 7 July 2010 recommended the Assembly of Kosovo to complete the Law no. 02/L-31, on Freedom of Religion in Kosovo with an additional chapter, which would adjust the legal status of the religious communities in Kosovo or to issue a special law, which adjusts the legal status of the religious

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<sup>88</sup> See Ombudsperson *ex-officio report no. 145/2010*.

<sup>89</sup> The Law on Legal Status of the Religious Communities, Official Gazette no. 22/1953 of Socialist Federal Republic of Yugoslavia” and “ Official Gazette no. 44/1977 of Socialist Republic of Serbia”.

<sup>90</sup> The Article 1, paragraph 2 of the Law on Freedom of Association in the Non-Governmental Organizations.

<sup>91</sup> The Law no. 2/L-3, on Freedom of Religion in the Republic of Kosovo.

communities in the Republic of Kosovo. By 31 December 2010 the Ombudsperson recommendation has not been taken into account and no legal provisions regulating this issue were adopted.

#### ***4.13.2. Religious communities in Kosovo***

The Constitution of Kosovo and the Law on Freedom of Religion aiming at keeping the society multi-confessional, regulates the issue of freedom of religions in details.

The most of believers in Kosovo belong to Islamic Community. The believers of this community are mainly of Albanian, Bosnian, Goran, Turkish, Roma, Ashkali and Egyptian ethnic background. The Serbian Orthodox Church, based on the number of believers is the second religion in Kosovo. The believers of the Serbian Orthodox Church are mostly of Serbian and Montenegrin ethnic background. The Catholic Church in Kosovo is the third religion in Kosovo based on the number of believers, and most of the believers are of the Albanian ethnic background. The believers of the Kosovo Evangelical Protestant Church are also mostly of the Albanian ethnic background and this religion is fourth religion in Kosovo based on the number of believers.

During 2010, the Ombudsperson drew attention regarding problem of wearing the veil (hijab) in the primary and secondary schools in Kosovo. On 17 March 2010, the Ombudsperson organized a press conference on the occasion of refusal of the Municipal Bodies of Education in Viti to implement the decision of Gjilan District Court, dated 17 November 2009 regarding this issue.

During the months of May and July 2010, various NGOs organized protests aiming to express their discontent for denial of the right to some pupils to wear veil during staying in the schools.

The most important event for the believers of the Serbian Orthodox Church was the inauguration of the patriarch Irinej in the Patriarchy of Peja on 3 October 2010. Unfortunately, this event despite efforts put and extraordinary organizing, was accompanied by mutual provocations. While the Patriarch Irinej was appealing to the international community not to recognize the independence of the Republic of Kosovo, the Kosovo Police denied to the Serbian officials entry into Kosovo. The Kosovo Police also arrested three persons because they stoned three buses with orthodox believers<sup>92</sup> which were returning back from Peja<sup>93</sup>.

In the whole territory of Kosovo on 6 November 2010 occurred few incidents on the occasion of going of the Serbian orthodox believers at the autocephalous graveyard for the winter celebration of "Sent Mitar". Shots from automatic rifle were fired against the bus, which was escorted by Austrian KFOR and Kosovo Police and was travelling towards graveyards in the village Mushtisht, Municipality of Suharekë. Fortunately there were no injured or wounded people as a result of this incident<sup>94</sup>.

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<sup>92</sup> See: <http://www.SETimes.com>, 04.10.2010.

<sup>93</sup> [http://www.spc.rs/sr/eparhija\\_raskoprizrenska\\_izrazava\\_protest\\_nezadovoljstvo\\_zbog\\_odsustva\\_medjunarodne\\_osude\\_napada\\_na](http://www.spc.rs/sr/eparhija_raskoprizrenska_izrazava_protest_nezadovoljstvo_zbog_odsustva_medjunarodne_osude_napada_na).

<sup>94</sup> <http://www.naslovi.net/2010-11-06/blic/kosovo-zadusnice-uz-pucnjavu/2097655>, 02.12.2010.

Also, on 6 November 2010, on the occasion of going to the graveyard of Deçan for commemoration ceremonies the believers noticed that a big number of graves were damaged since the last visit at the graveyard of Deçan on 28 August 2010<sup>95</sup>.

Except inauguration of Patriarch Irinej, another important event is inauguration of the bishop of Rashka and Prizren on 26 December 2010 in the headquarters of episcopacy of Rashka and Prizren in the “Sent George” church in Prizren. Over thousands of believers from different areas attended the inauguration ceremony. After the inauguration ceremony the believers, which attended the ceremony walked through the town in an organized way, and there were no serious incidents or provocations reported.<sup>96</sup>

The Catholic Church of Kosovo is organized as an apostolic administration in Prizren. The believers of the Catholic Church are of the Albanian ethnic background, but there is also the Croat community, which are mainly concentrated in the areas such as Janjeva and Letnica. The Catholic churches exist in whole Kosovo. There are 24 parishes in which serve 37 parsons and 79 nuns.<sup>97</sup>

The most important event in 2010 for the Catholic Church was the consecration of the “Nëna Terezë” cathedral in Prishtina. This event was attended by thousand of believers.

The biggest problems that believers of the Kosovo Protestant Evangelical Church faced during 2010 were lack of legislation on regulation of legal status of the religious communities and multiple attacks and coercion they experienced.

The biggest problems as regards unresolved legal position are the following: inability to do property registration on behalf of the Kosovo Protestant Evangelical Church and denial of the right to construct churches across Kosovo. Another problem, which is important to be mentioned is objection to having separate graveyard for the protestant believers in various cities of Kosovo. As a consequence, the protestant believers are forced to bury their family members in the Muslim graveyards. Thus, their right to express their belief and to manifest religious rituals is violated<sup>98</sup>.

The most concerning event for believers of the Protestant Church occurred on 19 March 2010 when in the windows of the Kosovo Protestant Evangelical Church were noticed posters attached to the window expressing protest against the priests of the Catholic Church. The Ministerial Council of the Protestant Evangelical Church requested arresting of perpetrators of such actions. They also announced they will not accept that the protestant believers become victims of this confusion.

Also, in the night between 23 and 24 March 2010 unidentified persons attacked Messiah Evangelical Church in Prishtina. This church is located at “Nazmi Gafurri” street. During the attack were smashed windows, but there were no wounded or injured people. Also, the inventory has not been stolen.<sup>99</sup>

According to data of official portal of the European Jewish Congress<sup>100</sup> there is no Jewish community in Kosovo, but based on the origin, around 40 persons from two families in Prizren have Jewish roots. There are no data on any synagogue or other Jewish institution.

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<sup>95</sup> <http://www.naslovi.net/2010-11-06/s-media/zadusnice-uz-pucnjavu/2097562>, 02.12.2010.

<sup>96</sup> [http://www.spc.rs/sr/u\\_prizrenu\\_svecano\\_ustolicen\\_novoizabrani\\_episkop\\_raskoprizrenski\\_g\\_teodosije](http://www.spc.rs/sr/u_prizrenu_svecano_ustolicen_novoizabrani_episkop_raskoprizrenski_g_teodosije), 05.01.2011.

<sup>97</sup> <http://www.kishakatolike.org/>, 05.01.2011.

<sup>98</sup> [http://www.kishaprotestante.net/index.php?option=com\\_content&view=article&id=183&Itemid=163&lang=en](http://www.kishaprotestante.net/index.php?option=com_content&view=article&id=183&Itemid=163&lang=en), 05.01.2011.

<sup>99</sup> <http://www.kishaprotestante.net>, 05.01.2011.

<sup>100</sup> [http://www.eurojewcong.org/ejc/section.php?id\\_rubrique=72#](http://www.eurojewcong.org/ejc/section.php?id_rubrique=72#), 05.01.2011.

#### ***4.14. Freedom of expression***

The freedom of expression is guaranteed by the Article 40 of the Constitution of the Republic of Kosovo and Article 10 of the European Convention on Human Rights. The freedom of expression constitutes one of the basic stones of a democratic society. The subjects of freedom of expression are not only the information or the idea which are accepted in a non offensive or indifferent manner, but also those who often worry and shock.<sup>101</sup>

The Ombudsperson emphasizes that this right, despite the obligations that the public authorities in Kosovo have to interpret this right in accordance with decisions of the European Court of Human Rights still continues to be only a decor of a legal state.

There is a general practical perception that there is no open debate regarding issues considered as essential and in the interest of the public. The authorities seem to treat this right more as an issue of their competence and not as a fundamental right.

The Ombudsperson concludes that the European Convention on Human Rights encourages all countries to promote human rights by approving specific national instruments, which provide additional protection including the international agreements. The legal mechanisms in force in the Republic of Kosovo in most of the cases fail to contain punitive provisions in case of failure to respect human rights in this field. Even in the cases when the authorities based on the legal instruments are obliged to issue by legal acts, they fail to issue such acts within a reasonable time or they do not issue such acts at all.<sup>102</sup>

A number of democratic states today switched from the traditional system of official secrecy into a regime of freedom of official information. The Republic of Kosovo should adopt other additional legal instruments, which enable administration of “opened government” which implies that the information is “public” if such information is hold and managed by the public authorities or it has been received, drafted and adopted by the same authorities and the information is dedicated to public.

The European Commission also this time focuses its criticism mainly on lack of freedom of expression and concludes that in Kosovo *the freedom of expression is not guaranteed practically*.

During the 2010, the OIK did not receive complaints regarding violation of this right.

#### ***4.15. The right of access to public documents***

Article 41 of the Constitution of the Republic of Kosovo guarantees the right of access to public documents. This right, which expresses the degree of development of a country’s democracy, is also stipulated by the Article 10 of the European Convention on Human Rights (ECHR).

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<sup>101</sup> Decision of the European Court of Human Rights, *Giniewski v. France*, dated 31 January 2006, § 43.

<sup>102</sup> See Law no. 2006/02-L65 against Defamation and Insult, Law no. 2005/02-L15 on Independent Media Commission and Broadcasting.

Given the deficiencies of the Law no.2003/12 on Access to Official Documents, as well as in order to provide harmonization with the Constitution of the Republic of Kosovo and the international standards, the Assembly of Kosovo on October 2010 adopted the Law no. 03/L-215 on Access to Public Documents.

Aiming to avoid the deficiencies of the previous law, as well as to adapt the law with the reality in Kosovo, it is encouraging that the representatives of the Ombudsperson Institution, civil society, as well as the representatives of the international organizations were included in the working groups for drafting of a new law.

Although, as regards the implementation of the previous law and respective administrative instructions, there were also organized a series of awareness campaigns by the central institutions, international organizations and civil society, the Ombudsperson Institution found a series of irregularities, as well as a low level of implementation of this law. The main remarks are related to incompatibility between the law and administrative instructions, failure of the institutions to maintain compulsory registers, establishing the positions in public institutions for persons in charge of handling requests for access to public documents.

*The Ombudsperson recommends establishment of the respective offices or positions in the public institutions for handling of requests for access to public documents as provided by law.*

During this year, the Ombudsperson Institution has received a limited number of complaints. Also, the Office of the Prime minister received a limited number of complaints as regards realization of this right.<sup>103</sup>

The Ombudsperson representatives were denied of the right of access to public documents during the course of the investigations.

In order to conduct the investigations as regards a complaint filed by a group of citizens regarding the implementation of the Law on Noise Protection, on 25 October 2010 the representative of the Ombudsperson Institution submitted the request for access to internal regulation of the legal office at the Municipality of Prishtina.

But, despite the mandate of the Ombudsperson Institution, as well as the right of access to public documents, our representatives were denied of this right. Such action which is in contradiction with the Law on Access to Public Documents clearly demonstrates the unwillingness of the municipal officials to implement this law. If an official of the Ombudsperson Institution, which is mandated to implement this law, faces such problems, it can be assumed what difficulties the citizens may be facing in realizing their right of access to public documents. Simultaneously, this is an evidence of low level of law enforcement in Kosovo.

*The Ombudsperson recommends a campaign of public awareness and information of the officials of the public administration with regard to their legal obligation to provide uninterrupted access to public documents for all the parties concerned, as well as on the role of the Ombudsperson Institution for implementation of this law.*

The issue of access to official documents, as well as the lack of transparency remain one of the major problems that Kosovo journalists are facing continuously during their work. They face major

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<sup>103</sup> According to data of the Advisory Office for Good Governance, human rights, equal possibilities and gender issues, during 2010 only 8 requests were received.

problems, especially when requesting information related to tenders. In most cases they do not obtain requested documents.<sup>104</sup>

According to the Article 4.3 of the Law on Access to Official Documents the Government of Kosovo shall draft the list of the documents which shall be handled as a case sensitive in order to protect public interest. But, the Government of Kosovo, since 2003, has not drafted such a list yet.

Despite that the Article 10 of the Law on Access to Official Documents stipulates that each public institution maintains registers of public documents, many public institutions do not have such registers. None of the Municipalities of Kosovo or Ministries published in their official web pages the register of the public documents.<sup>105</sup>

During the 2010 was adopted the Law no. 2010/03-L-172 on the Protection of Personal Data. However, the citizens of Kosovo are not, or are far less informed about their rights in relation to the protection of their personal data.<sup>106</sup> Although, the law has been adopted on 29 April 2010, the institution responsible for the implementation of the law, the State Agency for Protection of Personal Data, is not established yet.

The Ombudsperson Institution concludes that the previous law was not implemented in a satisfactory level. Therefore, *implementation of the law in accordance with the international standards, adoption of the secondary respective legislation, establishment of the offices and positions in accordance with the law, as well as organizing the public awareness campaigns for the public officials and the citizens in generally* remains a challenge, as well as a request for the institutions of Kosovo.

#### ***4.16. The freedom of media***

Despite the guarantees, which the legal system of Kosovo provides, in particular the Constitution of the Republic of Kosovo,<sup>107</sup> in relation to freedom of Media, the problem of freedom of media in our society remains at the worrying level.

One of the issues that have been continuously mentioned in the various reports on Kosovo is the independence of Media mechanisms and adequate legal infrastructure<sup>108</sup>.

The Ombudsperson notices that the issue of legal insecurity regarding inclusion of defamation and insult in the criminal code creates legal gap. Despite that this issue remained to be changed through the amendment of the Criminal Code, the existence of this issue in the criminal code represents reasonable concern.

Despite the legal gap and the lack of adequate independence of mechanisms, such as the Media Independent Commission (MIC), the Ombudsperson is concerned regarding violence used against journalists. On May 2010 occurred threats against Flaka and Veton Surroi, which represent daily “Koha ditore” and TV station “Kohavision”.

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<sup>104</sup> Research, “Journalists and Access to Official Documents”, Association of the Professional Journalists of Kosovo, (AGPK).

<sup>105</sup> GAP, Analyse of the Parliamentary Policies, Access to Public Documents.

<sup>106</sup> The European Commission Kosovo Progress Report for 2010.

<sup>107</sup> The Article 42 of the Constitution of the Republic of Kosovo.

<sup>108</sup> The European Kosovo Progress Report for 2010.



On September 2010, a team of journalists from “Klan Kosova” has been attacked and was illegally blocked in a class room of the school “Gjon Serreqi” in Ferizaj by the school director. On the same month, a team of media house “Koha” was illegally held under custody by a Kosovo Police lieutenant. During this reporting period, an attack against the editor of Radio Mitrovica in Serbian language Mr. C. Milisavleviq, has been carried out in Zveçan.

On November 2010, the director general of TV “Klan Kosova” Mr. Baton Haxhiu, has been threatened by the representative of a legal political party in the Republic of Kosovo, respectively the representative of the Democratic League of Dardania. Another case, in which reacted the International Organization for Protection of Journalists “Reporters without borders”, is the case of Mrs. Sabahate Shala who has been threatened and fired from the independent news agency “Kosovapress”.

All the aforementioned cases are a clear evidence of the tensed political, social and security environment under which the journalists carry out their job and clear evidence of degradation of the freedom of expression and media.

In the index of freedom of press in the world for 2010, Kosovo is in the 92<sup>nd</sup>. A year ago Kosovo was on the 75<sup>th</sup> place. The fall of the freedom of press in our country for 17 places within a year, is another evidence and clear picture how the Republic of Kosovo is being seen by the international community as regards freedom of Media. So, the deterioration of the situation regarding freedom of expression and Media is noticeable. Such deterioration has also been mentioned by the European Commission in the Kosovo Progress Report for 2010, which concludes lack of freedom of Media in the country.

Another big concern, for which the Union of Kosovo Journalists continuously draw attention are the problems accompanying the only public broadcasting TV station, Radio Television of Kosovo (RTK). The report of the organization “Reporters without borders”, underlines in particular direct control of the Government over the RTK.

Lack of funds and foreign investments left the newspapers weak on the front of political pressure from particular groups of interest, which threaten to withdraw the advertisements in case the Medias are not into their favour.

The Ombudsperson estimates the situation as not satisfactory also as regards information and Medias in the languages of the communities. There is a need for expansion of programs, strengthening the staff, as well as development of written Media in their languages. Given the general situation in Kosovo, especially the situation of the communities, there are no possibilities to improve the current situation without the help of the state institutions. In this aspect, it is important to mention absolutely unacceptable and bad situation of Media of Roma, Ashkali and Egyptian community. It is important to emphasize that Medias play an important role for the integration of the communities in our society.

The Ombudsperson finds that full respect of the freedom of Media is essential for functioning of democracy, as well as for protection of human rights. The freedom of Media is also a key issue to ensure that the citizens can have an active role to ensure peace and democratic processes.

The Ombudsperson appeals on the relevant authorities to take appropriate measures to establish needed space for improvement of freedom of media. In particular, special attention should be paid

to providing the adequate and effective access of media to information and at the same time to provide adequate implementation of the Law on Access to Public Documents.

The Ombudsperson requests the Assembly of Kosovo to solve forever the issue of financing the Public Broadcasting Service RTK, so that the only public broadcaster is at the service of the citizens and out of the state political influence and other groups of interest.

Also, the Ombudsperson considers that one of the measuring units of democratic development of the Republic of Kosovo is the freedom of expression and Media. As such, the freedom of expression and media will continuously be one of the aspects of estimation for the international organizations whose member Kosovo is intending to be. Therefore, it is very necessary to have control and parliamentary initiative to debate and estimate the situation of the freedom of Media in Kosovo.

During the reporting period, the Ombudsperson Institution has registered special cases in terms of Article 42 of the Constitution of the Republic of Kosovo.

#### **4.17. Freedom of assembly**

The right of the citizens for a peaceful gathering is a universal right guaranteed also by the Article 43 of the Constitution of the Republic of Kosovo, which provides full guarantee for respect and compatibility of such right with the international standards.

Everyone has the right to freedom of peaceful gathering.<sup>109</sup> This right may not be subject of other limitations, except limitations foreseen by law, which are necessary for a democratic society, if it is necessary to safeguard public order and to prevent crime, public health or moral, national security and protection of the rights of others.<sup>110</sup> This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

The Ombudsperson Institution in its previous annual report 2008-2009 raised its concern as regards Article 12 of the Law on Public Gatherings, since this law is believed to contain elements, which are regarded as not compatible with the European Court of Human Rights case law, which obligatorily presents base of interpretation of the rights in Kosovo.<sup>111</sup> In the article 12 of the Law on Public Gatherings, which was adopted by the Assembly of Kosovo in 2008, the Kosovo lawmakers delegate a part of competencies in the hands of so called “duty guards” which shall be assigned *ad hoc* by the organizer of the public gathering. Such delegation of obligations to the organizers of public gathering is in contradiction with the principles of the Article 11 of the European Convention on Human Rights.

This happens because the state in order to guarantee freedom of assembly may not restrain its actions only in a passive position of not interfering. The state has a legal obligation to take an active action for protection of the persons who organize and participate in the public gatherings.<sup>112</sup>

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<sup>109</sup> European Convention on Human Rights, Article 11.

<sup>110</sup> The Constitution of the Republic of Kosovo, Article 53.

<sup>111</sup> The Constitution of the Republic of Kosovo, Article 53.

<sup>112</sup> The European Court on Human Rights, (*Decision of 21 June 1988, Application no. 10126/82*).

The Ombudsperson noticed that if “duty guards” are engaged to ensure proper flow of the a public gathering, their engagement is directly linked to the proper flow of a gathering in the meaning of achieving the aim of the organiser of gathering, which cannot go beyond the request declared by the organisers. However, “duty guards” cannot be tasked with the obligation of “ensuring that participants do not damage the properties that exist in the place of gathering”, as foreseen by Article 12 paragraph 2 of Law on Public Gathering.

This action includes preservation of public or private property, and it is an exclusive obligation of state authorities and/or agencies specialised specifically for such activity, established according to the law, but which is not related to requests and purpose of assembly. The “duty guards” assigned in *ad hoc* basis” by the organisers of gathering, do not belong to the category of persons who are prepared and legitimised in this respect.

The case law of European Court warns that the effective freedom of assembly cannot be assumed to have been met by the state by merely fulfilling its obligation of non-intervention, but it requires affirmative measures to be undertaken even when it comes to relations between people if necessary.<sup>113</sup>

Based on the aforementioned, the Ombudsperson concludes that paragraph 3 of the Article 12 of the Law on Public Gatherings, according to which the lawmakers delegate the authority to the “duty guards” of a public gathering to “*immediately hand in to the police the participant or any other person violating peace and order, carrying weapons or any other dangerous items or prohibited signs, during the public gathering*” is exclusive obligation of state law enforcement authorities, and cannot be delegated to any other natural or legal person.

The ombudsperson recommends again completion and amendment of the aforementioned Article of the Law on Public Gatherings in order to harmonize the law with the European standards.

#### ***4.18. Freedom of association***

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.<sup>114</sup> Also, the freedom of association and organization is a base for realization of few other fundamental rights and freedoms, such as freedom of expression.<sup>115</sup>

The Constitution of the Republic of Kosovo guarantees the freedom of association describing it as the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization.<sup>116</sup>

The Assembly of Kosovo, in 2009 adopted the Law on Freedom of Association in Non-governmental Organizations. By this law were established procedures and conditions for registration and striking off, internal management, status and requests for financial reporting of the legal persons organized as NGOss. But, as a consequence of some technical problems, the Ministry

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<sup>113</sup> The same source of reference.

<sup>114</sup> European Convention on Human Rights, Article 11.

<sup>115</sup> The Constitution of the Republic of Kosovo, Article 40, European Convention on Human Rights, Article 10.

<sup>116</sup> The Constitution of the Republic of Kosovo, Article 44.

of Public Administration (MPA), in the beginning of 2010 started the process of completing and amendment of the law. The Assembly of Kosovo on 25 February 2010 decided to include the draft law in the priority list of draft laws.<sup>117</sup>

In generally, a major advance in this field cannot be reported. NGOs are not enough active in the field of legislation and their influence in the central administration. Their participation in this process is *ad hoc* and their funds mostly depend on the international donations. As a result of this, the monitoring capacities of the NGOs, even though increasing, they still remain limited. The European Commission expressed concern as regards environment in which the NGOs in Kosovo are acting, as well as it has emphasized that the initiative of the Kosovo Government for completion and amendment of the law on the NGOs should take into account concerns raised by the civil society.<sup>118</sup>

The members of the civil society were invited to attend the meetings of the Governmental working committee for preparation of the draft law. The members of the civil society were against substantial change of the law, especially against some tendencies of some micro financial NGOs and MAP, which were requesting to enable the micro financial institutions to be transformed into private banks.

The Governmental working committee had completed its work and the amendments of the law were in harmony with the European standards. But, the situation had changed since MAP forwarded a version other than the version agreed by the Governmental working committee. In this case followed the reactions of the civil society, which requested Prime Minister`s Office not to accept changes done by the MAP. The Prime Minister`s Office accepted request of the NGOs and it has refused the draft law version proposed by MAP. Meanwhile, it was scheduled another meeting of the Governmental working committee. In September, Governmental working committee completed its work by incorporating remarks of the civil society and the draft law with the included changes was forwarded to the Kosovo Assembly for adoption.

The Ombudsperson Institution recommends the Kosovo Assembly, respectively the Assembly commissions, that during the process of reviewing the draft laws take into account suggestions of various stake holders of the society, professional groups and civil society in order to make the procedure of completion and amendment of the law transparent which would be supported by the society and in harmony with the European standards.

During this reporting period, the Ombudsperson Institution did not receive any complaint as regards violation of freedom of association.

The cooperation between the Ombudsperson Institution (OIK) and NGOs has increased. The joint debates with the civil society in the Municipalities and various regions in Kosovo, as well as addressing the requests of the NGOs by the OIK for raising the matters of interest for the citizens of the Republic of Kosovo with the Constitutional Court or with the other public institutions are the encouraging indicators for a positive movement. The request of several NGOs to refer the Law on the Rights and Responsibilities of the Deputies with the Constitutional Court is a typical example. OIK reached the conclusion that there is a sufficient legal base for this matter to be reviewed by the Constitutional Court. On 22 December 2010 the Constitutional Court issued a Decision granting

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<sup>117</sup> The Decision of the Assembly of the Republic of Kosovo, no. 03-V-261, Prishtina, 25 February 2010.

<sup>118</sup> European Commission Progress Report on Kosovo, 2010.

interim measures by which it suspended implementation of the challenged Articles of the law on Rights and Responsibilities of Deputies.

#### ***4.19. The freedom of election and participation***

The freedom of election and participation is a fundamental right and as such is foreseen by the Constitution of the Republic of Kosovo,<sup>119</sup> the Law on the General Elections<sup>120</sup> and the Law on Local Elections in the Republic of Kosovo,<sup>121</sup> which are in accordance with the Article 3 of the European Convention on Human Rights,<sup>122</sup> as well as with the other international instrument, which are directly applicable in Kosovo.

During the 2010, the elections passed through various challenges at the central and local level. As a result of the irregularities that occurred in 2009, the Central Election Commission (CEC) organized re-runs on 31 January 2010 for the second round of voting for the President of the Municipality of Lipjan and the President of the Municipality of Prizren. The re-runs were repeated in the Municipality of Gjilan on 14 March 2010. Also, the extraordinary elections were organized in the Municipality of Istog<sup>123</sup> on 4 April 2010.

Due to the forming of the new municipalities, on 20 June were organized local elections and the elections for the President of the Municipality of Partesh.

The extraordinary elections were organized for election of the President of the Municipality of Rahovec on 21 November 2010, as well as 19 December 2010 following the decisions of the Constitutional Court of Kosovo due to the resignation of the mayor elected in the local elections held on 2009.

As a consequence of the political deadlock created in the country during the period of last three months of 2010, the extraordinary general elections were organized on 12 December 2010 in 37 Municipalities of the Republic of Kosovo. Based on the CEC<sup>124</sup> report, for these elections were organized in total 19.241 members of Polling Stations' Councils (PSC), as well as 6.447 trained persons in the capacity of a technical staff within the Voting Centres (VC). The number of polling stations (PS) for the 2010 has increased because the number of voters in one of the Polling Stations (PS) increased from 750 voters into 950 according to CEC.

The Ombudsperson Institution based on its legal and constitutional responsibilities and competencies, as well as aiming at ensuring smooth election process monitored the general elections 2010 in almost all Municipalities of the Republic of Kosovo except the Municipalities of Leposaviq and Zubin Potok. The representatives of the Ombudsperson Institution have visited 142 Polling Stations and 208 voting centres in total.

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<sup>119</sup> The Constitution of the Republic of Kosovo, Article 45.

<sup>120</sup> The Law no. 03/L-073on General Elections in the Republic of Kosovo.

<sup>121</sup> The Law no. 073/L-072on Local Elections in the Republic of Kosovo.

<sup>122</sup> The European Convention on Human Rights, protocol 1, Article 3

<sup>123</sup> These elections were held due to the death of the President of the Municipality, Mr. Fadil Ferati on 30 January 2010.

<sup>124</sup> See www.kqz-ks.org, (.04.2011).

The voting process has been monitored also in the places where the person deprived of their liberty and persons with disabilities are held, such as: detention centres, Dubrava correctional centre, Mental Health Centre in Shtime etc.

Based on the reports of its monitoring teams in the field, the Ombudsperson estimated that the elections were peaceful and without incidents, but they were accompanied by series of irregularities, such as:

- *Verification lamps were not functioning and their indication light was weak;*
- *The finger spray was of poor quality in most of polling stations;*
- *The voting lists were not complete;*
- *Family voting;*
- *The lists of the candidates of one political group in the voting booths (in most cases) were opened and even up to five numbers were circled;*
- *The voters could not find their names in the voting lists;*
- *Delays in preparing the material caused delays and queuing for voting;*
- *Some of the institutions entitled to organize voting process in their facilities were not in the lists of the Municipal Election Commissioner and some voters were deprived of exercising such right, for example, the voters living in the Integration House in Pejë, where older persons are placed;*

During this monitoring process, the Ombudsperson emphasized the following serious violations of the election process in Skenderaj, Drenas and Deçan:

- *Interferences by fans of certain political party in the polling stations;*
- *Family voting, one family member voting on behalf of the family.*

The above-mentioned irregularities evidenced by the OIK monitoring teams represent violation of the election process, which constitute criminal offences set forth by the Provisional Criminal Code of Kosovo (PCCK). According to PCCK, the abusing of vote constitutes criminal offences included in the chapter XVI.<sup>125</sup>

CEC has voided the election results in several Municipalities and it has approved the operational plan for the re-runs, which were planned to be held on 9 January 2011 in the Municipality of Lipjan, Municipality of Malishevë and Mitrovica.

Based on the violations concluded and concerns of the citizens of the Republic of Kosovo as regards the election process, the Ombudsperson has sent a recommendation letter to the relevant institutions<sup>126</sup>, requesting them to undertake actions as foreseen by law and to begin *ex officio* investigations on the alleged cases of abusing of the vote and to bring the perpetrators of such abuse before the justice.

The Ombudsperson through this recommendation letter addressed the relevant institutions, starting from the Acting President of the Republic of Kosovo, the Ministry of Interior, and the President of the Electoral Panel for Complaints and Appeals; the Chairman of the Judicial Council and the Chief

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<sup>125</sup> The Provisional Criminal Code of Kosovo, RA-2003/25, dated 6 July 2003.

<sup>126</sup> See <http://ombudspersonkosovo.org>, report on monitoring of the general elections in the Republic of Kosovo, dated 12 February 2011.

