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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

REPORT WITH RECOMMENDATIONS

Complaint. no: 595/2015
Isnije Dula

Related to

**Positive obligations stemming from Article 29 and Article 31, paragraph 2 of
Constitution of the Republic of Kosovo, and Article 5 of European Convention on the
Protection of Human Rights and Fundamental Freedoms**

To: Mr. Imet Rrahmani, Minister
Ministry of Health
Str "Zagrebi", n.n
10000 Prishtina

Prishtina, 19 September 2016

Purpose of the report

This report is based on the individual complaint filed by Mrs. Dula and its purpose is to identify some of the weaknesses of institutional actions in handling this case and to draw the

attention of the responsible institutions related to the measures to be taken in order to implement the right of mandatory psychiatric treatment for persons with mental disorders.

Powers of the Ombudsperson

In conformity with Law no. 05/L-019 on Ombudsperson, the Ombudsperson, among others, has the following powers and responsibilities:

- “to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases” (Article 18, par.1, sub-par.1.2);
- “to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination” (Article 18, par. 1, sub-par. 5);
- “to publish notifications, opinions, recommendations, proposals and his/her own reports” (Article 18, par. 1, sub-par. 6);
- “to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo” (Article 18, par. 1, sub-par. 7);
- “to prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo” (Article 18, par. 1, sub-par. 8);
- “to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation” (Article 18, par. 1, sub-par. 9).

Upon the submission of this report to the competent institutions and upon its publication, the Ombudsperson’s intention is to carry out the following legal responsibilities.

Description of the issue

This report is based on the complaint received with the Ombudsperson Institution (OI) by Mrs. Isnije Dula, who filed a complaint against the Institute of Forensic Psychiatry in Prishtina, relating to the claims for failure to implement the decision of Basic Court in Gjakova (P.no.709/14), on mandatory psychiatric treatment in custody.

Summary of facts

Facts, evidence and information available with OI can be summarised as follows:

1. On 29 October 2015, in conformity with Article 15.1 of Law on Ombudsperson no. 03/L-195, Ombudsperson received the complaint of Mrs. Isnije Dula, against the Institute of Forensic Psychiatry in Prishtina, related to the failure to implement the decision of Basic Court in Gjakova (P.no.709/14), on mandatory psychiatric treatment of her son Mr. B. D.

2. The complainant claim that her son Mr. B.D., (born on 23 September 1968), ever since he was 15, he has been suffering health problems with mental disorders and ever since, he was diagnosed to suffer from mental illness.
3. The complainant claims that as a result of mental disorders and violent actions of B.D., her husband had passed away ten years ago, while she and some other family members were constantly violated physically by Mr. B.D.
4. On 10 November 2013, just about before midnight, Mr.B.D., initially tried to open violently the door of the house of one of the neighbours, where the complainant lives, therefore, the neighbour hearing the noise, and upon him opening the door; he was physically assaulted by Mr. B.D.
5. On 11 November 2013, after the above-mentioned occurrence, Mr. B.D. left his house and on the evening of that night, his family was informed that he was in the village Xërxë and he was obstructing the free movement of vehicles. Family members of Mr. B.D., immediately informed the Police Station in Gjakova, who due to territorial incompetency and the area of responsibility, had asked Police Station of Municipality of Rahovec to act. The driver of the police vehicle, while driving the vehicle and while trying to reach on the spot as soon as possible, he hit Mr B.D., with his car, causing him serious body injuries (*Fractura acetabulum reg lat. dex et contuzio capitis regio occipitalis*) and the same was immediately transported to the Regional Hospital "Isa Grezda" in Gjakova. From the medical documentation, it can be seen that Mr. B.D. was hospitalised on 11 November 2013 and stayed in hospital until 27 December 2013.
6. On 18 February 2015, relating to the criminal offense of assault (see paragraph 4) Basic Court in Gjakova took a decision (P.no.709/14) and it imposed to Mr. B.D., the measure of *Mandatory Psychiatric Treatment and Custody in the Institute of Forensic Psychiatry in Prishtina*, for an indefinite period, making the Institute to inform the Court in writing at least once every two months.
7. According to the claims of family members, the execution of decision P.no.709/14, against Mr. B.D., relating to the measure of mandatory psychiatric treatment in the Institute of Forensic Psychiatry in Prishtina started on 20 March 2015, and this treatment was administered until 26 October 2015.
8. On 25 February 2016, family members of the complainant informed that Mr. B.D., was not taking his therapy regularly, and according to them there was a potential risk for the same to express psychical violence against the complainant (who has been living alone in the house with Mr. B.D), as well as against other neighbours or persons on the street or elsewhere.

Actions of the Ombudsperson Institution

9. On 9 November 2015, the OI representative asked statistical data from Kosovo Judicial Council (KJC), related to the number of persons against whom decisions were taken for mandatory psychiatric treatment from 2010 to 2015, at the level of all courts of the Republic of Kosovo, as well as against how many persons (suffering from mental illnesses) the procedure was carried out to take the ability to act for the period 2010-2015.

10. On 10 November 2015, OI was informed by KJC, that this information is available only as “Measures for Mandatory Treatment” for all kinds of measures taken by the court, whereas regarding the number of persons to whom the ability to act was taken, this information is available only in the case and KJC has not processed these data.
11. On 12 November 2015, the OI representatives held a meeting with representatives of Special Institute in Shtime (SISH) to assess the situation of placing persons with mental disabilities in this institution, as well as placing persons with mental disabilities – retardation in mental development into the Special Institute in Shtime and in Community-Based Homes.
12. On 19 November 2015, the OI representative met with the administrator of Basic Court in Gjakova, to whom he discussed relating to the case P.no.709/14. After receiving the information necessary from the case judge, he pointed out that the court decision (P.no.709/14) is in force and the authority to which the decision was addressed is under legal obligation to implement it.
13. On 24 November 2015, the OI representatives met with the director of Institute of Forensic Psychiatry in Prishtinë, with Neuro-psychiatrist, Psychologist, and the Social Worker, to whom they talked about the issue of Mr. B.D. They informed them that Mr. B.D., was accepted in the Institute of Mandatory Psychiatric Treatment, on 5 March 2015, and was discharged from this Institute on 27 October 2015. They pointed out that this is the only case that remained for so long in this Institution (altogether 237 days). According to them, further treatment should be continued with the Mental Health Centre (MHC) in Gjakova, and the officer of the Centre for Social Work (CSW) in Gjakova needs to work with the family of Mr. B.D., and the case should be managed in the triangle ***Family-MHC-CSW***.
14. On 25 November 2015, the OI representatives met with the MHC director in Gjakova, to whom they talked about the issue of Mr. B.D. He explained that about 370 (three hundred and seventy) persons with mental disorders are treated in this centre, who are suffering mainly from mental illnesses. According to him, out of the total number of patients, only five of them are aggressive and violent against the environment they are living. He explained that persons with mental disorders causing criminal offences are held in the Institute of Forensic Psychiatry until *Remission*, and then their treatment continues in MHC, in an outpatient clinic format, as well as in Integration Community Homes. He said that MHC are missing