Prosecutor of the Republic of Kosovo requesting them to undertake the appropriate actions as soon as possible.

#### ***4.20. The right to property***

The right to property is guaranteed by the Constitution of the Republic of Kosovo<sup>127</sup>. Based on the Constitution, no one shall be deprived arbitrarily of the right to property.

The property problems in Kosovo still remain a delicate problem since 10 years after the end of the war. The public institutions of Kosovo continue to face difficulties in protection of the fundamental property rights. The property problems in Kosovo are of a various nature. There are still problems regarding expropriation of the private properties, illegal usurpation of constructions sites and lands, and the problems with system of registration of land and property, as well as protection of religious and cultural heritage of all communities living in Kosovo.

According to applicable legal norms in Kosovo, every natural or legal person is entitled to the peaceful enjoyment of his possessions, to sell and use his/her property. In particular circumstances the state restricts, deprives or controls realization of the property rights of a person. Such action can be taken only in accordance with the law, which is clear, accessible and provides protection from arbitrary actions.<sup>128</sup>

In Kosovo, the issue of expropriation is regulated by law.<sup>129</sup> This law sets out the rules and conditions under which the state may expropriate person`s immovable property. This law sets out the rules for execution and restraint of the property, rules and procedures that shall be used in determining the amount and payment of compensation. Expropriation or deprivation of the right to property by the public institutions shall be based on the law, otherwise, the expropriation and deprivation from the right to property is unlawful and arbitrary.

The Ombudsperson Institution has registered cases of the Kosovo citizens complaining due to the violation of the compensation agreements. One of such cases is also the case of the owners of business premises, which have been destroyed in order to build an underpass in the “Pejton” neighbourhood in Prishtina. The Municipality of Prishtina, as an *expropriation body*,<sup>130</sup> did not respect already agreed deadline for the construction of the underpass between the parties (the Municipality of Prishtina and the individual owners), as well as it has changed the construction plan by which the owners of the premises were materially damaged.

Based on the ECHR, all the public institutions are obliged to respect and protect the property rights. This implies that the state shall not obstruct arbitrarily, the realization of the property rights. The state shall undertake the measures of prevention or correction of such obstructions.

This is an obligation of the judiciary, which should prevent unfair obstruction of the exercise of the property rights and to protect the individuals from injustice. The right to a legal remedy or to appeal against a particular decision, which obstructs the realization of the property rights is guaranteed by

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<sup>127</sup> The Constitution of the Republic of Kosovo, Article 46.

<sup>128</sup> The Article 1, the ECHR Protocol.

<sup>129</sup> The Law no.03/L-139, on Expropriation of Immovable Property.

<sup>130</sup> The term *expropriation body* is used as a synonym for the public intuitions or state institutions.

the Constitution and the International Instruments.<sup>131</sup> In the practical aspect, in terms of ECHR, the state is obliged to protect the property rights in an effective manner, including here the legal and administrative remedies, as well as the implementation of mechanisms, which should act without unjustified delays.

In several cases, the competent Courts in Kosovo fail to protect the individual's property rights by not implementing Court decisions. Such cases were registered with the Ombudsperson Institution, for instance, the case of Prishtina Municipal Court, which since 2008 did not implement the decision on demolition of the facility built without authorization, property of person NN (the data are in the Ombudsperson Institution), which is preventing the residents of the neighbourhood from the right to free use of their property.

The issue of illegal constructing and creation of the non-formal neighbourhoods still remains a worrying problem in the entire Kosovo. Many Municipalities have regulated to a certain extent the issue of illegal construction by legalizing or by destroying/removing such illegally constructed buildings. The Municipality of Prishtina has started sort of control over the illegal construction by adopting the Regulation for treatment of the illegal constructions,<sup>132</sup> aiming at treatment of the existing illegal constructions and interruption of illegal construction in the future. Based on this Regulation, the Directorate of Urbanism, Cadastre and Environmental Protection will carry out registration of the illegally constructed buildings within a deadline of 90 days from entering of this Regulation into force.<sup>133</sup>

The biggest contests, of course, appeared after the end of war in Kosovo 1998-1999. Some of the contests are from the previous period, due to the negligence of the citizens to carry out legal ownership transfer through the courts and cadastral offices. In most cases, the former inheritors are not alive. Their property has gone under various kinds of transformation due to the lack of timely property ownership transfer. This occurred often as a result of attempts to avoid property tax payments.

The most complicated cases are the cases when a certain real estate has been sold several times. The purchasers of the property have built a house in the property or have established business premises, but indeed they are not legal owners. This is a widespread phenomenon in Kosovo, especially after the 1999.

The OIK has registered the complaint 395/2009 filed by person NN (identity known to the OIK), who on 1999 purchased an apartment for which he has necessary documents. The Directorate for Property and Housing issues has decided in favour of the complainant. In the mean time, through the falsified documents by a third person, the apartment has been sold and the sales contract has been confirmed by the Municipal Court in Prishtina. The complainant, after the property contest which took place at Prishtina Municipal Court has been ordered to leave the apartment within 15 days. Regarding this case, for the same property, two times has been issued decision: once by the Property and Housing Directorate and the second time by the Municipal Court of Prishtina. The

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<sup>131</sup> See the Constitution of the Republic of Kosovo, Article 46 ; The European Convention of the Human Rights and Fundamental Freedoms, Article 13, as well as Article 6, paragraph 1.

<sup>132</sup> See the *Regulation on Treatment of the Illegally Constructed Buildings* issued by the Municipality of Prishtina, based on the Law on the no. 2004/37 on Local Self Government 03/ L – 04; the Law on Construction and the Status of the Municipality of Prishtina 01. No. 110 – 455.

<sup>133</sup> The same source of reference.



decisions of these two public institutions are in contradiction with one another. But, the victim is the innocent citizen.

The laws in force in Kosovo enable registration of property based on the current documentation, which enables each property to function in favour of the free market, in the favour of the owner and economic development. While, documentation of the property rights offers strong base and promotion of the property rights through the institutions and various mechanisms.

According to the Cadastral Agency of Kosovo there is a discrepancy between the present owners and the situation on the field, because the records of legal updates of the owners have not been kept properly. This is a consequence of lack of cadastral documentation, which has disappeared or it has been taken by the Serbian state during and after the war. But, the lack of cooperation and coordination between the public institutions of Kosovo make the situation of cadastral documents even more difficult.

At the OIK appeared the complainant NN (the identity of the complainant is known to the OIK) admitting that all documentation confirming his property rights has been destroyed during the war. In the cadastral records of Kosovo his property is not recorded at all. According to the officials, the complainant should request property documentation in Serbia. There are many similar cases in Kosovo, where the owners are obstructed to use and freely enjoy the right to their own property due to the lack of documentation.

Therefore, an immediate task of the Kosovo public institutions, especially the task of the Government is to increase serious and urgent efforts for finding the ways and forms, which would provide legal solutions to the owners whose properties have not been registered in the cadastral records. Thus, they can freely use their properties.

The religious communities of Kosovo (regarding this problem, please read *the equality before the law*, as a part of this report) are also facing the problem of registration of the property in the cadastral Records.

There are still problems with the Kosovo Property Agency. So far, 40.000 requests have been registered with this Agency. From the total number of 40.000 requests 26.000 have been reviewed, while 17.000 have been solved. The particular problem is usurpation of the properties in the northern part of Mitrovica, which remains an unsolved problem.

A typical case is the complainant NN (identity known for the OIK), which admits that his property is located in the northern part of Mitrovica and it is administered by the Kosovo Property Agency. He has never been compensated for his property in the form of rent. While, he is obliged to pay the rent for the property that he is using in the southern part of Mitrovica, which is also under the Kosovo Property Agency administration, otherwise he may get evicted. Also this case proves that the Kosovo Property Agency, as during the previous years, continues to fail to implement the rental and leasing scheme.

Kosovo Property Agency as a successor of the Directorate for Housing and Property issues should urgently and promptly fulfil its legal mandate and create a scheme, which includes rent or reasonable compensation for the bearers of the property rights, whose properties are located in the northern part of Mitrovica and are under KPA administration.

Based on the aforementioned, despite the existence of a legal framework, the property related problems in Kosovo still remain almost the same as in the previous years. The failures of the

institutions to protect the property rights are obvious. There is a slight progress, but there is still much to be done.

The protection of the property rights based on the Constitution, domestic laws and international instruments remains an obligation of the Government of Kosovo. Thus, every person should be enabled to full and undisturbed exercise of the right to property. This would also contribute to comprehensive economic and political development in Kosovo.

#### ***4.21. The right to education***

The Constitution of the Republic of Kosovo stipulates that “every person enjoys the right to free basic education. The issue of education is regulated by law and financed by public funds.”<sup>134</sup> The Constitution also sets forth the obligation for the public institutions to ensure equal opportunities to education for everyone in accordance with his/her specific abilities and needs.<sup>135</sup> This right is also guaranteed by the European Convention on Human Rights and its Protocols (ECHR) which is directly applicable in the Republic of Kosovo.<sup>136</sup>

The issue of the right to education has marked a significant progress with regard to adoption of the Law on Education in the Municipalities of the Republic of Kosovo.<sup>137</sup> By this law the competencies in education are transferred from central to local authorities. This process of decentralization includes transfer of competencies in the schools, thus, allowing the schools to manage and plan their own budget. This is a positive step forward, because the local authorities have higher possibilities to estimate real needs of a certain community. However, the Ministry of Education, Science and Technology (MASHT) remains responsible for development of policies, drafting and implementation of legislation with regard to development of education, including development of higher education and science in Kosovo; promotion of a non-discriminatory educational system which respects everyone’s right to education; creating and managing a general system of certification of teachers in Kosovo etc.<sup>138</sup>

According to the law concerned, the Municipal Directorates are responsible for employment of the teachers and directors; for the payment of salaries for teachers and supporting staff; infrastructure and maintenance, training the teachers and administrative staff, monitoring of schools etc.<sup>139</sup>.

According to the officials of the Ministry of Education, Science and Technology (MEST) the draft law for Pre-University Education is being discussed. This law aims at making the primary and secondary education mandatory, as well as to grant to the schools a wider financial autonomy.

Given the overall situation in Kosovo regarding education, the Ombudsperson welcomes and encourages such initiatives.

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<sup>134</sup> Article 47, paragraph 1, Constitution of the Republic of Kosovo.

<sup>135</sup> Article 47, paragraph 2, Constitution of the Republic of Kosovo.

<sup>136</sup> Article 2 of the Protocol no.1 of ECHR:” no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.”

<sup>137</sup> See the Law no. 03/L – 068 on Education in the Municipalities of the Republic of Kosovo.

<sup>138</sup> See the Article 3, Law no. 03/L – 068 on Education in the Municipalities of the Republic of Kosovo.

<sup>139</sup> See Article 5, Law no. 03/L – 068 on Education in the Municipalities of the Republic of Kosovo.

In 2007, the Ministry of Education, Science and Technology (MEST) published the document “the strategy for development of pre-University education in Kosovo 2007-2017”. By this strategy is foreseen review and approval of the Curriculum Framework. The Ministry of Education, Science and Technology (MEST) in cooperation with the other institutions is engaged to include basic skills required by the European Union in the education curricula and standards which every pupil should master. The Curriculum Framework presents the main document for the new cycle of reforms in the education system in Kosovo. In the context of this, The Ministry of Education, Science and Technology (MEST) has drafted the Curriculum Framework, which in May 2010 was brought out for a public discussion. However, so far this strategy has not been adopted due to the various opinions of the international experts about whether it should apply only in the first grade or it should also apply in the sixth and tenth grade.<sup>140</sup>

*The Ombudsperson Institution recommends approval of the curriculum for the lower cycles of the education as soon as possible, because the pupils are overburdened with the schoolbooks.*

The Violence in the schools remains a worrying phenomenon. On 26 May 2008 the Ministry of Education, Science and Technology (MEST) has signed a memorandum of cooperation with the Ministry of Internal Affairs, Ministry of Justice, Kosovo Judicial Council and the Ministry of Labour and Social Welfare aiming at prevention of asocial and delinquent behaviour in the educational institutions in the Republic of Kosovo. Despite this, the violence and delinquent behaviour in the schools are still evident. Furthermore, in some cases even with tragic consequences<sup>141</sup>. Some school directorates have organized setting up of the monitoring cameras inside the school buildings. Also, in some of the schools are engaged private security companies to maintain order within the school premises, while the budget for payment of the security workers` salaries is provided by participation of pupils. The safety in the schools is the responsibility of the Ministry of Education, Science and Technology and the initiative in taken by some schools which implies that pupils themselves participate for their own safety, cannot be allowed even if such initiatives are the right ones and effective.

*The Ombudsperson recommends that the Ministry of Education, Science and Technology (MEST) drafts a detailed action plan for providing a safer and more convenient environment for the pupils and teachers through close cooperation with other state institutions.*

Another problem that is continuously accompanying the education system is the lack of school premises. Even though the Ministry of Education, Science and Technology (MEST) during this year has realized several projects for building of the school premises and it has provided the means for building of few other premises, however, some of the schools in Kosovo still work in three shifts and in the crowded class rooms.

In some cases the number of pupils in the class room rises to 47 pupils per class room<sup>142</sup>, which indeed it makes the effective education unreachable.

In the context of the implementation of the right to education, the phenomenon of abandoning the schools and illiteracy remain a worrying factor. This phenomenon is present especially in rural

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<sup>140</sup> The interview of the Minister of Education, Science and Technology (EST), for daily “Kosova Sot” on 28 December 2010.

<sup>141</sup> The case of attempted murder in the premises of “Kuvendi i Arbrit” Gymnasium in Ferizaj. Three pupils were wounded in this case.

<sup>142</sup> Declaration of MDE, Director in Podujevë Mr. Nexhmi Rudari, for dalyi “Zëri” on Monday, 4 October 2010. See also gymnasium “Xhevdet Doda” in Prishtinë, December 2010.

areas. The following factors favour such phenomenon: poor living standard, lack of efficient support by the family, patriarchal mentality in some areas of the country (especially for girls); some schools are far away, emigration, lack of information on the real role of the school, as well as because of blood feud.<sup>143</sup>

*The Ombudsperson Institution recommends to the Ministry of Education, Science and Technology (EST) to organize in cooperation with Municipal Directorates awareness campaigns for the pupils and their parents on the role of the education, especially in rural areas.*

*Also, the Ombudsperson Institution recommends to the institutions to provide various forms of supporting the families with poor living conditions by providing transport in order to decrease the phenomenon of school dropout.*

The Ministry of Education, Science and Technology (MEST) in cooperation with the Municipal Directorates for education since several years is developing a program for informal and adult education. Through this programme MEST has succeeded in decreasing the illiteracy. But, the number of illiterates in the Republic of Kosovo still remains at the worrying level.

The level of participation of the pupils from the minority communities in the education system remains small. Even though, the Government of Kosovo in 2007 has adopted “the strategy for integration of Roma, Ashkali and Egyptian communities 2007 – 2017”, statistical data proves the level of their participation in the process of education is lower<sup>144</sup>.

The phenomenon of school abandoning by the members of the above-mentioned communities is a consequence of their poor living standard, as well as a consequence of lack of knowledge of their parents on the importance of education for their children. Also, the Ministry of Education, Science and Technology (MEST) has developed the plan-programmes for education for the grades I to XIII in Turkish and Bosnian language. During the 2010 the Ministry has also published the textbooks in the languages of these communities. However, there are still problems as regards textbooks for professional schools and gymnasiums in Turkish and Bosnian languages.

*The Ombudsperson requires the Government of the Republic of Kosovo, especially MEST to undertake substantial steps for implementation of the strategy for integration of minority communities in the Republic of Kosovo.*

The Serbian community, as well as part of Roma and Gorani community continue to be out of the educational system of Kosovo. These communities continue to be a part of parallel educational system applying plans and programmes provided by the Ministry of Education of the Republic of Serbia. Thus, two separated educational systems impede integration and interaction between the pupils, but also between the teachers of both communities. In the recent months, a part of the teachers in the Serbian areas have started signing contracts with the local directorates for education of the Republic of Kosovo, but there are still confusions among the teachers of Serbian community, and as a result of this some of them are hesitating to sign working contracts with the Municipal Directorates for Education and become part of the educational system of the Republic of Kosovo.<sup>145</sup>

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<sup>143</sup> The OIK received a complaint of person N.N from the Municipality of Ferizaj complaint because nine children of his family since February 2010 were not able to pursue the education because of the fear of retaliation by the family with which the complainant is in blood feud.

<sup>144</sup> See “The Education Statistics in Kosovo 2009/2010”, published by the Ministry of Education, Science and Technology.

<sup>145</sup> The president of Partesh Municipality Mr. Nenad Cvetković, daily “Koha Ditore”, dated 6 January 2011.

As regards motivation of teachers, some progress is noticed. Non-inclusion of the teachers in the Law on Civil Service of the Republic of Kosovo<sup>146</sup> is expected to have a positive impact as regards social position of the educational workers. In such case, more flexibility will be allowed as regards policy of payment and administrative procedures, which is expected to bring significant positive changes as regards social status of the teachers in Kosovo. On the other side, the programme of the Ministry for Education, Science and Technology (MEST) for requalification and professional upgrade of teachers will not only impact their professional upgrade but it will also impact rise of their salaries.

In the recent years, the University of Prishtina raised the number of new students. However, the problem which is present since many years in the University of Prishtina is lack of adequate schoolbooks for studying. In the absence of the relevant literature, the students are forced to study, in most cases by using so called “scripts”. It is hard to believe that the students will have meaningful studying by using such literature.

So far, MEST and the University of Prishtina have not taken any steps towards improving this situation. Unfortunately, the competitiveness from the private sector of the university education, despite the individual efforts for implementation of the new studying methods, did not significantly impact the increase of quality of the education in the Universities.

#### ***4.22. The freedom of art and science***

The freedom of art and scientific creativity is guaranteed by the Constitution of the Republic of Kosovo<sup>147</sup>, and it is in accordance with the international instruments for protection of human rights, which are directly applicable in the Republic of Kosovo.<sup>148</sup>

The copyrights are the oldest forms of intellectual property. The copyrights include the right on the work of authorship in the field of literature, science and art. From all other rights deriving from the intellectual property, the copyrights are the most violated rights.

The Assembly of the Republic of Kosovo adopted the Law on Copyrights and other related rights, which aims to protect and develop the intellectual property in generally and protection of copyrights in particular.<sup>149</sup>

The right to intellectual property in Kosovo, except by the aforementioned law is also protected by the following laws: the Patent Law, the Law on Industrial Design and the Law on Trademarks.<sup>150</sup>

During this reporting period, The Ombudsperson Institution did not receive any complaint regarding violation of the right to freedom of art and science, although we believe that there are violations of this right. Such violations occur due to the lack of knowledge of the opinion in generally on the possibilities offered by the laws in force. This is also the reason why the Courts did not have any case related to alleged violation of this law.

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<sup>146</sup> See the Article 4 paragraph 1, the Law on Civil Service of the Republic of Kosovo no. 03/L – 149.

<sup>147</sup> The Constitution of the Republic of Kosovo, Article 48.

<sup>148</sup> See the European Convention on Human Rights, Article 10; the International Covenant on Civil and Political Rights, Article 19.

<sup>149</sup> The Law on Copyright and Related Rights, no. 2004/45, 29 June 2006.

<sup>150</sup> See the Patent Law, 2004/49; the Law on Industrial Design, 2005/02 L 45; the Law on Trademarks, 2006/2 L 54.

#### ***4.23. The right to work and exercise of profession***

The right to work and exercise of profession is one of the fundamental human rights guaranteed by the Constitution of the Republic of Kosovo. This right is also regulated and safeguarded by the international instruments, such as Conventions and Recommendations of the International Labour Organization.

Since the adoption of the Law on Labour by the Assembly of Kosovo<sup>151</sup>, this right is safeguarded by domestic legal instrument as well, which stipulates the rights and obligations deriving from the employment relationship and provides an effective legal protection of the employee's rights in the public and private sector.<sup>152</sup> The Ombudsperson welcomes every positive movement in the field of economic and social rights, especially regulation of the employment relationship and encourages all public institutions and other relevant stakeholders for practical implementation of these legal provisions.

The issue of unemployment in Kosovo still remains a serious social issue faced by all citizens of Kosovo. Except the high rate of unemployment, the practice proved that as regards the right to work and especially the rights at work, the public institutions of Kosovo do not implement all provisions of the law and there are continuous violations of the right to work and exercise of the profession.

The Ombudsperson Institution within its Constitutional and legal mandate continuously has monitored this category of human rights. Based on the current data of the Ministry of Labour and Social Welfare (MLSW) during 2010 the unemployment rate marked a fall. In Kosovo in 2009 were 338.895 unemployed persons. While in 2010 with the unemployment office were registered 335.926 unemployed persons. From the total number of the registered unemployed persons, 160.065 are female and 175.861 are male. These data are based on the performance report for 2009/2010 drafted by the Department of Labour and Employment (DLE) of the MLSW.<sup>153</sup>

Based on the assessment of the MLSW, if expressed in percent, in Kosovo around 38% to 40% of the active population are unemployed. Probably these figures do not present real situation of unemployment because many unemployed persons do not appear at all at the office for registration of the unemployed people to be registered as jobseekers.

The Ombudsperson estimates that even after the adoption of the Law on Labour, there was no significant progress marked in Kosovo regarding implementation of the provisions of the law by the employers in the public and private sector. The most serious violations occurred during the process of recruitment, violations of employment procedures, as well as interruption of employment relationship, lack of compensation of the overtime work, violation of the right to annual leave etc. Based on the investigation conducted and collected information, it results that in the private sector, a considerable number of employers continue to recruit labour force from the black market aiming at avoiding establishment of working contract, which would protect the rights of employees.

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<sup>151</sup> The no.03/L-212 Law on Labour, adopted by the Assembly of Kosovo on 1 Nopvembre 2010.

<sup>152</sup> The same source.

<sup>153</sup> Performance report of the Department of Labour and Employment (DLE) of the Ministry of Labour and Social Welfare 2009/2010 (06/2009-06-2010).

One of the most worrying issues for the Kosovan society and the Ombudsperson in generally remains the issue of child labour. We encounter underage children working (selling cigarettes, hand cart work etc.), even at the late night hours. Such work is harmful and very dangerous for their health. Despite that such labour is forbidden and children enjoy legal protection by domestic legislation and Convention on Children Rights this phenomenon is going on without any change. The action of the competent authorities for prevention of child labour is not noticeable. In this regard, there is no change of community approach to this harmful and extraordinary dangerous phenomenon. Except the phenomenon of child labour, serious violations occur in the public and private labour market itself. The Ombudsperson considers that the Labour Inspectorate as a preventing mechanism and responsible for implementation of the law should conduct inspection of all working places in the public and private sector. Except implementation of the legal requirements, the Labour Inspectorate should also focus on inspection of working conditions, security and health conditions at the working places, and working environment. The Inspectorate should also actively prevent all kinds of discrimination at the working place, especially to pay special attention to the minimum age of the employees in the private sector. The Labour Inspectorate is also responsible for implementation of the applicable provisions on the labour relationship.

So far, by the end of 2010 the Ombudsperson Institution has received 51 complaints related to the right of work and exercise of profession. Only 3 (three) cases were solved positively. But, barring in mind that not all cases of violation of the right to work are reported, the OIK estimates that the number of persons facing denial or violation of the right to work could be even higher.

Based on the conducted investigation for this reporting period, the Ombudsperson estimates that the violations related to the right to work present failure of the public authorities in the capacity of respondent party to respond to the recommendations of the Ombudsperson.

During the reporting period, the Ombudsperson Institution has received a large number of complaints related to *non-implementation* of the decisions issued by Kosovo Independent Oversight Board (IOBK), which are to be regarded as serious violation of the right to work. Despite that the IOBK is foreseen by the Constitution<sup>154</sup> as an independent institution, its decisions are not being implemented by the respondent institutions. Regarding non-implementation of IOBK decisions, the Ombudsperson has sent letters and issued recommendations to the public authorities.

In May 2010 the Ombudsperson received a complaint from an individual from the Municipality of Shtime who alleged that the President of the Municipality of Shtime failed to implement a decision issued by IOBK.<sup>155</sup> The Ombudsperson by a recommendation letter, dated 14 May 2010 reminded the President of the Municipality of Shtime regarding non-implementation of the IOBK decision.<sup>156</sup> Regarding this case, the Ombudsperson recommended immediate measures to be taken in order to implement the decision issued by IOBK. Till the moment of publication of this report, the Ombudsperson did not receive any answer regarding its recommendation letter and it has not been informed whether the respondent institution has taken or will take measures based on its recommendations.

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<sup>154</sup> See Article 101.2, the Constitution of the Republic of Kosovo.

<sup>155</sup> See IOBK decision A 02/176/2009, dated 11 September 2009.

<sup>156</sup> The Article 13 of the Law on Independent Oversight Board of Kosovo for Civil Service of Kosovo: *The decision of the Board presents an administrative decision of absolute decree and shall be executed by the high management official or person in charge of the institution which received the first decision of complainant.*

On 29 September 2010 the OIK received a complaint of a citizen related to violation of the right from labour relationship. The citizen is a school director in one of the schools of Municipality of Prishtina.<sup>157</sup> By this decision, IOBK approved complaint of the complainant and obliged the Municipality of Prishtina to implement the decision. Based on the complaint of the citizen and IOBK decision, the Ombudsperson has sent a letter to the Director of Directorate for Education in the Municipality of Prishtina demanding information on reasons for non-implementation of decision. Till the moment of publication of this report, the Ombudsperson did not receive any answer by the Municipality of Prishtina as regards implementation of the IOBK decision.

Referring to the above-mentioned and similar cases, the Ombudsperson concludes that non-implementation of IOBK decisions by the public authorities does not contribute to the establishment of the legal state. Contrariwise, it weakens the authority of public institutions and creates premises for decrease of confidence on justice and legal state and it violates the human rights and freedoms of the citizens which are safeguarded by the Constitution and law.

In the reporting period, except the cases of failure of the public institutions to implement decisions of the independent institutions, especially of IOBK, OIK had also 3(three) cases of complaints that were solved positively, partially or directly as a result of engagement of the Ombudsperson Institution.

On 30 December 2009, the Ombudsperson Institution received a complaint against the MLSW regarding non-implementation of IOBK decision.<sup>158</sup> The Ombudsperson Institution based on its legal mandate addressed through a letter Mr. Rashiq, Minister of MLSW regarding complaint lodged by complainant.<sup>159</sup> The case has been solved in accordance with the law in the favour of the complainant. According to the letter sent by the MLSW the Ombudsperson was informed that the case has been solved positively and the complainant has started working.

Based on the aforementioned, the OIK recommends the relevant institutions to respect provisions of the Law on Labour in the Republic of Kosovo.

The Ombudsperson particularly requires all public institutions of the Republic of Kosovo to respect and implement decisions and recommendations of the independent institutions, among them decisions of OIK and IOBK and at the same time, requires sanctions based on the laws in force due to non-implementation of these decisions. .

#### ***4.24. Children`s rights in Kosovo***

In the Kosovan reality, protection and respecting of children still remains a big challenge despite the improvements and efforts put in this direction by the Kosovo institutions.

The position of children, protection and respecting of their rights, among others is conditioned by the overall economic and social situation of the country, which is difficult for most of the residents of Kosovo.

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<sup>157</sup> See IOBK decision no. 02/196/2009, dated 1 March 2010.

<sup>158</sup> See IOBK decision no. 20/2010, dated 18 March 2010.

<sup>159</sup> See the letter of the Ombudsperson sent to the Ministry of Labour and Social Welfare, dated 1 June 2010. In the answer of the MLSW addressing the Ombudsperson, dated 4 May 2010, no. 3960 informing the Ombudsperson that the complainant has started working at his working place on 4 May 2010.



The level of protection of children`s rights, as well as their improvement is related to the manner of implementation of the legislation for children`s rights by the institution whose obligations is to do so, which quiet often is insufficient, inadequate and ineffective. However, the protection, respect and improvement of children`s rights, respectively improvement of their quality of life in Kosovo is not an obligation of state institutions only. For this purpose the engagement of other stakeholders is necessary, and most of all is needed engagement of the entire society. We are all responsible for adequate and effective implementation of the legal framework, plans and meaningful social and institutional policies, which in their focus have protection and the best interest of children.

#### ***4.24.1. Implementation of the Strategy and National Action Plan for children`s rights***

Aiming at the implementation of the legislation on children`s rights, as well as coordination of the work of the governmental institutions for effective protection of the children`s rights, the Government of the Republic of Kosovo in 2009 adopted the Strategy and National Action Plan for children`s rights for the period of time 2009-2011. Based on the Constitution of the Republic of Kosovo and the Convention on the Rights of the Child, the National Action Plan stipulates the priority fields in which is planned undertaking of necessary measures aiming at general improvement of the situation of the children`s rights, which among others also refers to governing, education, health and social welfare.

When speaking of this plan and time limits set forth for its implementation we can say that some of the obligations undertaken are partially fulfilled by the relevant institutions of the Republic of Kosovo, but there is still a lot to be done in this aspect.

As regards the field of governing, the plan among others has foreseen functionalizing of the Inter-Ministerial Committee on Children`s Rights since this committee is not yet operational. This committee as the highest governmental mechanism has been established in 2008 aiming at the improvement of the current institutional mechanisms and to guarantee implementation and respect of the children`s rights in Kosovo. In the context of this, full institutionalization of the positions of the officials which are particularly in charge of children`s rights at the central and local level is necessary.

#### ***4.24.2. Shortcomings in the field of education of children***

By this plane, the education has been stipulated as a priority for the Government of Kosovo. The plan foresees comprehensive inclusion of children in the qualitative education, implementation of the laws on pre-university education; implementation of the infrastructure which sanctions the violence in the schools, inclusion in the education programmes the briefing hour in the schools, as well as organizing campaigns against the violence against children.

The violence against children continues to be worrying matter despite the realization of some of the commitments undertaken by the respective governmental institutions. During this reporting period the OIK has received complaints related to violence in the schools.

#### ***4.24.3. The phenomenon of the violence in the schools***

One of the examples regarding violence in the schools is the case of ill-treatment committed by the teacher against a pupil in one of the primary schools in the Municipality of Gjilan. Due to the injuries suffered, the ill-treated pupil was taken to the emergency service of the city hospital. The Ombudsperson addressed relevant authorities concerning this case requesting them to undertake necessary actions as foreseen by the applicable legislation.

The institutions, in order to reduce this phenomenon must continue with the implementation and completion of the respective legislation. The institutions should undertake activities aiming at raising the awareness of the society, especially raising the awareness of teachers that the use of violence against children is harmful, unlawful and as such it cannot be tolerated. In this context, it is necessary to include in the schools of Kosovo, except other personnel also pedagogues and psychologists, which would also be very helpful in this matter. Also in order to provide progress in teaching quality, the institutions in charge should take necessary measures to include the briefing hour in the education program as a mandatory course.

#### ***4.24.4. Abandonment of the education***

Concerning the intention to realize the right to education for all, the Ministry of Education, Sciences and Technology (MEST) has drafted Action Plan against abandonment of schools, which has been published in 2010. According to the MEST statistics the number of pupils who abandoned schools during the school year 2009/2010, in the primary and the secondary education marked fall comparing to with school year 2008/2009. Abandoning the schools by 1920 pupils during the period 2009/2010 is a worrying fact. MEST together with the other relevant institutions should continue to undertake relevant measures set forth in the action plan aiming at prevention of this phenomenon. The reasons for abandonment of schools can be of a various nature, but often are linked with difficult economic conditions and poverty.

OIK is engaged in a case where children of a family abandoned the school because of the blood feud. The pupils and teachers of the village school organized for these children 1or 2 hours of lessons per day. The lessons were held in their houses. OIK has requested the relevant authorities to organize more lessons for these children till the adequate solution is found. In this case, OIK despite mediation between the families in hostility has also requested the relevant institutions to provide freedom of movement, the right to work and continuation of the education for all as foreseen by the Constitution and law, despite the nature of conflict.

#### ***4.24.5. Child labour***

Aiming at the improvement of the situation as regards child labour, during this reporting period the Ministry of Labour and Social Welfare (MLSW) within the National Plan on the social welfare

together with other relevant partners continued to undertake activities linked to functionalizing of the Kosovan Committee for prevention and elimination of the child labour. Among others, the committee should also deal with the implementation of the list of hazardous jobs, monitoring and assessment of the hazardous jobs by the local action committees, as well as with delivery of data on the situation and progress of child labour monitoring. Given the difficult socio-economic situation in the country, despite the activities undertaken, the issue of child labour remains a big challenge for the society and Kosovo public institutions.

Despite this difficult situation, the Government of Kosovo should as soon as possible adopt a strategy and action plan for prevention and elimination of hazardous forms of a child labour in Kosovo, as well as to begin its adequate and consequent implementation. An obligation for adoption of a strategy and action plan derives from the Administrative Instruction no. 17/2008 on prevention and elimination of hazardous jobs for children of Kosovo. Since 2008, except letters on the paper, nothing else has been done.

Hard labour damages health and the welfare of children and as such constitutes violation of the Constitution of the Republic of Kosovo<sup>160</sup> and the Convention on the Rights of the Child<sup>161</sup> which are directly applicable in the Republic of Kosovo<sup>162</sup>.

#### ***4.24.6. Lack of social welfare for children***

In the plan of social welfare, despite the promises, unfortunately it must be concluded that the children with special needs are in a more difficult situation than other children. In this context, the Ombudsperson Institution addressed the relevant institutions regarding non-payment of funds to some families which are taking care of the children with permanent disabilities. To these families has been denied the right to enjoy such right for several months, although such rights are guaranteed by the Law no. 03/L-022 on Material Support of the Families and Children with Permanent Disabilities. Non-payment of these funds has worsened even more their economic situation, which has already been difficult and it has particularly worsened the welfare of children. Regarding this issue, the Government of Kosovo should allocate sufficient financial means to ensure undisturbed realization of this right. Also, the Government of Kosovo should ensure that the funds provided are used only for the purpose for which they are allocated.

#### ***4.24.7. Discrimination of children with disabilities***

According to the Convention on Rights of the Child, the child with mental and physical incapacity should have a normal and adequate life under conditions, which guarantee his dignity and encourage autonomy and facilitate his active participation in the community life<sup>163</sup>. The state is obliged to

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<sup>160</sup> The Article 50, the Constitution of the Republic of Kosovo, 2008.

<sup>161</sup> See Article 32, the Convention on the Rights of Children which guarantees the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

<sup>162</sup> The Article 22, the Constitution of the Republic of Kosovo, 2008.

<sup>163</sup> See the Article 23, Convention on the Rights of the Child.

provide to them and to persons who take care of them, among others, based on its possibility, an adequate material assistance for a dissident life. In this respect, the Government of Kosovo should approximate and adjust domestic legislation, which regulates this field with the international legislation, thus, it would guarantee social support to all children with partial mental and physical disabilities from the age 0 till 18.

#### **4.24.8. *Trafficking in persons – children victims***

As a part of priorities of the National Action Plan of children`s rights is also combating the phenomenon of trafficking in persons, which necessarily should be addressed by the relevant institutions. Based on the information collected from representatives of the Kosovo Police, as well as from the Victim Protection Division of the Ministry of Justice the majority of trafficked victims during 2010 were minor girls, which were trafficked for the purpose of sexual exploitation.

In the context of this, the OIK has received a complaint filed by a parent who complaint that the Kosovo Police did not undertake necessary measures to treat the case of his daughter as a case of trafficking in persons despite the sufficient data and elements indicating that this case was about trafficking in persons. In order to conduct the investigation concerning this case, the representatives of the OIK contacted with the representatives of Department of Investigation of Trafficking in persons and with other relevant institutions working on the identification and providing services to victims of trafficking. The case is being preceded by the relevant institution.

For a successful combating and prevention of trafficking in persons, as well as to protect trafficked children the relevant institutions of the Kosovo Government should continue training of the service providers related to implementation of the document on standard procedures of action for victims of trafficking in persons in Kosovo, as well as implementation of the document on minimal standards of care for the victims of trafficking.

During the reporting period, OIK has received several complaints related to non-implementation of Court decisions related to personal contacts of parents with the children, as well as on the procedural delays as regards issuing decisions on custody over children, which puts children and their parents in difficult situations. Regarding these cases, OIK addressed relevant authorities requesting them to undertake adequate actions as foreseen by law. As regards decisions on custody over children, the representatives of the OIK, upon the request of parties, monitored court sessions in few courts in Kosovo. Also, upon the request of parties, the OIK has monitored court sessions regarding requests for issuance of protection orders, decisions on wealth obtained during the matrimonial relationship, as well as court sessions related to bodily injuries suffered as a result of family violence.

#### **4.25. *Health and social protection***

Even 11 (eleven) years after the war, the social policies, economic situation, the rate of unemployment, health system and infrastructure, the scale of mortality in the health institutions and current situation of the legislation continue to be a challenge.

#### ***4.25.1. The social problems and lack of legislation***

The problem related to legal base for regulation of the social and health issues in Kosovo is still unresolved. In the Constitution of the Republic of Kosovo is not incorporated the International Covenant on Social, Economic and Cultural Rights.<sup>164</sup>

The economic and social situation of the families to whom the only source of existence is the social welfare is the same as reported in the previous year. Around 36 thousand families are evidenced as the beneficiaries of the social scheme of the Ministry of Labour and Social Welfare (MLSW). According to this Ministry, the budget allocated for the social scheme for the families in need, in 2010 has been increased for 7 %.

Despite that the social categories receive a symbolic material support from the Government of Kosovo; the social assistance schemes do not fulfil even the elementary needs of the beneficiaries. This social welfare is not enough. This social assistance has not been determined based on the minimum food carp for the families in need, while the Government of Kosovo does not count at all the rate of inflation. The government should calculate the inflation rate and it should index the social schemes based on the results of the calculated inflation rate.

Also, the children over 5 (five) years, continue to be discriminated by the law, which regulates the social welfare. This law lowers in a strange manner and without a reasonable economic or social criterion the age for benefit of the social welfare from the social scheme.<sup>165</sup>

The Law on Family and Social Services has been drafted aiming at establishing the legal base for regulation and improvement of social and family services for the persons and families in need in Kosovo. This law regulates the direct social care, advising and in special cases regulates the issue of offering the material help for the people who need social welfare.<sup>166</sup>

#### ***4.25.2. Discrimination of children with disabilities***

The Assembly of Kosovo adopted the Law on Material Support for families of Children with Permanent Disability, aiming at providing to these children a normal life and living conditions, which guarantee dignity and facilitate their life.<sup>167</sup>

This law foresees categorization of the children with permanent disability. This Article includes only three categories of children with permanent disability.<sup>168</sup> The Commission for assessment and categorization of the children with permanent disabilities is tasked to assess the type, and the scale of damaged physical, mental and sensorial health of the child with permanent disabilities<sup>169</sup>.

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<sup>164</sup> The Constitution of the Republic of Kosovo, Article 22.

<sup>165</sup> The Law no. 2003/15 on the Social Assistance Scheme in Kosovo, Article 4 section b.

<sup>166</sup> The Law no. 02/L-172 on Social and Family Services.

<sup>167</sup> Law no. 03/L-022 on Material Support of the Families of the Children with Permanent Disability.

<sup>168</sup> Law no. 03/L-022 on Material Support of the Families of the Children with Permanent Disability, Article 6.

<sup>169</sup> Law no. 03/L-022 on Material Support of the Families of the Children with Permanent Disability, Article 7.

This categorization is incomplete and it is being accompanied by harmful consequences. Many Kosovan families who have children with disabilities, disturbances in speaking and hearing or disease related disturbance in mental development cannot benefit the material assistance provided by this law because their children are not included in the categories of children with permanent disability.

#### **4.25.3. *The problem of pension scheme***

The establishment and implementation of the pension schemes for certain categories of citizens of Kosovo aim at lowering the level of poverty in Kosovo, although provisional, but still applicable in Kosovo. In 2005, the MLSW has prepared a draft-law for Pension and Disability Insurance, which has been forwarded to the Government of Kosovo for adoption. But, the Government of Kosovo since 5 (five) years is dragging the adoption of this draft-law.<sup>170</sup>

Other attempts of the MLSW for adoption of the draft-law concerned have been done in 2007 and 2010, but so far, the Government of Kosovo has failed to deal seriously with this issue. The adoption of this draft-law would finally create a legal framework for regulation of the issues for Pension and Disability Security in Kosovo. Currently, the pension schemes are based on the comprehensive principle, which implies that all persons over 65 years old are beneficiaries of the base pension. While, all persons who could provide evidence they were insured or have been payers of contributions based on the working relationship and had over 15 years of experience are entitled to the right for raise of their pension<sup>171</sup>.

As during the war in Kosovo, a part of documentation has been intentionally disappeared by Serbian occupation forces or it has even been taken to Serbia, many citizens of Kosovo are facing the problem of proving their working experience. As a consequence of this, many former employees could not be included in the raise of pensions.

Currently in Kosovo there are laws, which regulate the issue of pensions for some categories, such as the Law on Pensions of the Kosovo Protection Corps (KSP) and Kosovo Security Force (KSF),<sup>172</sup> and The Law on Disability Pensions in Kosovo.<sup>173</sup>

In the absence of the Law on Pension and Disability Insurance, most of the Kosovo citizens are lacking the right information, so they address the MLSW requesting to be included in the pension scheme of beneficiaries for persons with disabilities. Based on the fundamental criterions for gaining the right to such pension, almost all of them get refused by the medical commission, which decides on the disability scale of the applicants.

This presents an additional problem for the uninformed citizens because the parties are losing time and making unnecessary expenses for exercise of the legal remedies. The Ombudsperson Institution almost every day receives the complaints of the citizens filed against the decisions of the medical commission. The Ombudsperson Institution raised this issue at the MLSW and it has received a

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<sup>170</sup> See the Decision no. 04/227 of the Government of Kosovo, dated 29 November 2006.

<sup>171</sup> Decision no. 13/277 of the Government of Kosovo, dated 31 October 2007.

<sup>172</sup> Law no. 03/L-100 on the Pensions of the Kosovo Protection Corps Members.

<sup>173</sup> Law no. 2003/23, on Disability Pensions in Kosovo.

week response, which is based on the law, but it does not regulate the issue. We must emphasize again, Kosovo lacks a law on Pension and Disability Insurance that would regulate this issue.

The economic and social problems in Kosovo do not end only with the evidenced social cases. Although, there are no official precise data for the number of the population in Kosovo, it is assumed that Kosovo has the youngest population in Europe. The issue of inclusion of the newer generations in the labour market seems to be a capital problem for the Government of Kosovo since the rate of unemployment in Kosovo is 45 %.

#### ***4.25.4. The problems with health system in Kosovo***

As regards health care, the Kosovo citizens still face the problems, which have not been treated seriously by the Government of Kosovo, despite that, now there is a legal framework for health system, which is not sufficient.

The adoption of the Law on Health Insurance, which is going to be a solution for other problems in the health system as well, according to the Ministry of Health, has remained an open issue in the Assembly of Kosovo. Also this dragging of the issue by the relevant institutions damages the Kosovo citizens who already face a difficult health state.

The regulation of the health system and health services in Kosovo should be one of the emergent priorities for the Government of Kosovo. Lack of medicaments at the KCUC has been evident in the past and now. In the essential list of medicaments in the KCUC are included 59 % of medicaments from which, the cytostatics constitute 43 %, while the expendable material 56.7 %. The family medicine centres are in even worse situation in this aspect. The Government of Kosovo should finally seriously deal with the supplying of the health institutions with the medicaments and expendable material.<sup>174</sup>

The medicament's market in Kosovo presents another problem. It is the responsibility of the Government of Kosovo to monitor continuously and systematically the quality, origin and expiry date of all medicaments entering the territory of Kosovo. The Government of Kosovo should request accountability from the inspectorate regarding medicaments, which are placed in the Kosovo markets and whose user manuals are not translated in at least one official language of the state.

Also, the conditions of accommodation for patients who need to stay for a longer period of time at the KCUC for cure are very difficult. Except difficult conditions for the patients hospitalized in these clinics, this year appeared another additional problem. During this winter, the patients hospitalized at the KCUC have been facing the lack of heating since the KCUC has been disconnected from Thermokos (District Heating system).

Since the Oncologic Institute is not yet operational, the patients with cancer diagnose must go to the health institutions abroad. Given that the procedures for treatment abroad which go through the Ministry of Health are lengthy, most of the patients due to the urgent needs for treatment were obliged to undergo medical treatment on their own financial means. Given that such treatments are extremely expensive, in many cases this has influenced the deterioration of the difficult economic

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<sup>174</sup> Information provided from daily "Kosova Sot", 14 January 2011.

conditions of the Kosovo population. While, the patients who were not able to pay such expensive treatments, died!

The total number of patients for this year that have been seeking from the Ministry of Health treatment abroad is 1050. During the first 6 months of 2010, the Ministry of Health stopped sending patients abroad due to the budget shortages. The Ministry of Health report that it has sent abroad for medical treatment around 300 patients. The biggest number of patients has been sent to Turkey, Germany and Albania, while a small number of patients have been sent to other countries, such as Austria, USA etc.<sup>175</sup>

Given the high rate of unemployment and big needs, the Government of Kosovo should urgently do necessary capital investments in the health infrastructure, so that most of the advanced services, which demand advanced expertise and are expensive, can be carry out in Kosovo.

Among many shortcomings, Kosovo citizens need a rehabilitation centre, such as a rehabilitation centre for fixing the prosthesis of hands, legs, eyes and other health and physical problems in accordance with the international standards. Despite the fact that the number of young addicts in Kosovo is increasing, there are no signs of any movement towards establishing an institution for treatment and rehabilitation of addicts.

The law sets out that the institutions carrying out activities in the public health system shall be supervised by the founder of the institution, in terms of professional and managerial,<sup>176</sup> external and internal aspect, but indeed the situation is completely different.<sup>177</sup>

This problem becomes even greater having in regard that the labour market in Kosovo in the field of health system is regulated only partially. This market is unregulated and extremely neglected and with preconditions of chaos and anarchy.

By the law on private activities in the health system, a professional of private health care may offer private services in the public health institutions.<sup>178</sup> On the other side, the employee of the health system employed by the public health institutions may carry out private activity in the health system only after the normal working hours.<sup>179</sup> This legal stir of health care services without clear regulation of the labour market in the Kosovo health system creates a space for manipulation and it brings into a question the public health and leaves the destiny of the citizens living in poor economic and social conditions on the mercy of wild market, which is totally uncontrolled.

Based on the OIK data many citizens of Kosovo complain against medical staff who in almost all cases they treat during the working hours in the public institutions advise the citizens, sometimes they even force them, to go for treatment in the private sector (there where these doctors work after the normal working hours in the public sector) despite that the treatment, care and medical equipments are the same. OIK is investigating such cases.

Starting from the facts and presented situation, as a logical necessity, we recommend the following:

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<sup>175</sup> The same source of reference.

<sup>176</sup> Law no. 02/L-78on *Public Health*, Article 3, point 1.

<sup>177</sup> The same source of reference, Article 3 section 2.

<sup>178</sup> Law no. 2004/50 on *Private Practices in Health*, Article 2 paragraph 3.

<sup>179</sup> Law no. 2004/4 on *Health*, Article 98, section 2.



- *The Assembly and the Government of Kosovo to adopt the adequate legal infrastructure for regulation of the pension schemes in Kosovo providing to the retired persons a decent life in older age;*
- *The Assembly and the Government of Kosovo to incorporate in the Constitution of the Republic of Kosovo without delays the International Covenant on Economic, Social and Cultural Rights;*
- *The Assembly and the Government of Kosovo to amend and complete the Law on Material Support for the Families of Children with Permanent Disability by including the children with disability in speaking and hearing or a disease impacting the psychological development;*
- *The Government of Kosovo to regulate the labour market in the health sector, so that the Kosovo citizens are given the possibility to select a qualitative health services;*
- *The Government should monitor precisely, continuously and systematically the quality of medical procedures, professional background of medical staff, thus, to minimize the possibilities to abuse the exercise of profession in the health sector;*
- *The Government of Kosovo to review seriously the issue of legal framework and functionalizing of the health system in the Republic of Kosovo.*

#### **4.26. *Responsibility for the environment***

Aiming at providing a healthy environment for the population of Kosovo, as well as at the gradual implementation of the European Union environment standards, the Article 52 of the Constitution of the Republic of Kosovo set forth responsibility of the citizens towards the environment, as well as the responsibility of the state to provide a healthy environment.

The Ombudsperson Institution (OIK) considers as worrying the policy of the Government to allocate 1% of budget for the Ministry of Environment and Spatial Planning. This tendency does not express the adequate commitment of the public authorities for treatment of this issue as a positive obligation of the state for respect and protection of this right. Given the importance of this right, which directly impacts the right to life, the right to privacy, the right to family, public health and society in generally, it is worrying the fact that this right in the Constitution of the Republic of Kosovo is set forth as a “responsibility” and not as a “right”.

Another worrying fact for the OIK is non-implementation of the legal infrastructure in force in the Republic of Kosovo concerning protection of the environment.

A very important issue regarding protection of the environment is reporting. it must be admitted the fact that the quality of reporting depends on the quality of monitoring implemented at the country`s level and the organizing the information on the environmental system. Given that these two systems in our country are not well organized, it may be concluded that the lack of complete data and their credibility is an important indicator of the environmental situation in Kosovo. This is an indicator that directly falls in contradiction with the principle of transparency.

As regards non-implementation of this principle, as well as non-fulfilment of the legal obligation for the establishment of units for protection of the environment, human capacity building, as well as publications related to this issue on their web pages the Ombudsperson`s remarks are related to

central and local level. An example that illustrates the miserable situation of non-implementation of the legal framework is the Municipal Assembly of Prishtina, but also some other Municipalities.

Even though, during 2010 were delivered donations for the first time for the civil society, the cooperation and the participation of the civil society in the public reviews is not satisfactory. Also, the information of the Ombudsperson as regards this issue is not at satisfactory level.

As regards the issue of air quality, the scale of pollution in most of the measuring points in Kosovo exceeds 3 to 6 times the allowed average, depending on the weather. The allowed average exceeds several times, especially in Prishtina where the air quality is not satisfactory with the pollution parameter **PM10**, which is in most of the cases over the allowed maximum. Also, this phenomenon repeats around the places where the biggest polluters are located, such KEK/Obiliq, Sharcem/Hani i Elezit, Trepça/Mitrovicë, Ferronikeli/Drenas, dumps or urban and industrial waste, as well as District Heating of the Municipalities of Prishtina, Gjakova and Mitrovica.

Lack of air monitoring systems is a particular problem. The air monitoring is still being done with classic methods. The current monitoring systems do not have equipments for measuring the percentage of the metals in the air (for example, station in Drenas). Regarding this issue Kosovo lack administrative instructions through which would be determined the allowed values of discharge of polluting elements in the air. There is no national air protection strategy.

Kosovo has no plant for treatment of black waters. The new Law on Waters has been amended and improved, but the law and the Administrative Instruction is not enforced by the public institutions, respectively by the Municipal inspectorates. Water classification according to the quality, as well as the water protection zoning has not been done yet.

Also, there is no exploring and monitoring of ground waters. Kosovo yet does not have strategic plan on waters, water management plan, watershed management plan and flooding management plan. Also, there is no integrated system of monitoring surface and ground waters.

Treatment of drinking water is done in a classical manner, only by chlorinating the water and not by implementing and using modern processing technologies. In Kosovo, only 72% of the population have access to drinking water, while 45% of the population have access to canalization system. Only 1% of the waters wells, which are used by the 30% population, undergo water quality evaluation, which makes the Ombudsperson very concerned. This is an extremely worrying fact which is in contradiction with the right to drinking water.

Continuous human activities and impacts lead to degradation of land surfaces which cause socio-economic consequences. The main factors, which impact directly in degradation of environment, are the following: unplanned constructions, industrial waste collection, surface mining, household waste and landfills, erosion, uncontrolled use of gravel etc. Degradation of the agricultural land will cause big and irreparable consequences, pollution of agricultural land with heavy metals as well, black water discharge, illegal waste dumps etc, which directly are accompanied with endangering of the Kosovo citizens' health. The lack of monitoring systems aggravates even more such situation.

Erosion is in most cases a consequence of building the road network and unplanned building of premises and neighbourhoods. This puts the agricultural and forestry land at risk of degradation. It is encouraging the fact that the Municipalities have signed a memorandum of understanding with the Forest Protection Agency. By signing this memorandum the signatory parties agreed to transfer

to the Municipalities competencies on monitoring of the forests. Only the Municipality of Prishtina is not a signatory to this memorandum and has no directorate for protection of the environment.

The Ombudsperson received a complaint from the village, Municipal Assembly of Obliq. According to a decision of the Government of Kosovo the village is included in the zone of interest near the ore of lignite. As a consequence of mining and erosion the house of the complainant has been seriously damaged, which endangered the life of the complainant and his family. Despite the fact that damages cause as a consequence of mining are obvious, no expropriation procedure or alternative solution has been offered yet by the relevant authorities. Regarding serious damages caused as a consequence of mining, which directly endanger life of the people and violate the right to property, the Ombudsperson has expressed its concern through a recommendation.

Also, extraction of stones and gravel from the riverbeds and river valleys and a from rocky parts of the land continues in a wild manner, which arouses concern of the OIK due to the complaints of the citizens lodged with this institution as regards degradation of the environment, noise and dust, flooding and endangering the right to property as a consequence of land sliding, which directly causes breaches in the surrounding houses. Currently, in the entire territory of the Republic of Kosovo work over 200 stone crushers based on the licenses issued by the Ministry of Environment and Spatial Planning.

The system of waste management is being accompanied by serious problems. There is no recycling, while there is a discrimination of citizens as regards payment system. This is responsibility of the Municipalities but they do not implement the law waste management. This happens as result of mixture of competencies between the municipal and central institutions due to the lack of complete and precise determination of areas of responsibility of the companies which perform works. Lack of management of industrial waste, uncontrolled dumping of construction waste is a widespread phenomenon in Kosovo, while no body pursues the perpetrators.

The Administrative Instruction no. 02/2009 for management of thrown vehicles and their remains, which aims at prevention of pollution of the environment, is not being implemented. Despite that the Government of the Republic of Kosovo by decisions of 19 June 2009 obliged the iron collection points to stay 1 (one) kilometre away from the highway, such collection pints are visible along the highways.

Protected areas of the nature and biodiversity have changed mainly as a consequence of negative impact of human factor through illegal constructions and uncontrolled woodcutting. All these actions are in contradiction with the legislation in force and international norms for protection of the environment. Of course, other factors, daises, fires, climate change impact the biodiversity. An example of damages caused by human factor is national park "Mali Shar", and "Bjeshkët e Nemuna". Another factor with negative consequences for the environment is also industrial pollution and it is a worrying element in Kosovo. In the Republic of Kosovo there is no integrated environmental permission based on which are determined conditions for operation of the industrial operators as required by the Law on Protection of the Environment.

In the field of climate change Kosovo is not a party to UN Framework Convention on climate change and Kyoto Protocol. Kosovo has no strategy on climate change and no inventory of

greenhouse gases installed<sup>180</sup>. Kosovo continues to face lack of human resources and respective mechanisms for the implementation of the legislation in force.

Pressures against the environment by some economic and other factors through which the human by indulging own socio-economic needs significantly impact the environment and cause gradual degradation of the environment. Using the space, utilization the natural resources and various services which have an impact on the environment reflect also on the changing of the natural balance, exhaustion of natural resources and human health. Dimensions of these impacts, action mechanisms and the consequences on the environment depend on many factors.

Therefore, we may conclude that the issue of protection of the environment in the Republic of Kosovo is very worrying for the Ombudsperson. Failure to take respective measures for prevention and elimination in most cases is accompanied by irreparable consequences for the environment.

#### **4.27. *Judicial protection of human rights***

The Constitution of the Republic of Kosovo guarantees the right to judicial protection to all citizens “*if any right guaranteed by this Constitution or by law has been violated or denied*”, and has the right to an effective legal remedy if found that such right has been violated.<sup>181</sup>

Despite this constitutional guarantee for protection of judicial rights, its practical realization continues to be accompanied by difficulties due to the situation of the country’s judicial system. These difficulties remain despite the announcements and first encouraging steps for the reforms in judiciary aiming at the functionalizing the Kosovo judiciary in accordance with the international standards. The reform should include termination of re-nomination process of judges and prosecutors, adoption of the fundamental laws on judiciary, raise of salaries, as well as construction of premises for judiciary.

Amongst the main difficulties that the judiciary is facing and which have as a consequence undermining the confidence on the justice system and rule of law in Kosovo, are the following factors: non-functionality of the judicial power in the entire territory of Kosovo, excessive duration of criminal and civil procedures, a big number of old unresolved cases, the low rate of enforcement of judicial decisions, the big number of judicial decisions changed upon an appeal (around 60%); corruptive elements in the courts, practical non-implementation of the European Convention on Human Rights, as well lack of interpretation of decisions of the European Court of Human Rights in the judicial decisions.

The Ombudsperson is seriously concerned as regards non-extension of the judicial authority in the entire territory of Kosovo, as set forth by the Constitution of the Republic of Kosovo.<sup>182</sup> Since the declaration of the independence of the Republic of Kosovo,<sup>183</sup> the District and Municipal Court, The District and Municipal Prosecution, the Offences Court in Mitrovica, The Offences Court’s in Zveqan and Leposaviq continue to be out of jurisdiction of the Kosovo judicial system. There are in

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<sup>180</sup> Greenhouse gases are kind of gases released by agricultural greenhouses which penetrate the ozone layer and make ozone holes.

<sup>181</sup> *The Constitution of the Republic of Kosovo*, Article 54.

<sup>182</sup> *The Constitution of the Republic of Kosovo*, Article 102, paragraph 2.

<sup>183</sup> On 17 February 2008, the Assembly of the Republic of Kosovo declared Kosovo and independent and sovereign.

about 11.700 cases with the Prosecution, while 1.615 cases are pending for review, which are at risk of legal prescription due to time expiration. Also, lots of identification documents seized as the evidence by the police, such as passports and identification cards remained in the court. Failure to review cases by the court and the prosecution in Mitrovica, represents serious violation of human rights and freedoms. Such fact continues to be a big challenge for the authorities of the Republic of Kosovo to ensure the rule of law.

The Ombudsperson expressed its concern regarding situation of the judicial bodies in the northern part of Mitrovica during the meetings with the respective state institutions.<sup>184</sup> The Ombudsperson demanded the authorities to take appropriate measures aiming at providing to the citizens access to judicial services as soon as possible. The Ombudsperson did not yet receive an answer for the respective authorities.

The European Rule of Law Mission in Kosovo–EULEX promised to make operational the judiciary in Mitrovica during this year by returning the local judges assigned by the Kosovo Judicial Council to the courts in the northern part of Mitrovica. But, so far, no positive effect has happened and it is not known when such effect will happen.

Another concern for the Ombudsperson is 213.967 unresolved cases throughout the courts inherited from 2000. The pending cases, civil and criminal cases, at the Prosecution and Courts risk legal prescription since the legal limit times for review by the Courts and Prosecutions have expired. While the legal prescription, indeed is denial of justice. This represents one of the most serious violations of human rights and freedoms.

The reasons for such situation are numerous: lack of technical infrastructure, low salaries of the judges, prosecutors and administrative staff, corruptive elements within the judicial system etc.

The Kosovo Judicial Council has adopted the state strategy for reduction of 200.000 old cases.<sup>185</sup> By the strategy are determined the persons in charge for its implementation, but not limit times for reduction and final resolution of all old cases have been set out. The effects of the strategy for handling and reduction of these cases remain to be seen.

In February 2010 started the project of verification and re-nomination of the Judges and Prosecutors, based on the UNMIK Administrative Direction 2008/2. The project is lead by the Independent Commission of Judiciary and Prosecution. This project has been supported by the European Union and the United States of America.

The re-nomination process was aiming at restitution of public`s confidence in the judiciary, through verification of the candidate`s past, their competencies and ethic and professional qualifications. During the verification process were nominated and re-nominated 274 Judges and 60 Prosecutors. From the total number of nominated and re-nominated persons, in about 60 % of them are nominated for the first time in these positions. This means that the judicial system of the country has been renewed.

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<sup>184</sup> See *Report with recommendations*, date 19 March 2010, regarding non-functioning of the judicial bodies in the northern part of Mitrovica, addressed to Mr. Jakup Krasniqi, the President of the Assembly of Kosovo. The copies of this report have been forwarded to the Chairman of Kosovo Judicial System Mr. Enver Peci, Mr. Fejzulah Hasani, the President of the Supreme Court of Kosovo, Mr. Ismet Kabashi, the Chief Prosecutor of Kosovo, Mr. Xhevdet Abazi, the President of the District Court of Mitrovica..

<sup>185</sup> *Kosovo Judicial Council*, decision no. 22/2010, 18 November 2010.

The President of the Republic of Kosovo based on its constitutional competencies,<sup>186</sup> upon the recommendation of the Kosovo Judicial Council,<sup>187</sup> nominated the verified candidates in the positions of Judges and Prosecutors. The Judges and the Prosecutors engaged before the verification process were nominated by UNMIK.

The Ombudsperson's concern regarding process re-nomination is related to proceeding of the unresolved cases. Non-appointment of 60 % of former Judges will have as a consequence dissolution of most of the penal panels. As a result of this, it may appear the need for return to very beginning of the trial procedures for all cases, which were assigned to the Judges who are not re-nominated. The same difficulties will face also the Prosecutions of all levels.

As regards the legal infrastructure for the judiciary, significant improvements have been done. Without many delays, the Assembly of the Republic of Kosovo has adopted the basic laws on judiciary.<sup>188</sup>

But, the practical implementation of these law remains a challenge for the judiciary and other institutions since it has been foreseen the establishment and functionalizing of the new institutions in the Republic of Kosovo, as well as reform of the judicial system.

#### **4.27.1. The EULEX Judges and Prosecutors**

The Judicial and Prosecution system of Kosovo is supported by a contingent of international Judges and Prosecutors who were engaged within the European Rule of Law Mission in Kosovo- EULEX.

The purpose of the work of EULEX Judges and Prosecutors is to help the local judicial authorities to develop and strengthen an independent multiethnic justice system, free from political interferences and a system which acts by respecting the internationally recognized standards and the best European policies.

The EULEX Judges and Prosecutors have executive competencies in judiciary. The work with the local Judges in the mixed panels at all levels of trials and investigations of cases of war crimes, genocide, terrorism, organized crime, corruption, interethnic crimes, murder cases, aggravated murders, economic and other crimes. Except this, the EULEX Judges have competencies in civil cases as well. They are entitled to the right of selection of civil cases based on the competencies over the Special Chamber of the Supreme Court of Kosovo.<sup>189</sup> These cases are related to the Kosovo Privatization Agency, as well as the cases within the competences of all courts of Kosovo. They also handle the appeals regarding decisions of Kosovo Commission for Property Claims.

The Kosovo Judicial Council has no competencies over the EULEX Judges and Prosecutors. They are nominated and dismissed by the President of the Assembly of EULEX Judges and Prosecutors, as well as by the EULEX Chief Prosecutor who acts under the orders of the chief of EULEX Justice

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<sup>186</sup> *The Constitution of the Republic of Kosovo*, Article 104.

<sup>187</sup> The process of verification of Judges and Prosecutors ended on 26 October 2010. The Judicial Council of Kosovo assumed the competencies and responsibilities for selection and nomination of Judges and Prosecutors.

<sup>188</sup> *Law no. 03/L-223 on Kosovo Judicial Council; the Law no. 03/L-199 on Courts; the Law no. 03/L-241 on Kosovo Public Prosecution, The no. 03/L-225 Law on State Prosecution and the Law no. 03/L-224 on Prosecutorial Council of Kosovo.*

<sup>189</sup> *The Law no. 03L 053 on Competencies*, Article 5 paragraph 1.

Component. Currently in the Justice and Prosecution system of Kosovo are acting 50 Judges and 30 Prosecutors of the international mission-EULEX.

#### ***4.27.2. The competencies of the Ombudsperson in relation to judiciary***

Based on the Constitution and law the competencies of the Ombudsperson in protection of the citizens` rights related to judiciary are limited in contrast to other spheres and institutions and these competences do not affect or endanger independency of the Prosecutors in conducting the investigation and the independency of Judges in decision-making process.<sup>190</sup>

The Ombudsperson pays a special attention to protection of principles of fair trial, as well as to the principle of a trial within a reasonable time. These principles are guaranteed by the Article 6 of the European Convention on Human Rights.

#### ***4.27.3. The complaints of the citizens against judiciary***

During the 2010, OIK received in total 180 complaints, 70 of them have been declared inadmissible.<sup>191</sup> The largest number of complaints were addressed against Municipal, District and Supreme Court of Kosovo. The citizens were manly complaining on excessive duration of procedures, non-execution of judicial decisions, as well as doubts on the fairness of the Judge.

Many citizens, unhappy with the judicial decisions address the Ombudsperson through their submissions expressing their dissatisfaction and request the Ombudsperson to interfere in the judicial process of decision-making. Very often the citizens in their complaints addressing the Ombudsperson request drafting of various submissions and their representation at various judicial instances. Firstly, this is a consequence of lack of confidence of Kosovo citizens on judicial system. In many cases the inefficient information of citizens on the competencies of the Ombudsperson is obvious. But, there are also cases when the citizens expressly declared their trust on the OIK.

In all cases where the complaints or requests of the citizens were not in accordance with the competencies of the Ombudsperson they were advised to visit professional competent institutions, which provide legal services, such as the Commission for Legal Assistance and the Non-Governmental Organizations, which offer to the citizens legal services free of charge.

In total, 56 complaints were lodged against the Supreme Court of Kosovo, 25 were inadmissible, 8 were closed and 23 complaints are still opened.

Against the District Courts were lodged in total 44 complaints. For the total number of 44 complaints 17 complaints were inadmissible, 8 were closed and another 19 are still opened.

Against the Municipal Courts were lodged in total 80 complaints, 28 complaints were declared inadmissible, 3 complaints were closed and 49 complaints are still opened.

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<sup>190</sup> *The Constitution of the Republic of Kosovo*, Articles 132-135; *the Law no. 03/L-195 on the Ombudsperson*, Article 15, paragraph 6. "The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in cases of unreasonable delays or apparent abuse of power."

<sup>191</sup> See *Law no. 03/L-195 on the Ombudsperson*, Article 19, and paragraph 1.3.

After the analyses of received complaints, it results that the citizens complain on excessive duration of judicial procedures for reviewing the cases, in some cases for many years. This represents violation of the right to a trial within a reasonable time.

According to the Ombudsperson, the reason for such procedural delays in the civil contests, most of all is a consequence of the large number of cases inherited from the previous years. Such situation hinders even more continuous arrival of the large number of new cases from various spheres. Lack of resources for the judiciary brings the already difficult situation to a dead end. According to information of the Kosovo Judicial Council presented in December 2010 the number of pending cases are 233.462, with the obvious tendency of rising. Despite such situation, the Ombudsperson does not find any reasoning for procedural delays, which are related to civil contests when the citizens are forced to wait for a court decision even up to 5 years.

Despite the limited authorizations in the field of judiciary, the Ombudsperson in some cases has sent suggestions and recommendations, especially to the first instance courts through which it has requested speeding up of the judicial procedure by taking concrete actions. But, the Ombudsperson is not happy with the level of treatment of its memorandums and responses received from the courts.

During the 2010 the OIK has received complaints regarding biased actions and attitudes of Judges during the concrete trials and non-objectiveness in handling the cases. The OIK has been demanded to help in disqualification of these judges from the trial process. The Ombudsperson explained to the complainant the legal requirements for disqualification of judges and the legal way they have to follow in order to achieve such rights. According to the KJC statistics for 2009, around 60% of the appealed decisions issued by Municipal courts were changed by the District Courts. This fact is very significant and somehow proves reasonableness of doubts and justifies the complaints of the parties on the objectiveness of judicial decisions.

The complaints were lodged also against the final court decisions due to non-execution of these decisions by the Municipal Court. In these cases has been requested the assistance and intervention of the Ombudsperson to execute the judicial decisions. The execution of decisions at the country's level is very low. Only around 40% of the judicial decisions are executed. The reasons, which impact the low level of execution of final decisions according to KJC is the small number of the executive associates, as well as lack of precise addresses etc.

In all cases of complaints, the Ombudsperson conducted the investigations and it has contacted through letters and direct meetings with the officials of Municipal Courts who are responsible for the execution of judicial decisions. The Ombudsperson demanded explanation on non-execution of judicial decisions. In many cases after the intervention of the Ombudsperson the Courts have taken actions to execute the judicial decisions. But, in many cases even after the intervention of the Ombudsperson some of the Courts did not execute decisions. The Court officials justified non-execution of judicial decisions with the lack of Judges and other associates for execution. While, regarding non-execution of the judicial decisions of financial character the officials were pointing out non-execution of decisions by banks despite the orders issued by courts.

In some cases there were complaints lodged against the final court decisions. In these cases were exhausted all legal remedies including constitutional appeal. Some of the complainants even



demand the Ombudsperson to forward their case for trial at the Court of Strasbourg.<sup>192</sup> It is very worrying the fact that in some cases the complainants addressed the Ombudsperson after consultations with their own defence counsels. Also, there were complaints lodged against final judicial decisions in which all legal remedies were exhausted, demanding the Ombudsperson to raise the issue with the Constitutional Court due to the violations of human rights and freedoms.

In all these cases, in the case when legal remedies against decisions were not exhausted and in those cases in which the legal remedies against a decision were exhausted, the Ombudsperson advised the complainants to fill up the respective form to report the case and demand legal aid from the institutions and organizations, which provide such aid.

The complaints were also lodged as regards unjust delays by the court administration as the officials of the administration were not furnishing the parties with court decisions within the legal limit time, as well as due to the inability of the parties to have access to their case in the Court. The Ombudsperson, in all cases of complaints of such nature has contacted the Court officials and in cooperation with the Courts it has solved the complaints of the parties. The parties were furnished with the judicial decisions and were informed regarding situation of their cases in the Court.

#### ***4.27.4. The complaints of the citizens against Prosecution***

During the reporting period OIK received 25 complaints or requests from 25 different individuals related to the work of the Prosecution bodies. From the total number of complaints 10 of them have been declared inadmissible, 13 cases are still open and 3 cases are closed. The OIK handled the complaints, which were within the domain of its competencies. There were conducted actions of administrative-investigative nature, such as interviewing and taking different statements, checking documents, as well as checking the investigation files based on which the Prosecution issued a decision, decided to not commence criminal proceeding, to cease or suspend the criminal issue.

Against the District Prosecutions were lodged in total 13 complaints, from them 5 were declared inadmissible, 2 cases were closed and another 3 cases are opened.

Against the Municipal Prosecutions were lodged in total 12 complaints, five complaints were declared inadmissible, 1 case was closed and another 6 cases are opened.

The number of complaints related to the realization of the rights before the Public Prosecution was smaller comparing with the complaints addressing the Courts. Based on the analyses, it results that a part of complaints were lodged due to the procedural delays of investigation by the Public Prosecution till the issuance of decision. In many cases, due to the need for additional information, based on the criminal denouncement, particular information are required from the Police. At this stage of procedure, as a consequence of passivity and insufficient initiative of the Public Prosecutor very often comes to setbacks of the Public Prosecutor`s work.

Such actions very often result with legal expiration within which the injured parties may legally undertake private prosecution. In such cases is noticeable lack of communication between the injured party, the Police and the Prosecutor.

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<sup>192</sup> In popular jargon the term “the Court of Strasbourg” implies the European Court of Human Rights.

Also, there were complaints lodged based on the doubts on the conduction of the investigations by the Public Prosecutor, respectively by the Police team in charge of investigation. In some cases there were doubts about changing or manipulating the facts and evidence at the scene. In these cases the complainants requested intervention of the Ombudsperson at the investigation authorities aiming at providing unbiased flow of the investigation.

A number of complaints lodged with the OIK are related to detentions and delays in filing the indictment by the Prosecutions due to the delays in carrying out investigation procedures in relation to the case. In some cases, detention on remand is extended to the parties based on the same grounds.

The Ombudsperson in all admissible cases commenced investigations on the complaints of the parties and it has contacted the officials of the Public Prosecutions demanding explanation regarding delays of the investigation procedures and delays in filing the indictments. In some cases, after the intervention of the Ombudsperson, the authorities in charge of the investigation were put into action in order to conduct and to bring the investigation to an end.

Based on the information obtained from the State`s Prosecutor, the main reason for delays during the stage of the criminal investigations and proceedings to the courts is the small number of the Prosecutors at all levels. Despite the numerous burdens and lack of human resources and needed infrastructure, for the Ombudsperson the reasoning for delays in handling the criminal issues by the Court and the prosecution within the legal limit time, even for the State`s Prosecutor itself, are not always reliable.

#### **4.27.5. Recommendations**

- *The Ombudsperson recommends to the Kosovo Judicial Council (KJC), the Government and the Assembly of the Republic of Kosovo extension of the judicial power in the entire territory of the country including the northern part of Mitrovica and other Municipalities as foreseen by the Constitution of the Republic of Kosovo.*
- *The Ombudsperson recommends functionalizing of the Kosovo Judicial Council based on the Law no. 03/L-223 on Judicial Council of Kosovo.*
- *The Ombudsperson recommends establishment, without further delays of the Prosecutorial Council of Kosovo based on the Law no. 03/L-224 on Prosecutorial Council of Kosovo.*
- *The Ombudsperson recommends implementation of the Law no. 03/L-199 on Courts aiming at improvement of material conditions in judiciary and structuring the Courts in accordance with the law.*
- *The Ombudsperson recommends implementation of all legal measures, which would help elimination of the remaining judicial cases and to declare such elimination a priority for the judiciary and other state bodies of the Republic of Kosovo.*
- *The Ombudsperson insists that the staff problem and other problems of the courts, which are the main causes of delays in decision making process, are not and cannot be acceptable*

*reasons for violation of the right for review of the case within a reasonable time. This right is also guaranteed by the Constitution.*

- *The Ombudsperson recommends providing of all necessary conditions for effective implementation of legal act, which regulates protection of the right to a trial within a reasonable time and adoption of the amendments for a better protection of legal and constitutional rights of the clients in the proceedings of the cases.*
- *The Ombudsperson recommends adoption of the measures for ensuring faster review of interim preventive measures, since based on the received information and conducted investigation it has been confirmed that some Courts need several years to issue an interim preventive measure.*
- *The Ombudsperson notices long delays as regards execution of judicial procedures in the execution of Court decisions, therefore, the Ombudsperson recommends providing of all conditions for implementation of decisions within a shortest possible deadline.*
- *The Ombudsperson underlines that the disagreement with the final judicial decisions may not serve as a base for disobedience to the obligations of all of us, therefore, the Ombudsperson recommends implementation of judicial decisions without any delay.*
- *The Ombudsperson recommends the prosecuting and judicial authorities to guarantee to the perpetrators of the criminal offences fundamental constitutional rights, such as the right to a fair trial and the right to exercise of legal remedies. The perpetrator of the offences must be completely informed on the accusation against him, description of factual state and presentation of grounded evidence in which they may effectively challenge the judicial decisions.*
- *The Ombudsperson recommends the Courts as regards issuance of the decisions on mandatory psychiatric treatment to already specify precise duration of such measure, the beginning and the end. Also, in the reviewing procedures to issue a decision within a legal limit time regarding duration of the measure after one year period of its execution by informing the defendant unequivocally.*
- *The Ombudsperson insists that the competent authorities provide adequate conditions for the expert witnesses and the assessors to carry out their expert duty with all moral and professional responsibility, precisely, with responsibility and impartiality and within a legal limit time. Therefore, the Ombudsperson recommends drafting of a Regulation on judicial experts.*
- *The Ombudsperson recommends the Kosovo Chamber of Advocates to ensure higher quality of legal aid in the cases of ex officio representation or to provide a higher quality of the legal aid provided free of charge and unequivocally to provide protection of the defence counsel's client in case of damage in relation to performing of the defence counsel's duty.*

#### ***4.28. The rights of minorities and their members***

The rights of the communities and their members are regulated by the Constitution of the Republic of Kosovo and by direct application of the international conventions for protection of minorities and their rights<sup>193</sup>. Except international conventions in force there are also several laws dealing with protection of minority communities: Law on the Protection and Promotion of the Rights of Communities and their Members, Law on the Use of the Official Languages, Law on Freedom of Religion, Law on Cultural Heritage, as well as the Anti-Discrimination Law<sup>194</sup>.

The Constitution guarantees protection of cultural rights and preservation of identity of the minorities in the field of education; use of the language and alphabet, use of toponyms, access and representation in media, maintaining unhindered contacts among themselves within the Republic of Kosovo and outside, development of non-governmental sector within their own community, as well as participation in the work of private non-governmental international sector in Kosovo.

##### ***4.28.1. Composition of the population in the Republic of Kosovo***

The overall composition of population in Kosovo has not changed in the reporting period. The precise composition of the population in Kosovo is not known since there was no census<sup>195</sup>. Another ongoing problem is return of persons displaced from Kosovo from different countries, especially from Serbia, as well as within the territory of Kosovo. There was no positive movement in this respect during this reporting period.

##### ***4.28.2. Preservation of the national, political and cultural identity***

The Serbian community preserves its national identity through a relatively developed system of political parties, non-governmental organizations, humanitarian and cultural organizations. While, as regards religious identity, the Serbian community preserves its identity through Serbian Orthodox Church (SOC). The “autonomous” parallel education system, which includes primary, secondary and higher education functions based on the plans and programs of the Ministry of Education of the Republic of Serbia (MERS). This community preserves his religious identity through Serbian Orthodox Church (SPC). But, the same as the education system of the Serbian community, also the SPC has no cooperation at all with the relevant authorities of the Republic of Kosovo.

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<sup>193</sup> See Article 22, the Constitution of the Republic of Kosovo.

<sup>194</sup> See Article 59, the Constitution of the Republic of Kosovo.

<sup>195</sup> Census of population in the Republic of Kosovo has been done from 1 to 15 April 2011. This census has been accompanied by some irregularities, which were made public by the Ombudsperson in the media conference held on 5 April 2011. Due to the political pressure made by the Republic of Serbia calling on the Serbian community to boycott census, the census did not occur in the Municipalities inhabited by the majority of Serbs in the northern part of Kosovo, while the partial census occurred in other Municipalities inhabited by majority of Serbian community.

The possibilities to preserve the language, habits, cultural heritage and tradition of the Turkish community are insufficient and regarding this issue not much has been done, indeed very little efforts were done. In terms of preserving the cultural identity the only important role have the Non-Governmental Organizations dealing with such problems and amateur theatres in the areas where the Turkish community is more concentrated, such as region of Prizren, Prishtina, Mamusha, Vushtrri and Gjilan. But, the Ministry of Culture of the Republic of Kosovo, so far, has not been dealing seriously with this issue.

The same is the situation of the Bosnian Community concentrated in a higher number in the region of Prizren, Gjakovë and Pejë. Although, some Bosnian political parties and Non-Governmental Organizations have been formed for the first time and teaching in Bosnian language has begun, the possibility to preserve language, habits, cultural heritage and tradition is very difficult and it enjoys no institutional support. The biggest problem is lack of textbooks in Bosnian language. The textbooks for primary and secondary education in Bosnian language are provided from Bosnia and Herzegovina and Serbia. But, based on the information provided by the Chairman of the Office for Communities in Prizren, the problem of textbooks should be solved by the next school year 2011/2012.

From around 40 cultural and artistic Roma societies in Kosovo, nowadays only one deals with the preservation of Roma tradition and culture. The society dealing with this problem is called “Durmish Aslan“ in Prizren, while the others were transformed into NGOs, which in most cases have shut down their activity as a consequence of lack of professional staff and funds.

In generally, this community has always faced the problem of preserving and developing the identity as regards religion, language, tradition and culture. Due to specific, external appearance and the language they speak, they were always discriminated by all communities and as a result of this many members of Roma community have given up their origin and were assimilated within the other communities that have dominated numerically in the areas where members of Roma community live.

The assimilation tendency within the majority communities, Serbian or Albanian, has always been present at this community due to the various pressures and difficult economic and social conditions in which they live and were living in the past. The primary factor influencing the phenomenon of changing the identity is security. Other factors can be personal desire, political interest or an assumption that by changing the identity they could reach a better perspective in the society.

As regards Ashkali and Egyptian communities, which are in a similar situation, only the Municipality of Fushë Kosovë has done a positive and modest step by appointing the coordinator for culture of Ashkali and Egyptian community.

#### ***4.28.3. Challenges and educational possibilities of the minority communities***

##### **The Serbian community**

In Kosovo are functioning two parallel education systems. Except education system of the Republic of Kosovo, which applies education plans and programs of the Republic of Kosovo, in the areas inhabited by members of Serbian community and partially by members of Roma and Goran

community applies the education system of the Republic of Serbia. The Ministry of Education of the Republic of Serbia (MERS) finances the school personnel working under the education system of the Republic of Serbia. The Ministry of Education, Science and Technologies of the Republic of Kosovo (MST) does so in the form of material stimulation that in accordance with the professional level has been set linearly for all employees in the schools. By adopting the Law on Protection and Promotion of the Rights of the Communities and their members in the part related to education, this system of education (primary and secondary education), as well as the University in northern part of Mitrovica have been recognized in terms of Article 8 of this law since March 2008.

### **Turkish and Bosnian community**

The Bosnians and Turks can follow the education in primary and secondary schools in their own languages. The main problem is lack of textbooks in Turkish language. Thus, the pupils of Turkish community put efforts to fulfil the lack of textbooks in Turkish language mainly with textbooks from Turkey, although these textbooks are not in accordance with the education plans and programs of the Republic of Kosovo and such textbooks are being used as additional textbooks. The Turkish community has a high education institution in Turkish language in Prizren, while within the University of Prishtina functions cathedra of oriental and Turkish language. The Bosnians may follow the education in the secondary level in Bosnian language and also higher education at the High School for Business in Pejë, as well as at the Faculty of Education in Prizren. Also, there are several private Universities where members of these communities may follow lessons in their own language.

### **Goran community**

We must emphasize again that in the area of Gora are present two education systems, based on the planes and programs of the Republic of Kosovo and Republic of Serbia. The majority of Goran community expressed their wish to receive education in Serbian language due to better possibilities to follow the higher education in Serbian language. The members of Goran community continue to receive education and use textbooks in Serbian language and based on the planes and programs of the Ministry of Education of Serbia since there are no textbooks and education plans and programs in Serbian language in the education system of the Republic of Kosovo.

But, amongst the Goran community, the situation is a bit more complicated in terms of respecting their right to education. Indeed, the teachers of Goran community till 2005 were receiving salaries from both Governments, from Government of the Republic of Serbia and Government of the Republic of Kosovo, but due to the political pressure, in 2006 they interrupted contracts with MEST despite the fact that the schools in which they are organizing education are the property of the Ministry of Education, Science and Technologies of the Republic of Kosovo. A part of population in the Municipality of Dragash identified themselves with Bosnian community and accepted the education plan and program of MEST in Bosnian language, while the teachers and pupils who follow lessons based on the education plans and programs of the Republic of Serbia had troubles since they were not allowed to use facilities in the primary and secondary schools during 2008/2009

after the interruption of contracts between them and MEST. But, this year, the situation has improved and now the pupils and teachers have access to school facilities in the area of Gora.

### **Roma, Ashkali and Egyptian community**

Roma, Ashkali and members of Egyptian community living in various areas of Kosovo follow lessons in Albanian language. Roma, Ashkali and Egyptian community still face a very low level of education and very high rate of school dropout. These communities are facing very bad social and economic situation, which is one of the main reasons of school dropout by the members of these communities since the conditions for their education are at the minimum or they do not exist at all. Also, we must emphasize that Roma, Ashkali and Egyptian girls comparing to male children are discriminated by their parents or their custodians and they abandon the primary school at the early age in the primary school, while they do not follow the education in the secondary level, except in very few cases. Except this, one of the reasons for abandoning the schools by the members of the Roma community is also insufficient knowledge of the Albanian or Serbian language, depending on the area of Kosovo they live, which is a consequence of having very low results in the schools and abandoning the education.

In the Republic of Kosovo there is no primary education in Roma language yet. There are indications that MEST plans to develop education potential in Roma language in order to overcome this problem in the near future. The only form of education in Roma language exists in several schools working based on the plans and programs of the Republic of Serbia, but this is also limited at only few hours per week. Some of the schools providing such form of education are located in the Municipality of Gjilan, Kamenica and in the north of Mitrovica, Uglarë (Municipality of Fushë Kosovë) and Janjevë (Municipality of Lipjan).

The children of Ashkali and Egyptian community mainly attend classes in Albanian language, but the awareness regarding importance of the education of children at these communities is at a very low level. Thus, the children of these communities at the early age decide to abandon the school and start to work as a result of lack of motivation for education, but; mostly as a consequence of the difficult socio-economic conditions in which their families live.

A positive sign is functioning since many years of “Roma Education centre”, which is financed by “Balkan Sunflowers” NGO and Kosovo Foundation for Open Society (KFOS). This education centre offers assistance in doing the home work and the activists of this centre mainly work with the children of pre-school and school age. But, this positive initiative does not enjoy the institutional support.

#### ***4.28.4. Preservation of community languages and the practical challenges***

Multilingualism implies legal obligation to use all the official languages equally at the central and local level. But, the right to use all other official languages is not fully respected, especially by local governing bodies and administration at almost all Municipalities. Such situation has not improved significantly comparing to previous reporting period of the Ombudsperson Institution.

Situation regarding respect of official languages varies in the Municipalities. Also, the situation has not improved in the Municipalities where the official forms and notifications are provided only in Albanian language, which presents a difficulty to the members of the communities who do not speak Albanian language to realize their rights or to submit any formal request at one of the local governing bodies.

The policy of non-respect during the writing of names in Serbian, Turkish and Bosnian language in original form in the documents is still going on, despite that the Ombudsperson Institution has pointed out this problem several times. The same is also the situation as regards translation of the official documents, Decision Acts and Decisions in the languages of the minorities which in some Municipalities are official languages. Such documents are not translated or the translations are of such a low quality that quiet often those reading them have difficulties to understand the document.

#### *4.28.5. The minority communities and Media*

##### **The presence of the minority communities in the radio and television**

The Constitution of the Republic of Kosovo guarantees access and representation of minority communities in public media, establishment and use of their own media including offering of the information in their languages through daily news papers and cable services, using he reserved numbers of frequencies foe electronic media. Although, these provisions have been applied in practice, the Kosovo authorities have neither relevant mechanism for regulation of the practical implementation of this right nor the particular measures which would maybe encourage and support materially the minority communities in realization of this very important right.

Based on the Information collected by the Ombudsperson Institution and information provided by the Media Independent Commission from the total 114 licensed TV and Radio broadcasters in Kosovo there are 92 radio stations and 22 TV stations. In total, 26 radio stations broadcast program in Bosnian and Roma language, from which only one station broadcasts exclusively program in Roma language, three stations broadcast program in Bosnian language, while 18 stations broadcast additional program in Roma language, 6 stations broadcast additional program in Bosnian language.

Except the Serbian community, which has three local privately owned TV stations, none of other minority communities have their own TV station. While, there are radio stations broadcasting exclusively in Serbian language.

As regards Turkish community, as a positive example could be mentioned the fact that so far in Kosovo have started to broadcast in Turkish language two privately owned radio stations, which have local character and broadcast program 24 hours a day. The radio stations broadcasting in Turkish language are “Yeni Dönem” and “Kent FM”. Radio “Yeni Dönem” is a local radio station broadcasting program which can be reached in the region of Prizren and Pejë (Prizren, Mamushë, Rahovec, Suharekë, Malishevë, Gjakovë, Klinë, Deçan), with its program it covers 95% of the above-mentioned regions. Radio “Yeni Dönem” broadcasts program in 4 languages, 21 hours in Turkish language, 1 hour in Albanian language and 1 hour in Roma language.



Radio Television of Kosovo (RTK) is the only state institution whose work is financed by various donations and is assisted by the Consolidated Budget of Kosovo. RTK, except the program in Albanian language, prepares and broadcasts the TV and radio program in Serbian, Bosnian and Roma language.

RTK broadcasts daily 15 minutes information program in Bosnian language, as well as one hour documentary "Mostovi". RTK broadcasts once per week program in Roma language called "Yekhipe".

RTK also every day broadcasts two hours of radio program in Bosnian language, but this program is reachable only for the citizens residing in Prishtina and vicinity and for the citizens who may have access to AM frequencies, while in Roma language, RTK broadcast one hour radio program every day. RTK broadcasts information program in Serbian and Turkish language.

## **Written media**

Regarding written media, the Serbian community has the news paper "Jedinstvo" (which is printed in Mitrovica and financed by the Government of the Republic of Serbia), which is published every second week and this is the only news paper in Serbian language in Kosovo.

The only news paper in Bosnian language in Kosovo is "Alem", which until 2008 has been published every second week, but as a consequence of lack of financial means during 2009 and 2010 has been published only periodically. There is no daily news paper or magazine published in regular basis in Roma language. In Prizren has started to be published the magazine "Yekhipe" in Roma language, which sometimes was published also in Albanian language. This magazine was supposed to be published once per month also in Albanian and Serbian language, but as a consequence of lack of financial means this magazine is published only 6(six) times per year. Except this, the local NGOs from Prizren have established information portal in Roma language <http://rroma.courriers.info><http://troma.courriers.info/>.

In generally, Roma and Bosnian medias are facing lack of financial means more and more, so it is a matter of time when these medias are going to shut down totally, which proves that the government of Kosovo and relevant institutions are not dealing with the problems of written media in Bosnian and Roma language.

The harshest violation of this right of the Turkish community became obvious by subtracting the working premises of the successful Newspaper-Publishing Company "TAN", which is abolished after 30 years of working as the only medial house of Turkish community in Kosovo. The premises of this printing house were placed for 22 years at the printing house „Rilindja“. After the suspension of the medial house „TAN“, the news paper „Yeni Dönem“ for some time published the homonymous weekly magazine, which was printed in Prizren, but as a consequence of lack of financial means since July, 2008 this magazine stopped being published, thereof currently there is no magazine in Turkish language published in Kosovo.

Despite that Albanian language is native tongue to members of Ashkali and to some of the members of Egyptian community; their access to Medias is very limited. RTK doesn't broadcast any programme which would deal with the situation concerning information on position of these two

communities, especially a programme dealing with their culture and tradition. These two communities achieve access to Media only through one hour programme broadcast by “K” radio in Fushë Kosovë, as well as through radio stations in Ferizaj and Podujevë. These radio stations once per week broadcast one hour programme dedicated to members of Ashkali and Egyptian community. The broadcasted programme is of entertaining character.

#### **4.28.6. Conclusion**

Based on the situation as described above, the Ombudsperson concludes that it is not enough to adopt laws and to draft strategies by which the rights of the communities and their members should be protected, but the adopted laws and strategies should be consequently be implemented practically. Therefore, the Ombudsperson concludes that a good political will of the central and local public institutions of the Republic of Kosovo is necessary for implementation of the above-mentioned laws. The implementation of these laws would prove existence of very often mentioned will by the public institutions for the multi-ethnicity of the Kosovan society.

The Ombudsperson expresses particular concern as regards the lack of concrete political and material support for the minority communities such as Roma, Turkish, Egyptian and Bosnian community.

The Roma, Ashkali and Egyptian communities are in an extraordinary difficult situation in every field of life, particularly the field of education, preservation of the cultural identity and employment.

#### **4.29. Use of languages**

Based on the Constitution of Kosovo<sup>196</sup> and the Law on Use of Languages<sup>197</sup>, the Albanian and Serbian languages, as well their inscriptions are the official languages in Kosovo and enjoy equal status in the institutions of Kosovo.<sup>198</sup> The Turkish, Bosnian and Roma languages enjoy the status of the official languages at the Municipal level based on the conditions set forth by law.

In order to respect the linguistic identity of all people living in Kosovo and in order to create an adequate environment for the members of all communities in which they can express and preserve their linguistic identity in accordance with the International Covenant on Civil and Political Rights, European Convention for Human Rights and Fundamental Freedoms and its Protocols, Frame Work Convention for the Protection of National Minorities, European Charter for Regional or Minority Languages, The Hague Recommendations Regarding the Education Rights of National Minorities and Oslo Recommendations Regarding the Linguistic Rights of National Minorities, the Assembly of Kosovo has adopted the Law on Use of Languages.

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<sup>196</sup> *Constitution of the Republic of Kosovo*, article 5

<sup>197</sup> *Law no. 02/L-37 on Use on Use of Languages*.

<sup>198</sup> *Law no. 02/L-37 on Use on Use of Languages*, articles 1.1 and 1.2.

The Law on Use of Languages regulates legal provisions for protection and promotion of the rights of communities in the sphere of use of languages of the communities in the public life. The law foresees that every person has the right to communicate with, and to receive available services and public documents from, the central institutions of Kosovo in any of the official languages.

The official languages are used on an equal basis in the meetings and work of all bodies at the central and local level. All laws adopted by the Assembly of Kosovo shall be issued and published in the official languages. The official language versions are equally authoritative. All promulgated laws shall be published into the Bosnian and Turkish languages. The official names of central institutions shall be displayed in the official languages as well as in the official languages of the municipality.

The central institutions must ensure that their work environments are conducive to the effective use of the official languages and accommodate the use of any official language by their officers and employees. Official signs indicating or including the names of municipalities, villages, roads, streets and other public places shall be displayed in the official languages and in the languages that have the status of official language in the municipality in accordance with the law. The Municipalities are responsible for the implementation of the law despite their demographic composition. Also, the law prohibits any kind of discrimination based on the language.

In Publicly Owned Enterprises and in Socially Owned Enterprises the equality of the official languages applies. This implies that every person has the right to communicate with, and to receive services and documents from, Publicly Owned Enterprises and Socially Owned Enterprises in any of the official languages.

Courts and prosecution bodies, as well as other authorities involved in a criminal procedure, shall, in any proceedings before them, ensure that any person participating in criminal or any other judicial proceedings may use the official language of his or her choice. Courts have a duty to issue documents related to proceedings in the official language(s) chosen for the proceedings and in other official languages if so requested by any party to proceedings or if in the view of the court so doing would serve the general public interest. Any person participating in criminal or other judicial proceedings who does not speak and understand the language(s) of proceedings, has the right to use his or her language in the proceedings and it is the duty of the court and prosecution bodies to provide to these person the assistance of an interpreter free of charge.

The use of languages in the education shall be in compliance with the provisions of the Constitution and with the laws in the field of education. The names and the surnames of the persons shall be entered in the public registers, personal identification and other official documents in their original form, in their script, and according to the tradition and linguistic system, of their language. This form shall be used by civil servants.

Aiming to preserve, promote and to protect official languages and their status in Kosovo, as well as protection of the languages which are not official languages, the Law on Use of Languages has foreseen the obligation of the Government of Kosovo to establish the Language Commission which shall supervise the implementation of the law. This Commission has been established on 2007. The Language Commission undertakes measures to ensure equal status of the official languages whose mother tongue is not an official language, it conducts and carries out investigations based on the lodged complaints or by own initiative, undertakes administrative measures in case of violations in accordance with the Law on Use of Languages, issues recommendations and remarks in written in

case of non-implementation of its recommendations. Each community which considers that the violation of the right to use the official language of the community has occurred has the right to address the Language Commission and to lodge a complaint against the institution which violated the law. The Language Commission during the reporting period organized 5 (five) round tables on the use of languages in the following Municipalities: Prishtinë, Pejë, Prizren, Mitrovicë and Gjiilan. The Commission is very satisfied regarding reaction and exchange of the experiences regarding practical problems related to languages.<sup>199</sup>

The Commission`s Portal (by the end of reporting period) is not completely functional in Serbian language.<sup>200</sup>

Event though, there are obvious positive results regarding implementation of the *Law on Use of Languages* there are still problems regarding implementation of this law by the authorities at the central and local level. The budget shortages and lack of human resources damage the process of implementation of this law. The Ombudsperson during this reporting period in the process of monitoring the implementation of the right to use the mother tongue noticed that there are differences in fulfilment of the legal rights in equal use of the official languages in the territories of different Municipalities in Kosovo and that the implementation of language policies depends on the Municipal authorities and the scale of their involvement.

The official languages are used on an equal basis in the meetings and work of the central institutions, in the meetings, discussions during the sessions of commissions, committees, as well as during the public meetings organized by the public institutions at the central and local level.

The official names of the institutions at the central and municipal level shall be displayed in the official languages, as well as the services provided and the functions of the employees. Some Municipalities aiming to protect and promote the right of the communities issued Statutes and Regulations on the use of the official languages which are based on the national legislation in force which is a positive example.

The official signs which display or include the names of Municipalities are displayed in the official languages in the regional roads in the entire territory of Kosovo. However, it can be noticed that in few places the signs are written incorrectly or the signs in the Serbian language are sprayed.

As regards mandatory translations of the legal texts in the Serbian language they are of a bad quality and have lots of linguistic and grammatical errors and the terminology used in these translations is inadequate. These problems are justified on lack of adequate number of professional translators since it is difficult to recruit such translators due to inadequate working conditions, lack of possibilities for professional advancement and small salaries. This is a reason why the professional translators accept recruitment by the institutions which pay them well.<sup>201</sup>

When speaking of the right of communities to register their names in the registrar books, the names in the personal identification documents issued by the municipal bodies, public institutions and enterprises in the original form and in accordance with the linguistic orthography of their community it is noticeable that such rights are not being respected fully respected and often the names are not written properly and often are written with the phonetic signs of the Albanian

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<sup>199</sup> Information is obtained during the meeting between the OIK representatives and the President on the Language Commission held on 30 January 2010.

<sup>200</sup> <http://www.ks-gov.net/kgjz/>

<sup>201</sup> <http://www.ks-gov.net/kgjz/>

language. Regarding this problem, the Ombudsperson several times draw attention to the institutions. Among the Municipalities there are still problems regarding translation of the official documents and decisions in the languages of minorities. Very often happens that subjects must wait long time for translation and in some cases the official documents are translated only upon the individual requests which are in contradiction with the legislation in force. Also, the translation of such documents is of a low quality and often such documents are barely readable and understandable by the readers. The unprofessional translators, insufficient number of translators and overload with work impact the effectiveness of translation service. There are no lecturers in none of the translation services who would be in charge of verifying and checking the translation quality.

When speaking of the electronic information, mandates, services and job vacancies, the Assembly and the Government of Kosovo and several Municipalities have their portals on the internet. The portal of the Assembly of Kosovo<sup>202</sup> is functional in Albanian, Serbian and English language. The laws are not posted in Turkish and Bosnian language which presents violation of the Article 5 paragraph 5.4 of the Law on Use of Languages.

The official portals in some Municipalities are functional in Albanian language but not in Serbian language, for example: Prishtina,<sup>203</sup> Peja<sup>204</sup> and other Municipalities. In some Municipalities the official portal is functional also in Serbian language, for example the Municipality of Gjilan, but the part in Turkish language does not exist, even though, the Turkish language is an official language in this Municipality.<sup>205</sup> The official portal of the Municipality of Prizren is completely functional in all official languages in the Municipality (Albanian, Serbian, Bosnian and Turkish language).<sup>206</sup>

In the Municipalities where the Serbs constitute majority, the Law on Use of Languages is not fully respected. So far, there are positive examples in the Municipalities of e Novobërdë and Shtërpçë, where lives a considerable number of the Albanians whose status is regulated by this law, but there is no Regulation on the use of the official languages yet. The efforts for implementation of this law by newly formed Municipalities are noticeable. These Municipalities are still at the stage of establishing municipal structures. However, the Law on Use of Languages is not respected by the Serbian Municipalities in the north of Kosovo (northern part of Mitrovica, Leposaviq, Zveçan and Zubin Potok). There are no official portals in the Municipalities with the majority of Serbs.

The Courts and prosecution organs, as well as the other relevant bodies involved in the legal proceedings in their daily work use the official languages in accordance with the law.

Based on the aforementioned the Kosovan society is still divided based on linguistic lines. Lack of knowledge of the Albanian language by the minority communities presents an obstacle impacting negatively on their integration in the society. As regards Turkish community in Kosovo, they are in a better position because of them speak Albanian language. The Albanian language is the mother tongue of Ashkali and Roma communities. But, a very small number of Serbs, Bosnians, Gorans and Romas speak Albanian. It is a fact that the new generations of citizens know and speak only of the official languages and communicate less, except when they need to realize one of the rights in the institutional system. At the same time, the new generations will bear the burden of responsibility to ensure equal use of official languages in the government and civil society. The nature of the

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<sup>202</sup> [www.assembly-kosova.org](http://www.assembly-kosova.org)

<sup>203</sup> <http://kk.rks-gov.net/prishtina/Municipality/Assembly.aspx>

<sup>204</sup> <http://www.peja-komuna.org/>

<sup>205</sup> <http://www.gjilani-komuna.org/>

<sup>206</sup> <http://www.komuna-prizreni.org/>

obligation of realizing the right to freely use the languages requires persistent and continuous efforts and in this regard, we must resolve problems and causes in order to preserve the multi-linguistic society.

## **5. Recommendations of the Ombudsperson**

### **Equality before the law**

- To implement the quote established by the Law on Gender Equality, which states that the percentage of women in the decision-making positions in the governing bodies at all levels should be at least 40 %,
- The Government of Kosovo to develop the programs and affirmative measures for involvement of women in the labour market,
- The Ministry of Social Labour and Social Welfare, the Ministry of Education, Science and Technologies to encourage educational programs for continuous qualification of women in accordance with the needs of labour market,
- To implement the program for training the employees of the institutions, at the local and central level, which deal with the human rights and the issue of gender equality,
- To organize the additional trainings for the employees, which deal with the issue of family violence, the issue of women who are in charge of taking care of their own families, especially the issue of older women, who live alone,
- The Government of Kosovo to initiate immediately adoption of the Law on Social and Health Care in Kosovo,
- To activate the issue of financing safe houses and SOS phone calls for the victims of the family violence,
- To make operational the Units for Gender Equality in the Municipalities and to strengthen these units at all levels,
- To provide inclusion of the gender statistics in the state bodies and institutions of the Republic of Kosovo.

### **The right to life**

- The Ombudsperson recommends serious improvement of the quality and transparency of the legislative process, not only to offer to Kosovo a legal framework, but also to restore the confidence on the legal system.
- The Ombudsperson also recommends providing all necessary conditions for efficient implementation of investigations for protection of the rights of victims and to avoid the unnecessary delays and approve legal requests of the complainants in legal proceedings.

## **Prohibition of torture or inhumane or degrading treatment**

- Organizing the seminars or training courses for the institutions where the persons deprived of their liberty are held aiming at expanding the knowledge on human rights, especially the field of protection from torture which are guaranteed by the international instruments, which are directly applicable in Kosovo.
- To respect and implement without any delay recommendations of the Ombudsperson addressing the relevant authorities on the respecting of the known standards on human rights and the rights of persons deprived of their liberty.

## **The rights of the accused**

- The Government of Kosovo, respectively the Ministry of Justice to draft a project for construction of the new detention centres and correctional centres or to extend the existing centres in order to provide sufficient space for accommodation of the accused persons as required by law.
- The current number of the accused in most of the detention centres is not in accordance with the UN Standard Minimum Rules for Treatment of Prisoners and European Prison Rules, which request the authorities to keep the prisoners in the individual holding cells.
- The Kosovo Police and Medias to pay more attention to respect of the principle of presumption of the innocence, because broadcasting images of the arresting moments of the accused affects their dignity and somehow it prejudices their innocence.

## **The right to privacy**

- The relevant public institutions to engage seriously, aiming at avoiding violations of the right of privacy when such cases are evident and when such action is required by the Ombudsperson.
- *To adopt as soon as possible special and complete legal provisions for protection of the right of privacy in all forms.*

## **The right to marriage and family**

- The Ombudsperson considers that the Assembly of Kosovo should consider amendment of legal norms in the fifth part of the second chapter of the Family Law in order to provide more clarity in the field of adoption and clarification of jurisdiction during the application of procedures;
- The Ombudsperson recommends that the Judicial Institute continues organizing specific trainings for judging the cases, which treat family issues, especially those related to divorces and



adoption by focusing specially on the terms and conditions set forth by the Family Law and the advisory role of the centres for social work.

### **The right for access to public documents**

- The Ombudsperson recommends urgent training of a number of people for classification of public documents aiming to provide a transparent access to public documents.
- The Ombudsperson recommends establishment of the respective offices or positions in the public institutions for handling of requests for access to public documents as provided by law.
- The Ombudsperson recommends a campaign of public awareness and information for the officials of the public administration with regard to their legal obligation to provide uninterrupted access to public documents for all the parties concerned, as well as on the role of the Ombudsperson Institution for implementation of this law.

### **Freedom of assembly**

- the Ombudsperson concludes that paragraph 3 of the Article 12 of the Law on Public Gatherings, according to which the lawmakers delegate the authority to the “duty guards” of a public gathering to “immediately hand in to the police the participant or any other person violating peace and order, carrying weapons or any other dangerous items or prohibited signs, during the public gathering” is exclusive obligation of state law enforcement authorities, and cannot be delegated to any other natural or legal person.
- The ombudsperson recommends again completion and amendment of the aforementioned Article of the Law on Public Gatherings in order to harmonize the law with the European standards.

### **Freedom of association**

- The Ombudsperson Institution recommends the Kosovo Assembly, respectively the Assembly commissions, that during the process of reviewing the draft laws take into account suggestions of various stake holders of the society, professional groups and civil society in order to make the procedure of completion and amendment of the law transparent which would be supported by the society and in harmony with the international standards.

### **The right to election and participation**

- The Ombudsperson recommends the institutions in charge (the President of the Republic of Kosovo, the Ministry of Interior, the Chairman of the Kosovo Judicial Council) to undertake

actions foreseen by law and to carry out the *ex officio* investigation for the alleged cases of the abuse with the vote and to bring the perpetrators before the justice.

### **The right to education**

- The Ombudsperson recommends that the Ministry of Education, Science and Technology (MEST) drafts a detailed action plan for providing a safer and more convenient environment for the pupils and teachers through close cooperation with other state institutions.
- The Ombudsperson Institution recommends to the Ministry of Education, Science and Technology (EST) to organize in cooperation with Municipal Directorates awareness campaigns for the pupils and their parents on the role of the education, especially in rural areas.
- Also, the Ombudsperson Institution recommends to the institutions to provide various forms of supporting the families with poor living conditions by providing transport in order to decrease the phenomenon of school dropout.
- The Ombudsperson requires the Government of the Republic of Kosovo, especially MEST to undertake substantial steps for implementation of the strategy for integration of minority communities in the Republic of Kosovo.

### **The right to work and exercise the profession**

- The OIK recommends the relevant institutions to respect provisions of the Law on Labour in the Republic of Kosovo.
- The Ombudsperson particularly requires all public institutions of the Republic of Kosovo to respect and implement decisions and recommendations of the independent institutions, among them decisions of OIK and IOBK and at the same time, requires imposition of sanctions against the responsible persons based on the laws in force.

### **Health care and social security**

- The Assembly and the Government of Kosovo to incorporate in the Constitution of the Republic of Kosovo without delays the International Covenant on Economic, Social and Cultural Rights,
- The Assembly and the Government of Kosovo to adopt the adequate legal infrastructure for regulation of the pension schemes in Kosovo providing to the retired persons a decent life in older age,
- The Assembly and the Government of Kosovo to amend and complete the Law on Material Support for the Families of Children with Permanent Disability by including the children with disability in speaking and hearing or a disease impacting the psychological development,

- The Government of Kosovo to regulate the labour market in the health sector, so that the Kosovo citizens are given the possibility to select a qualitative health services,
- The Government should monitor precisely, continuously and systematically the quality of medical procedures, professional background of medical staff, thus, to minimize the possibilities to abuse the exercise of profession in the health sector,
- The Government of Kosovo to review seriously the issue of legal framework and functionalizing of the health system in the Republic of Kosovo.

### **Judicial protection of the rights**

- The Ombudsperson recommends to the Kosovo Judicial Council (KJC), the Government and the Assembly of the Republic of Kosovo extension of the judicial power in the entire territory of the country including the northern part of Mitrovica and other Municipalities as foreseen by the Constitution of the Republic of Kosovo.
- The Ombudsperson recommends functionalizing of the Kosovo Judicial Council based on the Law no. 03/L-223 on Judicial Council of Kosovo.
- The Ombudsperson recommends establishment, without further delays of the Prosecutorial Council of Kosovo based on the Law no. 03/L-224 on Prosecutorial Council of Kosovo.
- The Ombudsperson recommends implementation of the Law no. 03/L-199 on Courts, in particular the Articles 29 and 36, aiming at improvement of material conditions in judiciary and structuring the Courts in accordance with the law.
- The Ombudsperson recommends effective of the strategy and all legal measures, which would help elimination of the remaining judicial cases and to declare such elimination a priority for the judiciary and other state bodies of the Republic of Kosovo.
- The Ombudsperson insists that the staff problem and other problems of the courts, which are the main causes of delays in decision making process, are not and cannot be acceptable reasons for violation of the right for review of the case within a reasonable time. This right is also guaranteed by the Constitution.
- The Ombudsperson recommends providing of all necessary conditions for effective implementation of legal act, which regulates protection of the right to a trial within a reasonable time and adoption of the amendments for a better protection of legal and constitutional rights of the clients in the proceedings of the cases.
- The Ombudsperson recommends adoption of the measures for ensuring faster review of interim preventive measures, since based on the received information and conducted investigation it has been confirmed that some Courts need several years to issue an interim preventive measure.
- The Ombudsperson recommends providing of all conditions for execution and implementation of judicial decisions on the shortest possible deadline.

- The Ombudsperson underlines that the disagreement with the final judicial decisions may not serve as a base for disobedience to the obligations of all of us, therefore, the Ombudsperson recommends implementation of judicial decisions without any delay.
- The Ombudsperson recommends the prosecuting and judicial authorities to guarantee to the perpetrators of the criminal offences fundamental constitutional rights, such as the right to a fair trial and the right to exercise of legal remedies. The perpetrator of the offences must be completely informed on the accusation against him, description of factual state and presentation of grounded evidence in which they may effectively challenge the judicial decisions.
- The Ombudsperson recommends the Courts as regards issuance of the decisions on mandatory psychiatric treatment to already specify precise duration of such measure, the beginning and the end. Also, in the reviewing procedures to issue a decision within a legal limit time regarding duration of the measure after one year period of its execution by informing the defendant unequivocally.
- The Ombudsperson insists that the competent authorities provide adequate conditions for the expert witnesses and the assessors to carry out their expert duty with all moral and professional responsibility, precisely, with responsibility and impartiality and within a legal limit time. Therefore, the Ombudsperson recommends drafting of a Regulation on judicial experts.
- The Ombudsperson recommends the Kosovo Chamber of Advocates to ensure higher quality of legal aid in the cases of *ex officio* representation or to provide a higher quality of the legal aid provided free of charge and unequivocally to provide protection of the defence counsel's client in case of damage in relation to performing of the defence counsel's duty.

## **6. Activities of the Ombudsperson Institution**

### ***6.1. Activities of the Gender Equality Unit***

According to the Article 6 of the Law on Gender equality, discrimination issues directly related to gender shall be addressed by the Gender Equality Unit (GEU) of the Ombudsperson Institution, which is also responsible for revision and implementation of the Law on Gender Equality.

During this reporting period, the Gender Equality Unit has received many complaints related to gender based discrimination in employment, education, property and health care. Also, there were a considerable number of complaints lodged with the Gender Equality Unit, which were related to family violence, providing protection and shelter for victims, as well as complaints related to the right for access to the justice system and other fields.

During this reporting period, the Gender Equality Unit has had regular contacts with numerous international and local partners, as well as with the representatives of the civil society, EULEX, UNIFEM, and representatives of various NGOs.

Gender Equality Unit (GEU) has cooperated also with the Kosovo Police, Labour and Social Welfare Centres, safe houses, as well as various NGOs, such as: Kosovo Women`s Network Group “Norma”, Kosovo Centre for Gender Studies, ”Centre for Protection of Children and Women”, ”The Network of Roma, Ashkali and Egyptian Women in Kosovo” etc.

During this reporting period, the representatives of Gender Equality Unit participated in several seminars and meetings organized by local and international organizations. The purpose of such activities was preparation of action plans and policies in the field of gender equality and implementation of applicable standards, strengthening the role of women in the society, representation of women in the politics etc.

Also, the Gender Equality Unit participated in the radio programs, aiming to be closer to the citizens and to discuss on the issues of concern regarding family violence. Within this topic, the Gender Equality Unit participated and contributed in the meetings organized by local Organization “Norma” on the implementation of the project “all against violence”. The purpose of the project was raising the awareness in the Kosovan society as regards prevention of family violence.

On 17 March 2011, Kosovo Centre for Gender Studies (KCGS) organized promotion of the research “Women`s property inheritance rights in Kosovo”. The main purpose of this research was treatment of the issues related to the property inheritance rights of the women in Kosovo, problems, obstacles and difficulties that Kosovo women face as regards realization of the right to inheritance.

### ***6.2. Activities of the Children`s Rights Group (CRG)***

The Children`s Rights Group (CRG) within the Ombudsperson Institution has been established in order to take special care, protect and investigate violations of children`s rights by the public authorities in Kosovo.

CRG, during 2010 except handling complaints lodged with the Ombudsperson Institution has also undertaken series of other activities in order to promote and protect children`s rights in Kosovo.

On 12 May 2010, CRG participated in the conference “Supporting the reforms for minors in Kosovo”, which marked the continuation of the second phase of the supporting program for juvenile justice in Kosovo. The conference was organized by UNICEF and European Commission Liaison Office.

On 1 June 2010, CRG participated in the round table organized by UNICEF office and Forum “2015”. During the round table were discussed findings of the UNICEF report “Poverty of children in Kosovo”.

Aiming at exchanging the experiences in the field of children`s rights, as well as establishing the inter-institutional cooperation, CRG has had two study visits in two homologue institutions outside Kosovo. The first visit was conducted from 22 until 23 July 2010 in the Ombudsperson Institution of Macedonia, while the second visit was conducted on 27 August 2010 in the Ombudsperson Institution of Montenegro.

From 7 until 9 October 2010 two representatives of the Ombudsperson Institution in the capacity of observers participated in the annual meeting of the European Network of Ombudspersons for Children (ENOC). The topic of this conference was related to Article 12 of the Convention on the Rights of the Child, respectively listening to the children and involving them in the promotion and implementation of their rights.

Aiming at better public information on the work and activities of the CRG, as well as on the situation of the children`s rights in Kosovo, the CRG on 11 October 2010 participated in a radio program called “our obligation” which is broadcasted by Radio Kosovo. The program was focused on violence in the schools, as well as mandatory inclusion of the briefing hour in the schools of Kosovo.

In order to build up professional capacities of CRG, two representatives of this group pursued distance learning course organized by the Association for Education on Children`s Rights. The topics of the course were “Monitoring of the children`s rights” and “the right to education”.

On 21 December 2010 CRG participated in the conference “Children`s rights in Kosovo” organized by the Office for Good Governance of the Prime Minister`s Office. In the conference was discussed also the process of drafting the report on implementation of the Convention on the Rights Child in the Republic of Kosovo, as well as on the actions taken for realization of the Strategy and National Action Plan for the Children`s Rights by the institutions of the Republic of Kosovo.

On 23 December 2010, the representatives of the Ombudsperson Institution met with the Coalition of the Nongovernmental Organizations, which are involved in the child protection (KNGO). The purpose of the meeting was looking for the possibilities for a better cooperation between the Ombudsperson Institution and Coalition of the Nongovernmental Organizations (KNGO), aiming to improve functioning of the children`s rights protection system in Kosovo.

In the context of this issue, during this reporting period CRG continued cooperation with the representatives of the international organizations in Kosovo, such as UNICEF and Save the Children Kosovo.

## **7. Cooperation with the local public intuitions, non-governmental and the international organizations in Kosovo**

### ***7.1. Cooperation with the local institutions***

The Ombudsperson Institution, during this reporting period met with the representatives of the institutions of the Republic of Kosovo at the central and local level, including the President of the Assembly of the Republic of Kosovo, Assembly Committees, Human Rights Units within all Ministries of the Government of the Republic of Kosovo. Also, the Ombudsperson has had meetings with almost all presidents of the Kosovo Municipalities.

The officials of the Ombudsperson Institution (OIK) have had several meetings with the Kosovo Courts aiming at reviewing numerous complaints filed by Kosovo citizens, which addressed the OIK, especially as regards non-execution of decisions and procedural delays.

Also during this year, the Ombudsperson realized meetings with the independent institutions of Kosovo including several round tables organized in cooperation with the OSCE Mission in Kosovo. The purpose of these meetings was identification of common and specific problems of all independent institutions and finding the right manner to solve these problems.

The meetings were attended by the representatives of the following institutions: Kosovo Independent Oversight Board, Kosovo Judicial Institute, Central Election Commission, Independent Media Commission, Anti-Corruption Agency, Office of the Auditor General, Telecommunications Regulatory Authority, Energy Regulatory Office, Water and Waste Regulatory Office, Independent Commission for Mines and Minerals etc.

The OIK had also a very good cooperation with the Constitutional and Supreme Court of Kosovo as main pillars of the judicial system in Kosovo with which were handled many cases related to human rights in Kosovo.

We hope that such a good cooperation with the local institutions and responding by most of these institutions to the letters and recommendations of the Ombudsperson will continue in the future, aiming at realization of common purposes, which is well being of Kosovo citizens.

### ***7.2. Cooperation with the local NGOs***

The OIK also had close cooperation with the domestic NGOs such as: Council for the Defence of Human Rights and Freedoms (CDHRF), Kosovo Rehabilitation Centre for Torture Victims (KRCTV), NGO Clard, Movement “Fol”, Hendikos etc.

Cooperation with the movement “Fol” in the project “Strengthening dialogue against the abuse of the public authority” had an aim to assist setting up of a qualitative dialogue between the

Ombudsperson Institution and the Assembly of Kosovo, as well as with the civil society by facilitating and creating communication channels between them.

On this occasion have been organized debates with the citizens and TV debates, as well as multimedia campaign for promotion of the institution. At the end of this project, a report with recommendations and findings has been published by this organization. This report has been forwarded to all relevant state institutions.

On 1 November 2010 OIK has signed a memorandum of understanding with the NGO “Clard”. The cooperation with this organization continues for several years. The purpose of the memorandum of understanding is to strengthen cooperation between the parties aiming at ensuring the adequate protection of human rights in Kosovo by facilitating contact between the OIK and all persons who believe that his/her human rights have been violated.

Also, the OIK has had a very good cooperation with the CDHRF and KRCTV, especially in creating a working committee, which would proceed to creating of a model of national mechanism on prevention of torture. So far, this working committee supported by the OSCE has had several working meetings and it has prepared the agreement of cooperation, which is expected to be signed by the parties concerned in April 2011.<sup>207</sup>

### ***7.3. Cooperation with the international organizations in Kosovo***

As regards cooperation with the international organizations, OIK has had continuous meetings with the following organizations: OSCE, OHCHR, UNDP, UNHCR, UNMIK, UNICEF, EULEX, ABA ROLI, SOROS, Council of Europe etc, as well as with many foreign embassies in Kosovo, such as: American, German, Swiss, Italian, Norwegian, French and Dutch Embassy.

The purpose of these meeting was inter-institutional cooperation aiming at protection of the human rights and freedoms, as well as discussing the possibilities for the future capacity-building of the institution.

OIK has close cooperation with the OSECE Mission in Kosovo since its establishment in 2000. In order to create long-term institutional protection, OSCE supports the OIK as a public institution in charge of protecting and monitoring the human rights in Kosovo. In the OIK, there is permanently engaged a special OSCE advisor who supports the OIK in its daily activities by offering advises and expertise.

Since September 2010, the Ombudsperson Institution is being supported by the CDF project, which is managed by the UNDP office in Kosovo and KFOS. CDF project through an adviser supports the OIK in capacity and professional building of the institution through a complete functionalizing of the institution aiming at successful accomplishment of the Ombudsperson’s mission.

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<sup>207</sup> The cooperation agreement between the OIK, CDHRF, and KRCTV has been signed on 11 May 2011 in Prishtina.



#### ***7.4. Cooperation with the homologous institutions***

The Ombudsperson Institution has continued good cooperation with the homologous institutions, respectively with the Ombudspersons of the following countries: Albania, Macedonia, Montenegro, Bosnia and Herzegovina, Netherlands, Hungary, Greece and Catalonia. On the occasion of 10<sup>th</sup> anniversary of the establishment of the Ombudsperson Institution and 62<sup>nd</sup> anniversary of the Universal Declaration on Human Rights, OIK has organized a conference on the topic “Sovereignty and the human rights”, in which conference participated representatives of the homologous institutions from different countries, highest state institutions, International and Local Non-Governmental Organizations, as well as the representatives of the foreign embassies in Kosovo.

Here are the most important conclusions of the conference:

- The participating states have had various experiences regarding the topic of the conference and the Ombudsperson Institution was born based on the need for political and constitutional changes of the European countries;
- The exit from the conflicts enabled establishment of the Ombudsperson institutions;
- The implementation of the international instruments and documents impacted the change of social base;
- In most of the countries is noticeable an approximation of individual’s position in the constitutional norms in Europe, especially in the countries of Balkans;
- It is noticeable that the classic sovereignty has changed by the time; the role of the individual sovereign has increased comparing to the collective sovereign-the state;
- The differences between the Ombudsperson Institutions are not noticeable in the concept; a big similarity is noticeable at all institutions as regards their mission;
- Also, it has been said that the mission of the Ombudsperson Institution is to facilitate the mission of judiciary, especially relations between an individual and other public institutions in the cases of mediation;
- Permanent request for a close cooperation between all homologous institutions;
- It is worth of mentioning the fact that today in Kosovo we can speak and debate freely on this topic.

#### ***7.5. Capacity-building, conferences, workshops and trainings***

During the reporting period, the Ombudsperson and the OIK associates participated in several conferences, workshops, study visits and trainings.

On 19-20 January 2010, three officials of the OIK participated in the conference “*Protection of the Police and Judicial data in the criminal cases*”. The conference has been organized by the European Commission. The conference took place in Prishtina.

On 23 March 2010, an OIK legal adviser participated in a workshop on the action plan and program of the Government of Kosovo for prevention of self injury and suicide in Kosovo 2010-2015, organized by the Office of Good Governance of the Prime Minister of Kosovo. The conference took place in Prishtina.

On 28 March 2010, two officials of the OIK administration attended the training "*Communication and behaviour*". The training took place in Durrës, Albania.

From 12 – 23 April 2010, a legal adviser of the Ombudsperson Institution attended the training regarding corruption investigation, which was organized by the European Commission supporting the Anti-Corruption Agency. The training took place in Prishtina.

On 16 April 2010, a legal adviser of the OIK attended the round table "*Promotion and protection of the labour and social rights in Kosovo*", organized by the NGO Clard. The round table took place in Prishtina.

On 29 April 2010 a legal adviser of the OIK attended the workshop on the Law on Vocational Ability, Rehabilitation and Employment of the People with Disability, organized by the Ministry of Labour and Social Welfare. The workshop took place in Prishtina.

On 14 May 2010, the officials of the OIK attended the workshop "*Strategic planning*", organized by the OSCE. The workshop took place in Therandë.

On 19 May 2010, a legal officer of the OIK attended the conference "*Human rights and the environment*", organized by the Ombudsperson of Slovenia. The conference took place in Brdo Kranj, Republic of Slovenia.

On 20 May 2010, a legal officer of the OIK attended the seminary "*Strengthening the cooperation between the Police, Prosecutions and Courts*", organized by the OSECE. The seminary took place in Prishtina.

From 26 – 27 May 2010, the OIK staff members attended the training "*Team work and conflict solution methods*", organized by the OSCE, the training took place in Hajvali.

From 27 – 30 May 2010, the Executive Director of the Ombudsperson Institution, budget officer and procurement manager attended the training: "*Budget, decentralization of expenses and management of public finances*", organized in Durrës, Albania.

On 3 June 2010, a legal adviser of the OIK attended a debate on the draft-law on access to official documents, organized by the NGO "Levizja Fol". The debate took place in Prishtina.

From 13 – 16 June 2010, a legal officer of the OIK attended the conference "*Respecting the human rights, health and dignity of the prisoners*". The conference took place in Brussels, Belgium.

From 8 – 11 July 2010, OIK legal adviser attended the training "*The expropriation process and estimation of the real estate*", organized by Financial Law Smart Agency. The training took place in Durrës, Albania.

On 20 July 2010 the Ombudsperson and two legal advisers visited the Ombudsperson of Montenegro aiming at exchanging the experiences and deepening the cooperation between the institutions. The event took place in Podgorica, Montenegro.

From 22 – 23 July 2010, two legal advisers of the Children's Rights Team attended the study visit at the Ombudsperson Institution of Macedonia in Skopje, aiming at deepening of the inter-institutional cooperation, especially for protection of children's rights.

On 27 August 2010, two legal advisers of the Children's Rights Team attended a study visit at the Ombudsperson Institution of Montenegro in Podgorica, aiming at deepening of the inter-institutional cooperation, especially for protection of children's rights.

From 16 – 19 September 2010, the Director of Administration, the officer for budgeting and finances and procurement manager attended the training "*Budgeting, procurement process and the execution of expenses*", held in Durrës, Albania.

On 18 September 2010, the OIK staff members attended the seminary "*Academic writing and citing*", organized by the OSCE. The seminary took place in Hajvali.

On 20 September 2010, the Ombudsperson attended the meeting "*The issue of emigrants in Slovenia*", organized by the Ombudsperson of Slovenia. The event took place in Ljubljana, Slovenia.

From 21- 29 September 2010, the Ombudsperson attended the session of the United Nations Human Rights Council in Geneva, Switzerland.

On 21 September 2010, two OIK legal advisers attended the international conference on the issue of access to public premises of the persons with disabilities and the infrastructure within the project "*A suitable environment-a society for all*" organized by Handikos. The conference took place in Prishtina.

From 21 – 23 September 2010, an OIK legal adviser attended the training "*Combating the organized crime and corruption*", organized by the Anti-Corruption Agency. The training has been organized in Ohrid, Macedonia.

On 29 September 2010, an OIK legal adviser attended the round table "*Social dialogue in Kosovo-advantages and challenges*", organized by Friedrich Ebert Stiftung and the Union of the Independent Trade Union of Kosovo (UITUK). The round table took place in Prishtina.

From 1 – 2 October 2010 has been held the second training for all OIK staff members on the topic "*Academic writing and citing*", organized by OSCE. The training took place in Hajvali.

From 7 – 9 October 2010, two OIK legal advisers attended the forth conference of the European Network of Ombudsmen for Children (ENOC). The topic of the conference was "*Listening and including the children and involving them in promotion and implementation of their rights*", organized in Strasbourg, France.

From 7 – 10 October 2010, the Ombudsperson attended the Tenth Conference for the National Human Rights Institutions of 80 different countries around the world. The conference took place in Edinburg, Scotland.

On 15 October 2010, OIK legal adviser attended the meeting organized within the international week of the human with white stick. The meeting has been organized by the Kosovo Association of Blind Persons. The meeting took place in Prishtina.

From 20 – 21 October 2010, the Ombudsperson and one of the legal advisers attended the regional round table "National Mechanism against torture, within OPCAT on the topic: "*Implementation challenges and the role of human rights institutions*", held in Crikveničë, Croatia.

From 21 – 24 October 2010, two OIK administration staff members attended the training "*Payments, salaries and financial records*", organized by Financial Law Smart Agency. The training took place in Ohrid, Macedonia.

From 4 – 5 November 2010 has been organized training for the OIK legal advisers “*International legal instruments for human rights and the case law regarding human rights-methodology and techniques*”, of the European Court on Human Rights and Council of Europe. The training has been organized by the OSCE experts and was held in Hajvali.

From 17 – 18 November 2010, two OIK legal advisers attended the workshop “*The role of the national structures for human rights in promoting and protecting the human rights*”, held in Bilbao, Spain.

On 23 November 2010, OIK legal advisers attended a round table “*Monitoring jails and detention centres – exchange of experiences*” between the OIK, KTRC and CDHRF, organized by the OSCE. The round table took place in Gërmi.

On 26 November 2010, the Ombudsperson organized the round table with the local Media in the Republic of Kosovo discussing the topic “*The role of the Ombudsperson and the Media*”, organized by the OSCE. The round table took place in Gërmi.

On 26 November 2010, two OIK legal advisers attended the conference “*The power plants, EU-standards and the environment*”, organized by the NGO Bells in cooperation with the ATRC. The training took place in Vlorë, Albania.

From 1-3 December 2010, the Ombudsperson attended the fourth annual meeting within the project “*Peer-to-Peer*”. In this conference were established meeting schedule and the topic to be reviewed. The meeting has been organized by the Council of Europe for the National Human Rights Institutions for Europe. The meeting took place in Strasburg, France.

From 1 – 3 December 2010, three OIK legal advisers attended the seminar “*The procedures for submission of requests of the public authorities with the Constitutional Courts*”, organized by the East West Management Institute. The seminary took place in, Macedonia.

From 13 – 15 December 2010, two OIK legal advisers attended the third United Nations forum for the minority issues “*The minorities and their participation in the economic life*”, organized by the United Nations Office of the High Commissioner of Human Rights. The forum took place in Geneva, Switzerland.

From 20 – 21 December 2010, an OIK legal adviser attended the conference “*The supervision of the Parliament and independent institutions*”, organized by the OSCE. The conference took place in Tirana, Albania.

On 21 December 2001, the OIK legal adviser from the Children’s Rights Team attended the conference “*Children’s rights in Kosovo*”, organized by the Office of Good Governance of the Prime Minister’s Office.

On 22 December 2010, the Ombudsperson attended several meetings with various officials of the United Nations Office of the High Commissioner of Human Rights. During the meetings were discussed various issues related to human rights, as well as the forms of further cooperation between these institutions. The meetings took place in Geneva, Switzerland.

## 8. The Budget of the Ombudsperson

Based on the Constitution of the Republic of Kosovo and the Law on the Ombudsperson, the OIK as an independent Institution proposes the budget to the Assembly of Kosovo, which approves the budget. The OIK as an independent institution is responsible for preparation, proposal and the way of using the budget, while the Auditor General of Kosovo controls the manner of using and spending the budget based on the law in force in the Republic of Kosovo.

According to the Law on the Ombudsperson and some other relevant international documents the state should provide to the Ombudsperson sufficient budget and permanent support, so that the institution is able to accomplish its mission and obligation in accordance with the Constitution and law.

Unfortunately, this does not happen in reality because the Assembly of Kosovo did not allocate the budget to the Institution in accordance with the budget request submitted by the OIK. Regarding this issue, it is the Government; respectively the Ministry of Finance which keeps the monopoly of the public money and also it manages it in such a way. The OIK does not receive sufficient budget and support by the Government and the Assembly of Kosovo.

The amount of approved budget for the reporting period was not approved based on the OIK budget request. The OIK requested a budget of 565.442.00 €. The OIK based on the request for budget has foreseen to increase the number of staff from the current 47 staff members into 51. For 2010 the Ministry of Finances has allocated to the Ombudsperson from the Consolidated Budget of Kosovo a budget of 512,630.00 €, which means 52.812.00 € less than requested by OIK. The OIK by its budget proposal has foreseen also a slight increase of the number of staff members aiming to be able to respond to additional engagements and to accomplish fulfil its constitutional and legal obligations.

Through this budget were financed the following economic categories: salaries and wages, goods and services, utility and capital expenses.

*Table 1:* The structure of the budget for 2010, according to budget categories.

CATEGORIES	PLANNED	CONSUMED	DIFFERENCE
Salaries and wages	271,425.00 €	271,424.31 €	0.69 €
Goods and services	188,205.00 €	180,253.17 €	7,951.83 €
Utility expenses	46,000.00 €	16,707.75 €	29,292.25 €
Capital expenses	7,000.00 €	6,032.00 €	968.00 €
<b>TOTAL</b>	<b>512,630.00 €</b>	<b>474,417.23 €</b>	<b>38,212,77 €</b>

Despite the budget restriction based on the Law on Budget Allocations for 2010, the OIK has administered the allocated budget effectively and based on the respective destination by respecting particular budget categories. For the urgent needs of the institution has been done transferring of budget from the utility expenses in the budget category of capital expenses (see Table 2) aiming to furnish the institution with two (2) brand new photocopier machines.

The budget expenses for this reporting period were not realized based on the budget planning, especially for the budget categories for salaries and wages because the Assembly of Kosovo did not select the deputy Ombudsperson and voluntary interruption of the contract by some of the employees, as well as because of the delays in recruiting new associates due to the legal procedures on recruitment (announcements of vacancies-re-announcement of vacancies).

Unspent financial means for salaries and wages were used for payments of hot meals for civil servants based on the memorandum of understanding signed between the Union of Civil Servants and the Government.

During 2010, the OIK has been financially supported by local and international donors for various activities. The Norwegian Office, the Assembly of the Republic of Kosovo and Post-Telecom of Kosovo (PTK) supported financially the organizing of the international conference organized on the occasion of 10<sup>th</sup> anniversary of the establishment of the OIK. Also, the UNICEF Office in Kosovo has supported series of activities organized within a project related to campaign for children's rights. The OSCE has organized and financed three trainings for all OIK staff members, while at different stages the OSCE organized particular trainings for the legal officers and administration staff.

The independency of an independent institution as a constitutional category is closely linked to financial independency. Therefore, the Assembly and the Government of Kosovo are recommended to undertake all necessary measures to protect and preserve this independency as well as to provide reflection of this independency by approving the budget requests and human resources for 2011 as provided by law.

## 9. Statistical overview of complaints and cases for 2010

From 1 January 2010 to 31 December 2010, 1233 people appeared at the Ombudsperson Institution, at the central office in Prishtina and regional offices to file their complaints or to demand advice and legal aid. Around 414 of them have been processed and investigated, while for a part of complaints the parties have been instructed or advised on the steps they have to follow. During this period, 338 people met the Ombudsperson in person, his Deputy or director of the investigation during the period of 86 “Open Days” organized during the reporting period.

The biggest number of the cases investigated by the Ombudsperson Institution were referred mainly to: the right to legal remedies, protection of property, the right to fair and impartial trial, the right to work and exercise of profession, the right to health and social care, equality before the law etc.

**Table 2: Registered complaints (1 January 2010 – 31 December 2010)**

	<b>Registered complaints</b>	1233
<b>The ethnicity of the complainants</b>		
	Albanians	1080
	Serbians	89
	Bosnians	23
	Roma	16
	Turkish	10
	Others	15
<b>Gender</b>		
	Male	942
	Female	288

**Table 3: The investigated cases (1 January 2010 – 31 December 2010)**

	The cases opened for investigation (from the received complaints)	414
	Cases opened <i>ex officio</i>	11

**Table 4: Cases closed (1 January 2010 – 31 December 2010)**

	Declared inadmissible	160
	Positively resolved	183
	Other reasons	112

**Table 5: The ethnicity of the complainants based on the investigated cases**

	Albanians	332
	Serbians	65
	Bosnians	5
	Roma	3
	Others	9
<b>Gender</b>		
	Male	306
	Female	108

**Table 6: The respondent parties in the investigated cases**

	Courts	143
	Ministries	107
	Municipalities	81
	Police	23
	Others	81

**Table 7: Reports, recommendation letters and requests for interim measures**

	Reports on the cases	7
	<i>Ex officio</i> Reports	5
	Recommendation letters	10
	The request for interim measures	1

**Table 8: The individual respondent parties of the investigated cases**

<b>THE JUDICIAL AND PROSECUTION SYSTEM</b>		
	Municipal Court of Prishtina	33
	The Supreme Court of Kosovo	23
	District Court of Prishtina	15
	Municipal Court of Prizren	10
	Municipal Court of Gjilan	8
	District Court of Prizren	7
	Municipal Court of Gjakovë	7
	Municipal Court of Mitrovica	4
	Municipal Court of Ferizaj	4



	Municipal Court of Pejë	4
	Municipal Court of Podujevë	4
	Municipal Court of Rahovec	4
	The Special Chamber of the Supreme Court	4
	Municipal Court of Mitrovicë	3
	Constitutional Court of Kosovo	3
	Municipal Public Prosecution of Prishtinë	3
	District Court of Gjiilan	2
	Municipal Court of Skenderaj	2
	District Public Prosecution of Prishtinë	2
	Municipal Prosecution of Mitrovicë	2
	District Economic Court of Prishtine	1
	Municipal Court of Kaçanik	1
	Municipal Court of Kamenicë	1
	Municipal Court of Suharekë	1
	Municipal Court of Vushtrri	1
	District Public Prosecution of Mitrovica	1
	District Public Prosecution of Gjiilan	1
	Municipal Public Prosecution of Prizren	1
	Municipal Public Prosecution of Gjakovë	1
	Municipal Public Prosecution of Pejë	1
	District Public Prosecution of Pejë	1
<b>GOVERNMENT AUTHORITIES</b>		
	The Ministry of Interior	10
	The Ministry of Health	10
	The Ministry of Labour and Social Welfare	9
	The Ministry of Education, Science and Technology	8
	Kosovo Pension Department Administration	7
	Dubrava Jail	5
	The Ministry of Environment and Spatial Planning	4
	The Ministry of Transport and Post-Telecom	4
	Prishtina jail	3

	Drivers licence Department in	3
	Department of Pensions Administration in Prizren	3
	Kosovo Tax Administration	2
	The Government of Kosovo	2
	The Ministry of Kosovo Security Forces	2
	Prizren Jail	1
	The Ministry of the Administration of Local Power	1
	The Ministry of Agriculture, Forestry and Rural Development	1
	The Ministry of Economy and Finances	1
	The Ministry of Culture, Youth and Sports	1
	The Ministry of European Integrations	1
	Kosovo Correctional Service	1
	Kosovo Medicines Agency	1
<b>LOCAL AUTHORITIES</b>		
	Municipal Assembly of Prishtinë	11
	Municipal Assembly of Pejë	7
	Municipal Assembly of Prizren	7
	Department of Education in Gjilan	5
	Department of Education in Vushtrri	4
	Municipal Assembly of Ferizaj	4
	Municipal Assembly of Rahovec	4
	Municipal Assembly of Skenderaj	4
	Municipal Assembly of Mitrovicë	3
	Municipal Assembly of Fushë Kosovë	3
	Municipal Assembly of Kaçanik	3
	Centre for Social Work in Prishtina	3
	Municipal Assembly of Gjilan	3
	Department of Education in Kamenicë	2
	Municipal Assembly of Gjakovë	2
	Municipal Assembly of Kamenicë	2
	Municipal Assembly of Klinë	2

	Municipal Assembly of Lipjan	2
	Municipal Assembly of Malishevë	2
	Municipal Assembly of Vushtrri	2
	Centre for Social Work in Prizren	2
	Centre for Social Work in Vushtrri	2
	Department of Education in Lipjan	1
	Department of Education in Mitrovicë	1
	Department of Education in Pejë	1
	Department of Education in Prishtinë	1
	Department of Education in Prizren	1
	Department of Education in Shtime	1
	Department of Education in Skenderaj	1
	Department of Education in Viti	1
	Municipal Assembly of Ranillug	1
	Municipal Assembly of Obiliq	1
	Municipal Assembly of Podujevë	1
	Municipal Assembly of Suharekë	1
	The Main Family Medicines Centre in Kaçanik	1
	Registrar`s Office in Podujevë	1
	The primary school “7 Marsi” in Suharekë	1
	The Health Centre in Gjilan	1
	Cadastral Office in Lipjan	1
	Cadastral Office in Obiliq	1
	Cadastral Office in Prizren	1
<b>OTHERS</b>		
	Kosovo Police	20
	Kosovo Energetic Corporation	16
	Kosovo Property Agency	13
	Kosovo Privatization Agency	10
	University of Prishtina	7
	Private parties	3
	Kosovo Independent Oversight Board	2

	Central Election Commission	2
	Foreign authorities	2
	Kosovo Custom Service	2
	The Independent Review Board of Appeals	2
	Regional Water Company "Prishtina"	2
	The Assembly of Kosovo	2
	University Clinical Centre of Kosovo	1
	The Archive of Kosovo	1
	Telecommunication Regulatory Authority	1
	The Union of Independent Trade Unions of Kosovo	1
	EULEX Police	1
	The Kosovo Police Inspectorate	1
	Prishtina Municipal Labour Inspectorate	1
	Jugobanka	1
	Media Independent Commission	1
	Insurance Company "Siguria"	1
	Trepça Management Board	1
	Prishtina Airport	1
	Kosovo Chamber of Advocates	1
	OSBE	1
	American Bar Association	1
	The Regional Investigation Unit in Prishtina	1

**Table 9: The subject of the investigated cases**

	The right to legal remedies	99
	Protection of property	73
	The right to a fair and impartial trial	68
	The right to work and exercise of profession	65
	Health care and social security	36
	Equality before the law	28
	Judicial protection of rights	10
	The rights of the accused	10
	Freedom of movement	8

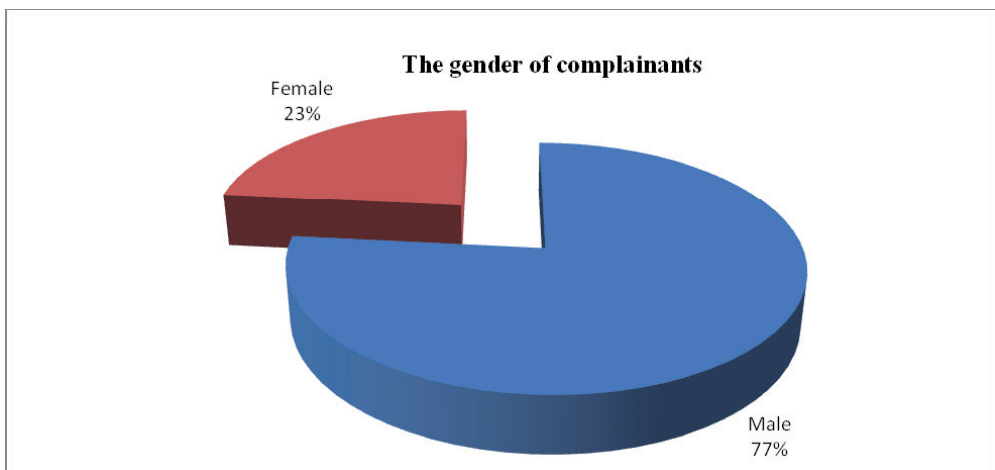
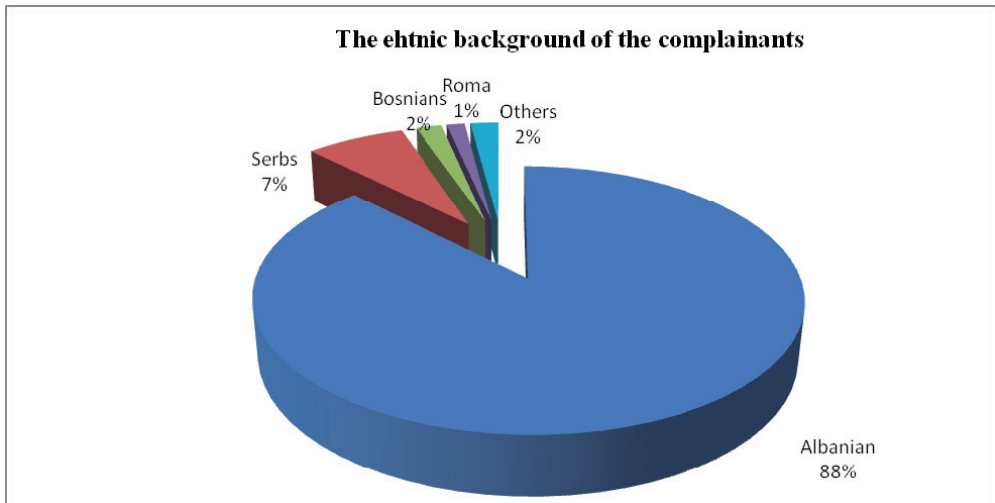
	Prohibition of torture and cruel, treatment or punishment	7
	The right to freedom and security	7
	The responsibility for the environment	7
	The right to life	5
	The right to privacy	5
	The freedom of belief, conscience and religion	5
	The right to education	5
	The child`s rights	5
	The right of access to public documents	5
	Human dignity	4
	The right to personal integrity	3
	Religious confessions	2
	The right of election and participation	2
	The limitation of fundamental freedoms and rights	2
	The cases of mediation	2
	The principle of legality and proportionality in criminal cases	1
	Freedom of expression	1
	Interpretation of the provisions on human rights	1

**Table 10: Failures of the authorities to respond to the letter of the OIK**

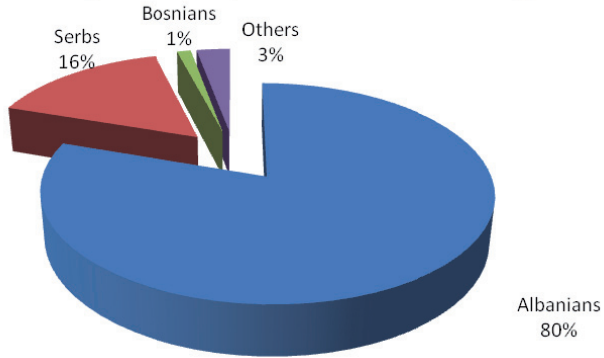
<b>THE JUDICIAL AND PROSECUTION SYSTEM</b>		
	Municipal Court of Prishtina	17
	Municipal Court of Gjilan	3
	Supreme Court of Kosovo	3
	Public Municipal Prosecution of Prishtina	3
	District Court of Prishtina	2
	District Public Prosecution of Prishtina	2
	Municipal Court of Vushtrri	1
	Municipal Court of Rahovec	1
	Municipal Court of Suharekë	1
	Municipal Court of Ferizaj	1
	Municipal Court of Kamenicë	1
	Municipal Court of Gjakovë	1
	Municipal Court of Gjilan	1

	District Court of Prizren	1
	Judicial Inspection Unit in Prishtinë	1
<b>GOVERNMENT AUTHORITIES</b>		
	The Ministry of Health	5
	Kosovo Cadastral Agency	5
	The Ministry of Interior	2
	Ministry of Local Government Administration	2
	Ministry of Environment and Spatial Planning	2
	The Ministry of Education, Science and Technology	2
	The Ministry of Labour and Social Welfare	1
	Kosovo Pension Administration	1
	Ministry for the Kosovo Security Force	1
	Kosovo Medicines Agency	1
<b>LOCAL GOVERNMENT</b>		
	Municipal Assembly of Malishevë	2
	Municipal Assembly of Prishtinë	2
	Municipal Assembly of Gjilan	2
	Department of Education in Gjilan	2
	Municipal Assembly of Junik	1
	Municipal Assembly of Mitrovicë	1
	Directorate of Urbanism in Klinë	1
	Municipal Assembly of Skenderaj	1
	Municipal Assembly of Ferizaj	1
<b>OTHERS</b>		
	Kosovo Energetic Corporation	3
	Kosovo Privatization Agency	2
	Kosovo Police	2
	The Faculty of Economics	1
	University of Prishtina	1
	The Independent Review Board of Appeals	1
	Kosovo Property Agency	1
	“Trepça” public enterprise	1

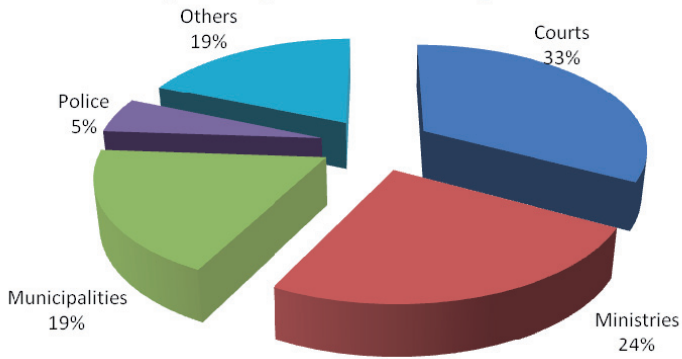
**Figure 1: Graphic presentation of statistics for 1 January 2010 - 31 December 2010**



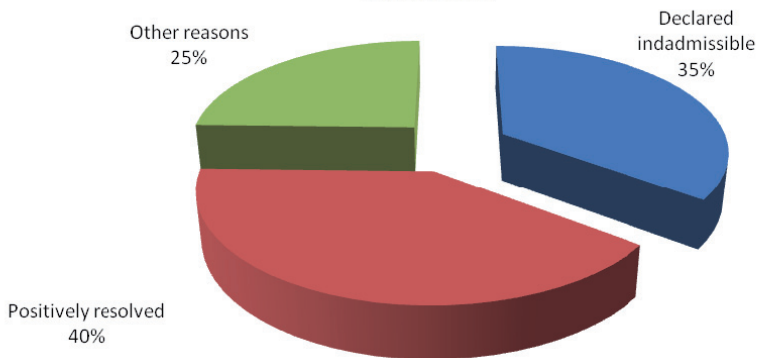
**The ethnic background of complainants based on the investigated cases**



**The respondent parties of the investigated cases**



**Cases closed**





## 10. The staff structure

The structure and the number of OIK staff approved for the 2010 are composed by selected public officials and civil servants. Based on the budget structure for salaries and wages, except the Ombudsperson, the total number of the employees foreseen was 47, from them, 5 public officials selected by the Assembly and 42 civil servants.

The issue of selected staff of the OIK, for the reporting period, has not been resolved completely as a result of delays of the adoption of legal procedure for selection of the Ombudsperson's Deputies. During this year, the Ombudsperson had only one Deputy. The Deputy was former Acting Ombudsperson who was inherited by the previous legislation and with an expired mandate who in December 2010 resigned and left the OIK.

Despite the request of OIK for a budget for recruiting new staff members in 2010, thus rising the number of staff to 51, such request has not been approved by the Government of Kosovo, respectively by the Ministry of Economy and Finances, although, it is the Assembly of the Republic of Kosovo who should decide on this issue! With the current number and staff composition the OIK has had significant problems in accomplishing its mission.

Based on the approved budget for 2010, 42 associates of the OIK are treated as civil servants. This staff number is not sufficient and it does not enable effective functioning and successful accomplishment of the constitutional and legal mission of the OIK. Significant lack of staff is expressed in the sector of professional staff and administrative staff as well.

Based on the assessment of the current human resources, as well as based on the increased volume of duties and responsibilities, it results that the 47 employees as foreseen by the Kosovo budget for 2010, is insufficient.

The successful accomplishment of the mission as assigned by the Constitution and the Law is becoming difficult day by day, especially due to the lack of staff for few sectors of OIK, such as: the office for international relations, legal advisers for few particular sectors within the OIK, as well as few important functions in the administration.

In 2010 were noticed big needs for legal advisers, especially a need for 4 (four) legal advisers for the main office in Prishtina, one (1) legal adviser for the office in Gjilan, one legal adviser for Gjakovë, one for Ferizaj, one for Dragash and one legal adviser for Shtërpçë.

In the administration service there is lack of an official for staff sector, internal auditor, lector, and head of the office for Media and public relations, two officials for information technology and an archivist.

One of the fundamental obstacles for functioning and realization of the OIK main obligations continues to cause big movement of staff, respectively leaving the working places on one side, and the legal procedures for recruitment and on the other hand the establishment of the new working relationship. The right to leave the working place (one month) and the legal limit time for recruitment of a new employee for the same position (three months) are inconsistent and cause negative consequences. Such situation must be resolved by the respective law which sanctions recruitment of the Clarks and civil servants.

During this reporting period 8 employees interrupted the working relation with OIK in voluntary basis, while 7 new employees established working relationship with the OIK. The main reasons for resignations of the employees are advanced or leading positions they get in the international or local institutions in Kosovo and abroad where the salaries are higher and working conditions are better.

**Table 11: Composition and the structure of the staff of the institution.**

Assessment of the situation and movements of staff for the period of time January-December 2010

No.	The positions of the staff	The staff approved for the 2010	The situation of the staff employed in 2010
I.	<b>THE OMBUDSPERSON</b>	1	1
	<b>The Ombudsman's Deputies</b>	4	1
	<b>The executive assistant to the Ombudsman</b>	1	1
II.	<b>THE EXECUTIVE DIRECTOR</b>	1	1
	<b>The executive assistant</b>	1	1
III.	<b>DEPARTMENT OF INVESTIGATIONS</b>		
	<b>1. Director of Department</b>	1	1
	1.1 Sector – Legal advisers in charge of investigations	5	5
	1.2 Sector – The Anti-Discrimination Team	3	3
	1.3 Sector – Children's Rights Team	1	1
	1.4 Sector – The Gender Equality Unit	1	1
	1.5 Legal assistant	2	2
	<b>2. Regional Offices</b>		
	2.1 Office in Prizren	3	3
	2.2 Office in Gjilan	3	3
	2.3 Office in Pejë	2	2
2.4 Office in Mitrovicë	3	3	
2.5 Office in Graçanicë	2	2	

<b>IV.</b>	<b>DEPARTMENT OF ADMINISTRATION</b>		
	<b>1. The Director of Department of Administration</b>	1	1
	1.1 The officer for budget and finances	1	1
	1.2 The sector of relation with Media	1	1
	1.3 Department of logistics	1	1
	1.4 Translation service	2	2
	1.5 Certification officer	1	1
	1.6 officer of Assets	1	1
	1.7 Official for admission/ switchboard operator	1	1
	1.8 Drivers	2	2
1.9 Householder	1	1	
<b>V</b>	<b>PROCUREMENT DEPARTMENT</b>	1	
	<b>1. Head of the Procurement Department</b>		1
	<b>The total number of staff:</b>	<b>47</b>	<b>44</b>



## Acronyms

KPA	Kosovo Property Agency
EU	European Union
CEDAW	Convention on the Elimination of Discrimination against Women
CLARD	Centre for Legal Aid and Regional Development
CBM	Community Building in Mitrovica
DPP	Department of Labour and Employment of the MLSW
ENOC	European Network of Ombudspersons for Children
EULEX	European Union Rule of Law Mission
FIC	Forum for Civic Initiatives
KSF	Ministry of Kosovo Security Force
CRG	Children's Rights Group
ECHR	European Court of Human Rights
ADT	Anti-Discrimination Team
OIK	Ombudsperson Institution
KSI	Kosovan Stability Initiative
IP	Initiative for Progress
BPI	Balkan Policy Institute
KDI	Kosovo Democratic Institute
ECHR	European Convention on Human Rights
KEC	Kosovo Energetic Corporation
KFOS	Kosovo Foundation for Open Society
KJC	Kosovo Judicial Council
MA	Municipal Assembly
CDHRF	Council for the Defence of Human Rights and Freedoms
CNGO	Coalition of Non-Governmental Organizations
SPC	Serbian Orthodox Church
IMC	Independent Media Commission
IOBK	Independent Oversight Board of Kosovo
PCKK	Provisional Criminal Code of Kosovo
PCPCK	Provisional Criminal Procedure Code of Kosovo
CEC	Central Election Commission
CRK	Constitution of the Republic of Kosovo

PSC	Polling Station's Councils
LOCP	Law on Out Contentious Procedure
LCP	Law on Contested Procedure
MPA	Ministry of Public Administration
MERS	The Ministry of Education of the Republic of Serbia
MEST	Ministry of Education, Science and Technology
MEF	Ministry of Economy and Finance
NMPT	National Mechanism for Prevention of Torture
MLSW	Ministry of Labour and Social Welfare
MT	Ministry of Transport
GEU	Gender Equality Unit
OHCHR	Office of the High Commissioner for Human Rights
NGO	Non-Governmental Organization
UNO	United Nations Organization
OPCAT	Optional Protocol to the Convention against Torture
OSCE	Organization for Security and Cooperation in Europe
PTK	Post-Telecom of Kosovo
KRCT	Kosovo Rehabilitation Centre for Torture Victims
KRCT	Kosovo Rehabilitation Centre of Torture
KCGS	Kosovan Centre for Gender Studies
UCCK	University Clinical Centre of Kosovo
CPWC	Centre for Protection of Women and Children
CPA	Centre for Policies and Advocacy
SWC	Social Work Centre
PSC	Polling Station's Centres
RTK	Radio Television of Kosovo
KPC	Kosovo Protection Corps
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNIFEM	United Nations Development Fund for Women
UNMIK	United Nations Interim Administration Mission in Kosovo
PSN	Polling Station Number
YIHR	Youth Initiative for Human Rights

## 12. Annex 1: The requests for the Constitutional Court

Based on the constitutional competencies, the Ombudsperson has the right to refer the issue to the Constitutional Court in accordance with the legal provisions.<sup>208</sup>

The OIK during the 2010 received 3 complaints/requests lodged by the citizens and various Organizations for rising of various issues with the Constitutional Court. The Ombudsperson after reviewing the submitted requests issued a decision as well. The OIK declared one of the complaints as inadmissible, while two other requests were forwarded to the Constitutional Court. For one of the requests the court issued the interim measure, while the other request is under the procedure of reviewing.

On 19 July 2010, 12 Non-Governmental Organizations<sup>209</sup> submitted a request to the Ombudsperson requesting the Ombudsperson to forward to the Constitutional Court a request to assess the compliance of the Law on the Rights and the Responsibilities of the Deputies with the Constitution of the Republic of Kosovo.<sup>210</sup> The Non-Governmental Organizations opposed supplementary pension of deputies at the age of 55, even in case they serve half-term by referring to the deputy's salary, not on the average pension in Kosovo. The submitters of the request estimate that this law is contradictory because it discriminates other categories of employees in Kosovo. This law is also in contradiction with the social equality in the country, since the pension age in the Republic of Kosovo is 65 and the amount of pension is determined based on the contributions paid at the Kosovo Savings Trust during their career.

The Ombudsperson after analyzing the request of the civil society, after conducting the investigations and research, on 26 November 2010 forwarded the case to the Constitutional Court for assessment of compliance.<sup>211</sup> After reviewing the request of the Ombudsperson, On 22 December 2010, the Constitutional Court notified the Ombudsperson that it has issued "Decision for interim measure", by which it suspends immediately implementation of the Law on the Right and Responsibilities of Deputy.<sup>212</sup>

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<sup>208</sup> *The Constitution of the Republic of Kosovo*, Chapter XII, Article 135 and Article 113, point 2.

<sup>209</sup> The Kosovo Democratic Institute, Forum for Civic Initiative, Kosovo Democratic Institute, Kosovo Initiative for Stability, Initiative for Progress, Youth Initiative for Human Rights, Balkan, Kosovo Stability Initiative, Balkan Policy Institute, CHDRF, Movement "Fol", Community Building in Mitrovica, the Centre for Policies and Advocacy and "Syri" Vision.

<sup>210</sup> The request for reassessment of the Article 14, point 1.6, as well as Articles 22, 24, 25 and 27, of the Law no. 03/L-111 on Rights and Responsibilities of the Deputy of the Assembly of the Republic of Kosovo, adopted on 4 June 2010.

<sup>211</sup> See *The Ombudsperson of the Republic of Kosovo*, request addressing the Constitutional Court, dated, 26 November 2010, at <http://www>.

<sup>212</sup> See the Constitutional Court of the Republic of Kosovo no. Ref.: MP79/10, 22 December 2010.

## REQUEST

Addressing

The Constitutional Court of Kosovo

- In the case: The issue of the incompatibility of the Article 14 paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law no. 03/L–111 on the Rights and Privileges of the Deputy with the Constitution of the Republic of Kosovo.
- Respondent party: The Assembly of Kosovo.
- Legal base: The Constitution of the Republic of Kosovo, Article 113, and Article 135 paragraph 4; the Law on Ombudsperson, Article 15 paragraph 7; the Law on the Constitutional Court, Article 29.

26 November 2010, Prishtina

### The facts

According to information available to Ombudsperson Institution, the facts can be summarized as follows:

1. On 4 June 2010, the Assembly of Kosovo adopted the Law on the Rights and Privileges of the Deputies by 74 (seventy four) votes “pro”, 2 (two) votes “against” and 2 (two) “abstentions”.
2. On 21 June 2010, Non-Government Organizations (NGO): Kosovo Democratic Institute (KDI), Forum for Civic Initiative (FIQ), Movement “Fol”, Community Building Centre in Mitrovica (CBM)<sup>213</sup>, addressed the President of the Republic of Kosovo asking him not to enact the Law in question.
3. On 25 June 2010, Mr. Bahri Hyseni, the Chairman of the Committee on Legislation and Judiciary at the Assembly of Kosovo requested the Secretariat of the Assembly of Kosovo to correct a technical error in the law on the Rights and Responsibilities of the Deputy, respectively in the Article 22 which states that the pension age will be 55 years and, not 50 years as specified in the Law at the moment the Law was adopted in a plenary session on 4 June 2010.<sup>214</sup>
4. On 25 June 2010, the Assembly approved request of Mr. Bahri Hyseni to correct the technical error made at the plenary session, dated 4 June 2010. The request of Mr. Bahri Hyseni was approved by 73 (seventy-three) votes “pro” and 2 (two) votes “against”.

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<sup>213</sup> See the official website of the President of Kosovo [www.president-ksgov.net](http://www.president-ksgov.net) (link <http://www.president-ksgov.net/?page=1,6&cdate=2010-06-21>)

<sup>214</sup> See the transcript of the plenary session of the Assembly of Kosovo held on 25 June 2010.



5. On 5 July 2010, the Law on the Rights and Responsibilities of the Deputy was enacted by the President of the Republic of Kosovo by decree DL-029-2010.

6. On 19 July 2010, Ombudsperson Institution received submission of the following NGOs: Kosovo Democratic Institute (KDI), Forum for Civic Initiative (FIQ), Youth Initiative for Human Rights (YIHR), Kosovo Initiative for stability (IKS), Initiative of Progress (INOP), Balkans Policy Institute (IPOL), the Council for Protection of Human Rights and Freedoms (CDHRF), Movement “Fol”, Community Building Centre in Mitrovica (CBM), Centre for Politics and Advocacy (QPA) and “Syri” Vision, which through a joint application requested the Ombudsperson Institution that based on its duties and responsibilities granted by the Constitution, asks the Constitutional Court of the Republic of Kosovo to assess the constitutionality of the Article 22 of the Law on the Rights and Responsibilities of the Deputy.

7. The aforementioned NGOs consider that this Article is in contradiction with the Constitution of the Republic of Kosovo and requested that the implementation of this Law does not commence on 1 January 2011 as it was foreseen, before the Constitutional Court issues a Judgment on the merits on this issue.

8. On 20 July 2010, the Law on the Rights and Responsibilities of the Deputy was published on the Official Gazette no. 74 of the Republic of Kosovo, dated 20 July 2010.

9. On 20 July 2010, the Union of Kosovo Pensioners – with the President Ramë Alihajdaraj joined the application submitted by these Non-Governmental Organizations.

10. The aforementioned NGOs contested the Article 22, paragraph 1 of the Law on the Rights and Responsibilities of the Deputy considering this Law as discriminatory in relation to other pensioners, pretending that it violates the principle of equality before the Law.

## **Legal mechanisms applicable in the Republic of Kosovo**

11. The Constitution of the Republic of Kosovo in the first chapter “Fundamental provisions” proclaims equality before the Law and the values on which the legal order is grounded:

*“Article 3 [Equality before the Law]*

*2. The exercise of the authority in the Republic of Kosovo shall be based upon principles of equality of all individuals before the Law and with full respect internationally recognized fundamental human rights and freedoms, as well as the protection of the rights of and participation by all Communities and their members.”*

*“Article 7 [Values]*

*“1. The constitutional order 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, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market.”*

12. Also, the Article 24 of the Constitution of the Republic of Kosovo in the second chapter “The Rights and fundamental freedoms” guarantees equality before the law and non-discrimination:

*“1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination”.*

*2. No one shall be discriminated against on grounds of race, colour, 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.”*

13. The European Convention for the Protection of Human Rights and Fundamental Freedoms in the Article 14 expressly prohibits discrimination.

*Article 14 – Prohibition of discrimination*

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

14. International Covenant on Civil and Political Rights in the Article 26 states that :

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

### **Legal analyse**

15. Ombudsperson notices that supplementary pensions determined based on the provisions of the Article 22 of the Law on the Rights and Responsibilities of the Deputy are significantly disproportionate to the average pensions in the country and, as such are incompatible with the values proclaimed in the Article 7 of the Constitution of the Republic of Kosovo which bases its legal order on the principles of democracy, equality, non-discrimination and social justice.

16. Ombudsperson emphasizes that the principle that all citizens are equal before the Law as guaranteed by the preamble of the Constitution of the Republic of Kosovo and, the commitment to a state of economic welfare and social justice are among the fundamental and most important principles of the Constitution of the Republic of Kosovo.

17. Ombudsperson notices that the principles of protection of Constitutionality and lawfulness have an imperative character and are applicable at the same level for the citizens, as well as for the State`s authorities. The Assembly as a Legislative Body of the State during the adoption of the Laws and other Acts must make sure that such Acts are always in accordance with the provisions and principles of the highest act of the state – Constitution.

18. The Law on the Rights and Responsibilities of the Deputy contains provisions which enable the members of Kosovo Assembly to benefit more favourable pensions than all other beneficiaries of pensions and, it is not in accordance with the Constitutional principles of equality, the rule of law, non-discrimination and social justice. The Article 22 of the Law on Rights and Responsibilities of a Deputy states that:

*“1. A Deputy after the mandate is entitled to supplementary pension, if he has served as deputy at least one term and has reached the age of fifty-five (55) years. .*

*2. A deputy who meets conditions set forth in the paragraph 1 of this Article benefits supplementary pension in the amount of fifty percent (50%) of a base salary of the deputy. The deputy who has served two (2) mandates in terms of paragraph 1 of this Article benefits a supplementary pension in the amount of sixty percent (60) of a base salary and the deputy who has served three (3) or more mandates benefits pension in the amount of seventy percent (70%) of a base salary.”*

19. The Ombudsperson emphasizes that the principle that all citizens are equal before the Law, which is guaranteed also by the preamble of the Constitution of Republic of Kosovo and the commitment to a state of economic welfare and social justice are some of the fundamental and most important principles that are enshrined in the Constitution.

20. Ombudsperson deems that the right to supplementary pension at the age of 55 years under the Law on the Rights and Responsibilities of the Deputy which is not based on the given contribution while they were on duty, but directly from the budget of the Republic of Kosovo (Article 28), while by the Law does not foresee creation of such fund for this purpose, contains discriminatory elements.

21. Law on Amending UNMIK Regulation no. 2005/20 on Kosovo Pensions Trust in the Article 7, “Collection of the contributions to finance individual Savings Pensions Trust” states that:

*“Each employer shall be obligated to contribute on behalf of its Employees to the Savings pension fund. Employees shall be obligated to contribute on their own behalf for the Savings pension fund. The Employer and Employee`s obligation to contribute begins on the first day of employment with the Employer who have reached the age of eighteen (18) and ends when the Employee reaches Pension age.”*

22. Ombudsperson considers that the privileges foreseen for the members of the Kosovo Assembly by the Law on Rights and Responsibilities of the Deputy are discriminatory in relation to other categories of pensioners because the retirement age of the members of the Kosovo Assembly is 10 (ten) years lower, while the amount that they benefit from this pension is disproportionate with the pensions that the other categories of pensioners benefit. This Law enables a member of Assembly which serves only one term of 3 (three) years to benefit a pension nearly 8-10 (ten) higher than a citizen, even higher than a University professor who has served and contributed over 40 years in Kosovo and in the Pension Fund. The pension system in Kosovo is comprehensive and it is evident that the payments are low comparing with the regional countries.

23. Furthermore, Article 38 of the Law on Rights and Responsibilities of the Deputy enables the Deputy that after the mandate returns to his previous job if he was employed in the public sector or any other institution funded with public funds. This provides them security, which means they are not at risk of becoming unemployed if they were previously employed in the public sector. Also, they can provide another job given that the age of retirement in Kosovo is 65.

24. According to the aforementioned Articles, the Deputy who ended his mandate between the age of 55 and 65 years old can benefit from supplementary pension and at the same time gets paid based on the function he performs. For both positions he gets paid by the budget of Kosovo.

Whereas, upon reaching the age of 65, the Law does not limit the Deputy that except the supplementary pension benefits also incomes from the old-age pension.

25. Ombudsperson considers that the Article 22 of the Law on Rights and Responsibilities of the Deputy which is challenged through this application would not be in contradiction with the constitutional principles of equality and rule of law, if it would have provided more favourable retirement conditions for this category of people. However, Ombudsperson considers that such conditions should be based on reasonable grounds. They should be in line with the spirit of general principles in this field and, at the same time such conditions shall not threat Article 3 of the Constitution of the Republic of Kosovo (*see paragraph 10*), that indirectly may have an adverse effect on other Constitutional principles, such as rule of law, social justice and non-discrimination.

26. By adopting the Article 22 of the Law on Rights and Responsibilities of the Deputy, the Assembly of Kosovo made another one discriminatory action by providing more preferential treatment for members of the Assembly of Kosovo than for other public officials, even though they are in the same social position.

27. The Committee on Human Rights, in its interpretation of the Article 26 of the International Covenant on Civil and Political Rights, among other estimates that the Article 26 does not require the States to issue Laws that would guarantee social welfare. However, when such law is issued by the institutions of the sovereign state, then the law should be in Accordance with Article 26 of the Covenant.<sup>215</sup>

28. According to World Bank research 45% of the population of Kosovo are poor, while 15% of the population live in extreme poverty and have difficulties to provide basic needs for food. According to the latest report of the World Bank published on 10 June 2010 ( See report no. 53709 – XK):

*“Kosovo has a population of about 2.0 million and with a GDP per capita of 1,760 is one of the poorest countries in Europe. Poverty remains persistent and widespread with 45 percent of the population below the national poverty line. The official unemployment rate is 48 percent; the worst in Europe.”*

According to Statistical Office of Kosovo published in the quarterly bulletin (October 2010) the average salary in Kosovo in the first quarter of the year 2010 is 272 Euros.

29. According to the information available to Ombudsperson, the basic salary of a Deputy is 1.488 (one thousand four hundred and eighty eight) Euros. This means that the Deputy who performed duty of a Deputy benefits supplementary pension at the amount of 50 percent of the base salary of the Deputy (*See paragraph 18*), which is 744 (seven hundred forty-four) Euros. While the maximum amount that a retiree in Kosovo with 40 years of working experience, based on the pay-contribution scheme earns 80 Euros (eighty Euros), while based on the scheme of base pensions a retiree earns only 45 (forty five) Euros.

30. The European Court on Human Rights in the case of *Stec and others v. The United Kingdom* (*Applications nos. 65731/01 and 65900/01*), states that:

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<sup>215</sup> See publication “*The main cases of the Committee on Human Rights*”, Summarized by Raia Hanski dhe Martin Scheinin, page 377

*“...A difference of treatment is, however, discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and aim sought to be realised. The contracting state enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (Van Raalte v. the Netherlands, 21 February 1997, § 39, Reports of Judgements and Decisions 1997-I)”*”.

31. Ombudsperson finally finds that the privileged status of Kosovo Assembly members under existing legal system does not provide sufficient basis to justify such a high level of deviation from the general principles in the domain of pensions.

### **Conclusion of the Ombudsperson**

32. In the context of clarifying the constitutional and legal circumstances, the Ombudsperson in the capacity of an applicant with the Constitutional Court, by referring to the above mentioned arguments notices that the interest of the Institution to interfere in this issue based on the legal means granted to the Institution by the Constitution and Law, is correction of the content of the provisions of the Law on Rights and Responsibilities of the of the Deputy.

33. Under these conditions, Under Article 113, paragraph 2.1, Article 135, paragraph 4 of the Constitution of the Republic of Kosovo, paragraph 15 of the Law on Ombudsperson and Article 29 of the Law on Constitutional Court, the Ombudsperson requires the Constitutional Court to rescind as incompatible with the Constitution, Articles 14 paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on the Rights and Responsibilities of the Deputy.

Yours sincerely,

Sami Kurteshi

Ombudsperson

## 12.1. Decision of the Constitutional Court



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО – REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

Prishtina, 22 December 2010  
Ref. No.: MP79/10

### DECISION ON INTERIM MEASURES

in

Case No. KO 119/10

#### The Ombudsperson of the Republic of Kosovo

#### Constitutional Review of Articles 14 (1) 6, 22, 24, 25 and 27 of the Law on Rights and Responsibilities of Deputies, No. 03/L- 111 of 4 June 2010

The Constitutional Court, composed of

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Cukalovic, Judge  
Gjylieta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### The Applicant

1. The Applicant is the Ombudsperson of the Republic of Kosovo.

#### Challenged law

2. The Applicant seeks the annulling of Articles 14(1)6, 22, 24, 25 and 27 of the Law on Rights and Responsibilities of Deputies, No. 03/L-111 of 4 June 2010.

## **Subject matter**

3. Constitutional Review of Articles 14(1)6, 22, 24, 25 and 27 of the Law on Rights and Responsibilities of Deputies, No. 03/L-111 of 4 June 2010.

## **Legal Basis**

4. Article 113 (2) of the Constitution of the Republic of Kosovo (“the Constitution”) and as Articles 20 and 27 of the Law of the Constitutional Court of the Republic of Kosovo (“the Law”).

## **Summary of the Facts**

5. On 4 June 2010, the Law on Rights and Responsibilities of Deputies was approved by the Assembly of the Republic of Kosovo by a vote of 74 (seventy four) “for”, 2 (two) “against” and 2 (two) “abstentions”.
6. On 21 June 2010, the following non-governmental organizations (NGOs): Kosovo Democratic Institute (KDI), Forum for Citizens Initiatives (FIQ), “Fol” Movement, Community Building Mitrovica (CBM), addressed the President of the Republic of Kosovo, with a request not to promulgate the abovementioned Law.
7. On 25 June 2010, Mr. Bahri Hyseni, Chairperson of the Committee for Legislation and Judiciary, Assembly of Kosovo, requested the Secretariat of the Assembly to rectify a technical omission made on the Law on Rights and Responsibilities of the Deputies, respectively Article 22 of the Law, that the age of retirement should be 55 years, and not as approved with the plenary session of 4 June 2010, that the retirement age be 50 years.
8. On 25 June 2010, the Assembly approved the request of Mr. Bahri Hyseni to rectify the technical omission made in the session of 4 June 2010. The request of Mr. Bahri Hyseni was approved by 73 (seventy three) votes “for” and 2 (two) votes “against”.
9. On 5 July 2010, the Law on Rights and Responsibilities of the Deputies was decreed by the President of the Republic of Kosovo, by Decree DL-029-2010.
10. On 19 July 2010, the Ombudsperson Institution received a submission by a number of NGOs: Kosovo Democratic Institute (KDI), Forum for Citizens Initiatives (FIQ), Youth Initiative for Human Rights (YIHR), Kosovo Initiative for Stability (IKS), Initiative for Progress (INPO), Balkan Institute of Policies (IPOL), Council for the Defense of Human Rights and Freedoms (KMDLNJ), “Fol” Movement, Community Building Mitrovica (CBM), Policy and Advocacy Centre (QPA) and Syri Vision, which addressed the Ombudsperson Institution with a common request, that the Constitutional Court of the Republic of Kosovo, as per its duties and responsibilities provided by law, review the constitutionality of Article 22 of the Law on Rights and Responsibilities of the Deputy.

11. The above named NGOs consider that this Article is a violation of the Constitution of the Republic of Kosovo, and request to halt implementation of the law as planned, 1 January 2011, pending a merit-based decision by the Constitutional Court.
12. On 20 July 2010, the Law on Rights and Responsibilities of the Deputy was published in the Official Gazette of the Republic of Kosovo.
13. On 21 July 2010, the request made by the NGOs was joined by the Pensioners Union of Kosovo.

### **Proceedings before the Court**

14. On 26 November 2010 the Applicant filed his Referral with the Constitutional Court.
15. The President of the Court appointed Robert Carolan as Judge Rapporteur, and he appointed a Review Panel comprising Judges Ivan Čukalović, Kadri Kryeziu and Gjyljeta Mushkolaj.
16. On 17 December 2010, in private session, the Court deliberated on the preliminary Report of the Judge Rapporteur with regard to the granting of an interim measure pending the final outcome of the Referral.

### **The Applicant's Allegations**

17. The Applicant considers, *inter alia*, that the Law on Rights and Responsibilities of the Deputy contains provisions "which enable members of the Kosovo Assembly to realize pensions which are more favourable than any other retirement benefit for other citizens, and they are not in compliance with constitutional principles of equality, rule of law, non-discrimination and social justice".
18. The Ombudsperson also "notes that supplementary pensions provided upon by Article 22 of the Law on Rights and Responsibilities of the Deputy are distinctly disproportional to the average pensions in the country, and as such, they are not compliant with the values proclaimed by Article 7 of the Constitution of the Republic of Kosovo, which founds its constitutional order upon principles of democracy, equality, non-discrimination and social justice".
19. Furthermore, the Article 38 of the Law on Rights and Responsibilities of the Deputy offers the possibility to deputies to return to their respective working places, if he/she was employed in the public sector prior to the term, or any institution funded by public funds. This provides them with some safety in terms of employment, which means that they do not risk unemployment, if they had been part of the public sector prior to the term. Also, they may get another working place; it is widely known that the general age of retirement in Kosovo is 65 years.
20. Finally, according to the Ombudsperson "the privileged status for the deputies of the Assembly of Kosovo in the existing legal order of the Republic of Kosovo,



does not represent sufficient grounds to justify such a high level of deviation from the general principles in the field of pensions.”

### THE CONSTITUTIONAL COURT

After having heard the Judge Rapporteur, Robert Carolan, and having discussed the views of the Applicant expressed in its written submissions, the Court deliberated on 17 December 2010. The Court concluded, without prejudging the final outcome of the Referral, that the Applicant have put forward enough convincing arguments that the implementation of the challenged provisions of the Law on Rights and Responsibilities of Deputies, No. 03/L-111 of 4 June 2010 may result in unrecoverable damages and that such an interim measure is in the public interest.

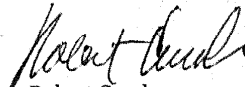
### FOR THESE REASONS

The Court, pursuant to Article 116(2) of the Constitution and Article 27 of the Law, unanimously

### DECIDES

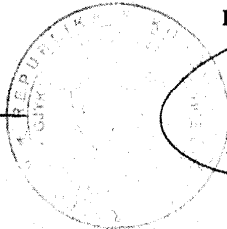
- I. TO GRANT interim measures for a duration of no longer than three (3) months from the date of the adoption of this Decision;
- II. TO IMMEDIATELY SUSPEND the implementation of the Articles 14(1)6, 22, 24, 25 and 27 of the Law on Rights and Responsibilities of Deputies, No. 03/L-111 of 4 June 2010, for the same duration.
- III. This Decision shall be notified to the Parties;
- IV. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

**Judge Rapporteur**

  
Robert Carolan

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani





## **13. Annex 2: Legal base and the competencies of the Ombudsperson**

### **THE CONSTITUTION OF THE REPUBLIC OF KOSOVO**

#### **Chapter XII – Independent Institutions**

##### **Article 132 [Role and Competencies of the Ombudsperson]**

1. The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.
2. The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo.
3. 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.

##### **Article 133 [Office of Ombudsperson]**

1. The Office of the Ombudsperson shall be an independent office and shall propose and administer its budget in a manner provided by law.
2. The Ombudsperson has one (1) or more deputies. Their number, method of selection and mandate are determined by the Law on Ombudsperson. At least one (1) Deputy Ombudsperson shall be a member of a Community not in the majority in Kosovo.

##### **Article 134 [Qualification, Election and Dismissal of the Ombudsperson]**

1. The Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term.
2. Any citizen of the Republic of Kosovo, who has a university degree, high moral and honest character, distinguished experience and knowledge in the area of human rights and freedoms, is eligible to be elected as Ombudsperson.

3. The Ombudsperson and Deputy Ombudspersons shall not be members of any political party, exercise any political, state or professional private activity, or participate in the management of civil, economic or trade organizations.
4. The Ombudsperson shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of responsibilities of the Ombudsperson.
5. The Ombudsperson may be dismissed only upon the request of more than one third (1/3) of all deputies of the Assembly and upon a vote of two thirds (2/3) majority of all its deputies.

#### **Article 135 [Ombudsperson Reporting]**

1. The Ombudsperson shall submit an annual report to the Assembly of the Republic of Kosovo.
2. Upon request of the Assembly, the Ombudsperson is required to submit interim or other reports to the Assembly. Upon the request of the Ombudsperson, the Assembly shall permit the Ombudsperson to be heard.
3. 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.
4. The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution.

### **Chapter VIII – Constitutional Court**

#### **Article 113 [Jurisdiction and Authorized Parties]**

1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:
  - (1) The question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;
  - (2) The compatibility with the Constitution of municipal statutes.

### ***13.1. Law on Ombudsperson***

**LAW No. 03/L – 195**

**Assembly of Republic of Kosovo,**

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

## **LAW ON OMBUDSPERSON**

### **CHAPTER I GENERAL PROVISIONS**

#### **Article 1 The purpose of the Law**

This Law aims establishing legal mechanism for protection, supervision and promotion of fundamental rights and freedoms of natural and legal persons from illegal actions or failures to act and improper inactions of public authorities, other bodies and organizations exercising public authorizations for their account.

#### **Article 2 Scope of Law**

This Law regulates the organization and functioning of the Ombudsperson Institution, establishing procedures for appointment and dismissal, powers and manner of work of the Institution of Ombudsperson and regulates the procedures for submitting the complaints and their investigation.

#### **Article 3 Basic Principles of the activity of the Ombudsperson**

1. Ombudsperson is an independent institution that is governed by the principles of impartiality, confidentiality and professionalism.
2. The provisions of this Law apply to protect the rights, freedoms and interests of all persons in the Republic of Kosovo and abroad from illegal actions or failure to act of the bodies of public authorities of the Republic of Kosovo.

## **Article 4**

### **Working language**

Working Languages of the Institution of the Ombudsperson are official languages envisaged by the Constitution and Law.

## **Article 5**

### **Composition of the Ombudsperson Institution**

1. Ombudsperson Institution is composed of:
  - 1.1. Ombudsperson;
  - 1.2. five (5) Deputy Ombudspersons;
  - 1.3. professional staff and
  - 1.4. administration.

## **Article 6**

### **Conditions for election of the Ombudsperson and his deputies**

1. On the post of Ombudsperson and his deputies are elected persons who meet the following conditions:
  - 1.1. must be a citizen of the Republic of Kosovo;
  - 1.2. must have high education (a University degree);
  - 1.3. must have character, honesty and high moral
  - 1.4. should be experienced and have distinguished knowledge in the field of human rights;
  - 1.5. should not be sentenced to a final decision for a criminal offense punishable by the legislation of Republic of Kosovo;
  - 1.6. should not exercise function in any political party, a deputy in the legislature of the Republic of Kosovo Assembly that elects him, or a government cabinet member.

## **Article 7**

### **Incompatibility**

1. Ombudsperson and his deputies should not be members of any political party or exercise political, state or private professional activity.
2. Ombudsperson and his deputies do not participate in the management bodies of civil, economic and trade organizations;
  - 2.1. In addition to restrictions set forth in sub-paragraph 1.6 Article 6 of this Law and paragraph 1 and 2 of this Article, the Ombudsperson and his deputies have no right to exercise any other public or professional duty for which they are paid, except teaching at the institutions of higher education.
3. The Ombudsperson and his deputies may be involved in science, cultural, academic activities and other activities which are not in contrary to their functions and the legislation in force.

**CHAPTER II**  
**PROPOSAL, ELECTION AND DISMISSAL OF THE OMBUDSPERSON AND HIS**  
**DEPUTIES**

**Article 8**  
**Proposal Procedures**

1. The procedure for electing the Ombudsperson and his deputies starts six (6) months before the expiration of their mandate.
2. During the election procedure of candidates for Ombudsperson and his deputies, ethnic and gender representation must be ensured.
3. Proposal for Ombudsperson is made by respective Committee of the Assembly of the Republic of Kosovo, which reflects the political, ethnic and gender composition, of the Assembly in accordance with Rules of Procedure of the Assembly of the Republic of Kosovo.
4. The Assembly of Kosovo publishes the competition for election of Ombudsperson, in written and electronic media.
5. In the competition the conditions for election of Ombudsperson are determined, envisaged by the Constitution and the Law. The time period for submission of proposals for candidates cannot be shorter than fifteen (15) nor more than twenty (20) days.
6. After expiration of time period foreseen in paragraph 5 of this Article, the Commission, within the term of fifteen (15) days, assesses whether the candidates meet the requirements envisaged by the Constitution and the Law to be elected Ombudsperson, and rejects nominees who do not meet these conditions.
7. The Commission conducts interview with each candidate who meets the conditions to be elected for Ombudsperson and based on the data presented and the results of the interview, prepares the short list of candidates qualified for Ombudsperson.
8. The short list comprises of three (3) candidates.
9. The Commission delivers the short list to the Assembly of the Republic of Kosovo with the attached list of all candidates who meet the requirements to be elected for Ombudsperson.
10. The Commission proposal contains justification why the Commission has given priority to some of the candidates in comparison with other candidates.
11. Proposal of the deputies is made by the Ombudsperson on the basis of open and transparent competition, according to the competition announced by the Assembly of Kosovo.
12. The proposal of Ombudsperson contains justification for the proposed candidates.
13. At least one Deputy Ombudsperson must be a member of the Kosovo Serb community and at least one (1) must be from other non-majority communities that are represented in the Assembly of the Republic of Kosovo.
14. The procedure for election and dismissal of Ombudsperson and Deputy Ombudsperson shall be regulated with a special Regulation of the Assembly of Republic of Kosovo.

**Article 9**  
**The election of the Ombudsperson and his deputies**

1. The Ombudsperson is elected by the Assembly of the Republic of Kosovo, with majority of votes of all its deputies for a term of five (5) years, without the right of re-election.
2. The Ombudsperson should be elected within thirty (30) days from the day of proposal of candidates. If this deadline is not reached, the Assembly of the Republic of Kosovo votes for the election of the Ombudsperson in each plenary session for thirty (30) other days. If the Ombudsperson is not nominated within sixty (60) days, the respective Committee of the Assembly will again publish competition for the Ombudsperson.
3. The deputies of Ombudsperson are elected at the same time by the Assembly of the Republic of Kosovo with a majority of votes of members present and who vote.
4. If the Assembly does not elect the deputies within sixty (60) days, the Assembly shall announce a new competition.
5. One of the elected deputies is appointed as Principal Deputy with rotation for one (1) year mandate by the Ombudsperson.

**Article 10**  
**Taking the job (office) and oath**

1. Ombudsperson shall take the office after having given the oath before members of the Assembly of the Republic of Kosovo.
2. The text of the oath is as follows: "I solemnly swear and promise that will perform faithfully, independently and impartially the duties and functions which are entrusted to me by the Constitution and by Law and will protect and promote human rights and freedoms in Republic of Kosovo".

**Article 11**  
**Immunity**

1. Ombudsperson and his deputies enjoy immunity from prosecution, civil Lawsuit and dismissal for activities or decisions that are within the scope of responsibilities of the Ombudsperson Institution.
2. The Offices of the Ombudsperson Institution are inviolable. Archives, subjects, communications, property, funds and assets of the Ombudsperson Institution, wherever they are or by whosoever held, shall be inviolable and immune from control, acquisition, official search, confiscation, from expropriation or from any other intervention or through bailiff action, administrative, judicial or legislative action.

**Article 12**  
**Dismissal from the function of the Ombudsperson and his deputies**

1. Ombudsperson and his deputies may be dismissed for the following reasons:



- 1.1. physical or mental inability that causes inability to perform his/her functions.
  - 1.2. in case to committing a criminal offense punishable by the legislation of Republic of Kosovo to six (6) months imprisonment or more based on court decision of final form.
  - 1.3. due to his personal conduct which is inconsistent with the exercise of his function.
  - 1.4. if he/she performs actions in contradiction to sub-paragraph 1.6 of Article 6 and paragraph 2 of Article 7 of this Law.
2. Ombudsperson requires from the Assembly of the Republic of Kosovo to dismiss from function one (1) or more of his deputies, due to one or more reasons set out in this Law.

### **Article 13**

#### **End of the function of the Ombudsperson and his deputies**

1. The function of the Ombudsperson and his deputies ends:
  - 1.1. in case of death;
  - 1.2. in case of resignation;
  - 1.3. when five (5) year mandate for Ombudsperson expires, while three (3) year mandate for the deputies of Ombudsperson; and
  - 1.4. when dismissed.
2. In case of absence, death, permanent or temporary disability, the Ombudsperson is replaced by the principal deputy. If the Principal Deputy cannot perform the function, then the Ombudsperson is replaced by the oldest deputy, according to age.
3. In case of expiry of the mandate, the Ombudsperson and his deputies shall exercise their functions until the election of the new Ombudsperson and his deputies.

### **Article 14**

#### **Providing of job after the end of mandate**

1. After completion of the mandate, the Ombudsperson may return to his post or public work that he/she had prior to election as Ombudsperson. When this is not possible, then the previous employer must provide a suitable job, depending on skills and his profession.
2. The Ombudsperson, whose mandate expires, or due to reasonable causes cannot continue previous job or cannot find another adequate job, nor has fulfilled general conditions for retirement, has the right to remuneration in the same amount that would be paid if he/she had worked until being hired to another job or until fulfilment of general retirement conditions, but not longer than one year from the end of the mandate.

## **CHAPTER III POWERS AND RESPONSIBILITIES OF THE OMBUDSPERSON**

### **Article 15 Competencies**

1. The Ombudsperson has the competences to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international standards of human rights and international conventions, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority.
2. The competences of Ombudsperson extend to the entire territory of the Republic of Kosovo. In exercising his/her functions related to cases that arise within the territory of the Republic of Kosovo, the Ombudsperson can provide good services to the citizens of the Republic of Kosovo who temporarily live outside territory of the Republic of Kosovo.
3. The Ombudsperson has the power to investigate whether to respond to complaint filed or on its own initiative (*ex officio*), if from findings, testimony and evidence presented by submission or by knowledge gained in any other way, there is a base and it results that the Republic of Kosovo institutions have violated human rights and freedoms.
4. If the Ombudsperson starts procedure on his/her own initiative or if any other person on behalf of the damaged person with the submission addresses to the Ombudsperson for initiating of the procedure, the consent from the person whose rights and freedoms have been violated is necessary.
5. When the Ombudsperson initiates procedure on his own initiative regarding the violation of rights and freedoms to a greater number of citizens, children or persons with lost abilities for action, consent required by paragraph 4 of this Article is not necessary.
6. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in cases of unreasonable delays or apparent abuse of power.
7. The Ombudsperson may initiate matters to the Constitutional Court in accordance with the Constitution and Law on the Constitutional Court.
8. The Ombudsperson shall also exercise his/her competences through mediation and conciliation.
9. Services offered by the Institution of the Ombudsperson are free.

### **Article 16 Responsibilities**

1. Ombudsperson has the following responsibilities:
  - 1.1. to investigate alleged violations of human rights and be committed to resolve them;
  - 1.2. to draw attention to cases when the institutions of the Republic of Kosovo violate human rights and to make recommendation to stop such cases and when it is necessary to

express his opinion on attitudes and reactions of the relevant institutions relating to such cases;

1.3. to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media;

1.4. to inform 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;

1.5. to publish notifications, opinions, recommendations, proposals and his own reports.

1.6. to recommend promulgation of new Laws in the Assembly, modification of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo;

1.7. to prepare annual reports, periodical reports and others on the situation of human rights and freedoms in the Republic of Kosovo;

1.8. to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation;

1.9. to cooperate, in accordance with the Constitution and legislation in force, with all organizations, local and international institutions dealing with protection of human rights and freedoms;

1.10. The Ombudsperson, his deputies and staff must keep-safe the confidentiality of all information and data that they receive, paying special attention to safety of complainants of damaged parties and witnesses, in accordance with the Law on data protection;

1.11. Obligation for official confidentiality is also valid after ending of mandate or termination of their employment.

2. The Ombudsperson can provide advice and give recommendations to any natural or legal person concerning compliance of Laws and sub-legal acts with internationally accepted standards for human rights and freedoms.

3. The Ombudsperson can advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advance of human rights and freedoms in the Republic of Kosovo.

4. The Ombudsperson undertakes all necessary measures and actions to review complaints submitted under paragraph 1 of Article 15 of this Law, including direct intervention to the competent authorities, who will be required to respond within the time period reasonable as determined by the Ombudsperson. If severe damage continues as a consequence of the complaint under Article 15 paragraph 1 of this Law, the competent authorities are required to respond promptly.

5. If during the investigation, the Ombudsperson determines that the execution of an administrative decision may have irreversible consequences for the natural or legal person, he/she can recommend to competent authority to suspend execution of the decision until completion of investigations relating to this issue.

6. The Ombudsperson has access to files and documents of every institution of the Republic of Kosovo and can review them on cases that are under review and under this Law, may require any institution of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including a copy of full or partial file and other documents upon request of the Ombudsperson.

7. Officials of the Ombudsperson Institution may, at any time and without notice, enter and inspect any place where persons are deprived of their freedom and other institutions of limited freedom of movement and can be present at meetings or hearing sessions where such persons are included. Officials of the Ombudsperson Institution may hold meetings with such persons without the presence of officials of respective institution. Any kind of correspondence of these persons with the Ombudsperson Institution is not prevented or controlled.

8. Ombudsperson or his representatives may enter the official premises of all bodies of public authorities, other bodies and organizations exercising public authority for their account.

## **CHAPTER IV COMPLAINTS REVIEW PROCEDURES**

### **Article 17 Initiation of procedure**

Any person who believes that his rights and freedoms are violated by any Law, action or inaction, mismanagement of public authority bodies, other bodies and organizations exercising public authorities for their account, may request from the Ombudsperson Institution the initiation of procedure.

### **Article 18 The way of submitting the complaint**

1. Any complaint submitted to the Ombudsperson should be signed and must contain personal records of the submitter of the complaint and should contain all the circumstances, facts and evidences on which the appeal is based. Submitter of the complaint may declare whether legal remedies are exercised or not, and if so which of these remedies are applied.

2. Any appeal for initiation of the procedure, as a rule, is submitted in writing. The request for initiation of the procedure may be submitted even verbally, in case it cannot be made in writing.

### **Article 19 Procedure after receiving the complaint**

1. After receiving the complaint, the Ombudsperson within thirty (30) days decides for the admissibility of the case as follows:

- 1.1. to review the case under prompt procedure;
- 1.2. to start full investigation;
- 1.3. to reject the complaint because:

- 1.3.1. is not in the jurisdiction of the Ombudsperson according to this Law;
  - 1.3.2. the complaint is submitted after the term foreseen with this Law;
  - 1.3.3. the complaint is anonymous;
  - 1.3.4. the complaint represents an abuse of the Law for filing the complaint or
  - 1.3.5. the complainant has failed to provide information requested by the Ombudsperson.
- 1.4. to reject the complaint as groundless.
  - 1.5. to stop investigation when he/she ascertains that the case was resolved in another way in accordance with the request of the complainant.
2. In all cases above, the Ombudsperson shall notify the party in writing within 30 days from receiving the complaint.
  3. Ombudsperson's decision to reject or to refuse the appeal is of final form.

## **Article 20**

### **Cases of refusal to review the complaint**

1. Ombudsperson refuses the request for reasons as follows:
  - 1.1. when from the entries submitted and the circumstances of the case appears that the rights and freedoms are not violated or any mismanagement is not performed;
  - 1.2. when the request is incomplete and has not been completed even after the requirements of the Ombudsperson;
  - 1.3. when procedures for a case are being held in judicial or other competent bodies, except in cases specified by this Law.
  - 1.4. when all the regular and extraordinary remedies are not exhausted, unless he/she considers it would be useless for submitter of the complaint to initiate or continue proceedings, or if estimates that individuals have suffered severe damage or may suffer severe and uncompensated harm in the meantime;

## **Article 21**

### **Cases of prescription and exclusion**

1. Ombudsperson does not initiate proceedings to investigate violations of human rights if from the date that party has received the final form decision or is informed about it and until submitting the complaint to the Ombudsperson Institution have passed more than six (6) months.
2. Regardless of paragraph 1 of this Article, the Ombudsperson may Initiate procedure after the expiration of a period of six (6) months, if he considers that the submitter of the complainant has been prevented or if estimates that the issue is of particular importance.

**Article 22**  
**Procedure after start of investigation**

1. When the Ombudsperson decides to initiate investigations in accordance with Article 19 of this Law, he/she shall communicate his decision to the submitter of the complaint and the body against which the complaint is filed. The Ombudsperson may require additional information regarding the case.
2. Ombudsperson sets the time period within which the body must submit all information required in accordance with paragraph 1 of this Article. The time period cannot be shorter than 8 days or longer than thirty (30) days. When the body fails to submit information required by the Ombudsperson within the foreseen time period, it must submit in writing the reasons for the delay in providing the requested information without delay.
3. If the Ombudsperson evaluates responses or measures taken by the body inadequate, he/she has the right to deliver the case to the highest competent authority, or to submit separate report to the Assembly, by proposing concrete measures for resolving the violated right.
4. Refusal or failure to respond to the requirements of Ombudsperson is considered obstruction of Ombudsperson's work. This does not prevent the Ombudsperson to issue his conclusions and recommendations.
5. The Ombudsperson may report the actions foreseen in paragraph 4 of this Article in his reports.

**Article 23**  
**Obligation of cooperation and the consequences of refusal**

1. All organs of state authorities are obliged to assist the Ombudsperson in the development of investigations, as well as to provide adequate support according to his request.
2. Refusal to cooperate with the Ombudsperson of a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body the initiation of administrative proceedings, including disciplinary measures, till the removal from job or civil service.

**Article 24**  
**Invitation of witnesses and experts**

Ombudsperson may send invitation to any witness or expert to interview him/her about the case. The person invited who works in public institutions is obliged to respond the invitation.

**Article 25**  
**Decision Making**

After completion of the investigation, the Ombudsperson in accordance with its powers and responsibilities, issues a decision in which his findings and recommendations are submitted. His decision is delivered to the complainant and responsible public authorities.

**Article 26**  
**Response to requests of the Ombudsperson**

Bodies, to which the Ombudsperson has addressed recommendation, request or proposal for disciplinary measures, must respond within thirty (30) days. The answer must include written reasons for actions taken on the issue in question.

**Article 27**  
**Report of the Ombudsperson**

1. The Ombudsperson presents the annual report to the Assembly of the Republic of Kosovo
2. The Ombudsperson presents to the Assembly of Kosovo the report for the previous year till 31 March of following year. The Ombudsperson presents the report in plenary session, in which it is discussed.

**Article 28**  
**Publication of Special Reports**

Ombudsperson may also publish special reports through media relating to violation made by the body, if the latter, after repeated requests did not respond appropriately to his proposals and recommendations.

**CHAPTER V**  
**OFFICE, OBJECT, STAFF AND BUDGET OF THE INSTITUTION OF OMBUDSPERSON**

**Article 29**  
**The residence of the Institution, the inviolability of the residence and offices of the Ombudsperson**

1. The residence of the Ombudsperson Institution is located in Pristina.
2. Ombudsperson Institution is provided with appropriate facilities for work and other equipment in order to enable him/her effective conduct of functions and responsibilities.
3. The Ombudsperson may open other offices within the territory of the Republic of Kosovo if required.
4. Within the Institution of the Ombudsperson special units for protection of special categories of human rights will operate.

**Article 30**  
**Professional Personnel**

Personnel of the Ombudsperson Institution are selected from among the citizens of the Republic of Kosovo in accordance with the Law provisions on Civil Servant in the Republic of Kosovo.

**Article 31**  
**Regulation of the Institution**

1. Ombudsperson Institution issues its Rules of Procedure.
2. The Rules of Procedure is published in "Official Gazette of the Republic of Kosovo" and the website of the Ombudsperson Institution.

**Article 32**  
**Salaries**

1. The level of salary of the Ombudsperson and his deputies is determined in accordance with the Law on salary of public senior officials.
2. The level of salary of other staff of the Ombudsperson Institution determined in compliance with Law on salary of civil servants.

**Article 33**  
**Engagement of external advisors and experts**

Ombudsperson, in agreement with the employer may engage, according to needs, external advisers and experts, to serve for a certain period of time.

**Article 34**  
**Financing**

1. The Ombudsperson Institution is financed from the budget of the Republic of Kosovo.
2. Regardless of the provisions of other Laws, the Ombudsperson Institution prepares its annual budget proposal and sends it for approval to the Assembly of the Republic of Kosovo.
3. The Ombudsperson Institution manages independently with its own budget and is subject to internal and external audit by the General Auditor of the Republic Kosovo.

**Article 35**  
**Acceptance of donations**

Ombudsperson Institution may accept additional donations from local and international donors, for which the Assembly of the Republic of Kosovo is notified and which do not affect the financial independence of the Ombudsperson Institution and which are not in contrary to the Law, and that do not affect the independence of the Ombudsperson Institution or its rights on the Budget of the Republic of Kosovo.



## **CHAPTER VI TRANSITIONAL AND FINAL PROVISIONS**

### **Article 36**

1. Within six (6) months after entry into force of this Law, deputies of the Ombudsperson are elected in accordance with this Law.
2. The current mandate of the Ombudsperson continues until the end of his/her mandate.
3. The current mandate of the Deputy Ombudsperson continues until election of other deputies.
4. The Ombudsperson is also competent for the cases submitted before the entry into force of this Law, when from the facts, continual violation of one or more international standards on human rights is evident, or constitute the continued abuse of power.

### **Article 37 Transitional provisions**

Within three (3) months after entry into force of this Law, the Ombudsperson Institution issues Work Regulation.

### **Article 38 Abrogative provisions**

Upon entry into force of this Law UNMIK Regulation No.2000/38 on establishment of the Ombudsperson Institution in Kosovo of the date 30 June 2000, UNMIK Regulation No. 2006 / 6 on the Ombudsperson Institution in Kosovo of the date 16 February 2006 and UNMIK Regulation No. 2007/15 Amending UNMIK Regulation 2006 / 6 on the Ombudsperson Institution in Kosovo, of the date 19 March 2007 as well as all other provisions which are in contrary to this Law are abrogated.

### **Article 39 Entry into force**

This Law enters into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

### **Law No. 03/L –195 22 July 2010**

Promulgated by the Decree No. DL-046-2010, dated 09.08.2010, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu

### ***13.2. The competencies of the Ombudsperson in the other laws***

#### ***Law no. 03/L-215 on access to public documents***

##### *Article 3, paragraph 1.5.*

“The Ombudsperson-an independent institution established by the Constitution of the Republic of Kosovo.”

##### *Article 10 Failure by the public institution to reply*

“Refusal of the application of the applicant as well as the failure by the public authority to reply within the prescribed period of time shall be considered as a negative reply and shall entitle the applicant to initiate the procedure before the Ombudsperson Institution, other public institutions, competent court, in accordance with the Law into force.”

##### *Article 17 the Ombudsperson Institution*

“The Ombudsperson Institution is an independent authority, which shall assist citizens to have access to the necessary documents being refused to them.

The Ombudsperson Institution’s duty shall be to ensure an unobstructed exercise of the right of access to public documents, notably:

To take the necessary measures to promote and support the fundamental rights of access to documents; and to submit regular reports to the Assembly on implementation of the right of access to official documents by public institutions. The Ombudsperson Institution shall provide services to citizens free of charge.

The unsatisfied party may, in the procedure of realization of the right in access to public documents, address an appeal even to other public institutions.”

#### ***Law no. 03/L-202, on Administrative conflicts***

##### *Article 10, paragraph 2*

“Administration body, Ombudsperson, associations and other organizations, which protect public interests, may start an administrative conflict.”

##### *Article 18*

”The plaintiff in the administrative conflict may be a natural person, legal entity, Ombudsperson, other associations and organizations, which act to protect public interest, who considers that by an administrative act a direct or indirect interest according to the law, have been violated.”

***Law no. 03/L-121, on Constitutional Court of the Republic of Kosovo***

*Article 6, paragraph 2, point 2.4.*

“The Ombudsperson is a member of the commission for reviewing the candidates for nomination at the Constitutional Court.”

*Article 6, paragraph 1*

”The requests raised in accordance with the Article 113 of the Constitution will shall be submitted by 1/4 of deputies of the Assembly of the Republic of Kosovo, the President of Kosovo, the Government and the Ombudsperson.”

***Law no.03/L-006 on Contested Procedure***

*Article 460*

“If the public prosecutor or Ombudsperson participates in the court process, they are entitled to the procedural expenses according to the provisions of this law, but not the right to be paid for their work done.”

***Law no. 03/L-063 on Kosovo Intelligence Agency***

*Article 7*

”Rules on Complaints Mechanism, to be developed in consultation with the Ombudsperson Institution in Kosovo and placed in the public domain.”

*Article 10*

“The Inspector General shall be responsible for supporting inquiries of the Ombudsperson of Kosovo.”

*Article 39.2.*

” Complaints may be addressed to the Ombudsperson Institution in Kosovo (OIK).”

*Article 39.3.*

” Any complaint submitted to the OIK shall not prejudice the right of an individual, institution or third party to seek adjudication from a court.”

***Law no.03/L-222 on Tax Administration and Procedures***

*Article 84, paragraph 2, Confidentiality of information,*

Tax official may disclose information concerning a taxpayer to the following persons:

*Subparagraph 2.4.*

”the Ombudsperson Institution established under legislation and regulations in force regarding the Establishment of the Ombudsperson Institution in Kosovo, for use in resolving taxpayer complaints”

***Law no. 02/L-28, on Administrative Procedure***

*Article 35.3.*

” In order to protect public interests, which may be affected by an administrative proceeding, the right to start an administrative proceeding or to participate in it, is also recognized to the following entities: *point c)* the Ombudsperson.”

*Article 47.1.*

“In cases when the requirements set out in paragraphs 3 and 4 of Article 35 hereunder have been met, the administrative proceeding may be initiated by the public or Ombudsperson.”

*Article 47.2.*

“In cases when an administrative proceeding is initiated by the public or Ombudsperson, the public administration body shall undertake any action it deems necessary to prepare the case, including issues not explicitly stated in the request, if, in its judgment, it is of public interest to do so.”

***Law no.03/L-047, on the Protection and Promotion of the Rights of Minorities and their Members in the Republic of Kosovo***

*Article 13.4.*

“The communities and their members shall have the right to: *point b)* to file a complaint to the office of the Ombudsperson and other specialized bodies including the Independent Media Commission and the Language Commission.”

***Law no. 2004/2, on Gender Equality, Article (b) of the UNMIK Regulation no. 2004/18 on the adoption of the Law on Gender Equality***

*Article (b) of the Regulation states the following:* Article 6 of the Law on Gender Equality shall be erased completely and be replaced by the new Article 6 which:

“Discrimination issues directly related to Gender shall be addressed by the Gender Equality Unit of the Ombudsperson institution, established with UNMIK Regulation No. 2000/38, which also shall be responsible for reviewing draft laws, giving comments on the implementation of the present law

and existing legislation related to gender issues. The Office for Gender Equality of the Ombudsperson shall be funded by the Kosovo Consolidated Budget.”

***The Anti-Discrimination Law no.2004/32***

*Article 10*

“An authorized body to receive and investigate complaints concerning violations of rights based on discrimination is the Ombudsperson of Kosovo, which will review cases in compliance with his or her authority according to the legislation in force.”

***Civil Law no.02/L-65, against Defamation and Insult***

*Article 9*

“Given statements shall not be liable under this law if the defendant shows that they were made in any of the following circumstances: *point d)* any statement given before the Ombudsperson.”

***Law no. 03/L-31 on Execution of the Penal Sanctions***

*Article 61, paragraph 8*

“Letters and other postal items from convicted persons to the Office of the Ombudsperson of Kosovo may not be examined in any circumstances.”

*Article 215, paragraph 7*

“The provisions of the present Article are without prejudice to the powers of access that the Ombudsperson of Kosovo, judges and other judicial officials may have under the applicable law to confidential documents, files and information.”

***Provisional Criminal Procedure Code of Code, 6 July 2003***

*Article 294. paragraph 3*

“The Ombudsperson of Kosovo or his or her deputy may visit detainees on remand and may correspond with them without prior notification and without the supervision of the pre-trial judge or other persons appointed by such judge. Letters from detainees on remand to the Office of the Ombudsperson of Kosovo may not be examined. The Ombudsperson and his or her deputy may communicate confidentially with detainees on remand orally and in writing. Communications

between a detainee on remand and the Ombudsperson and his or her deputy may be within the sight but not within the hearing of a police officer.”

*Article 295, paragraph 3*

“A restriction or prohibition of a visit or correspondence shall not apply to visits by or correspondence with defence counsel, doctors, the Ombudsperson of Kosovo, representatives of a liaison office or diplomatic mission of the State of which the detainee on remand is a national or, in the case of a refugee or a person otherwise under the protection of an international organization, representatives of the competent organization.”

*Article 321, paragraph 7*

“At the request of the Ombudsperson of Kosovo, the Ombudsperson shall also be notified of the main trial for the purpose of monitoring the criminal proceedings within the limits of his or her authority.”

***Regulation no. 2006/12, on the establishment of the Human Rights Advisory Panel***

*Article 13 Participation of an Amicus Curiae and the Ombudsperson*

*Paragraph 13.1.*

”The Advisory Panel may, where it is in the interests of justice, invite:

(b) The Ombudsperson to submit written observations if the Ombudsperson has already been seized of the matter”.

*Paragraph 13.2.*

” The submission of written observations by the Ombudsperson shall be without prejudice to the powers, responsibilities and obligations of the Ombudsperson under the applicable law.”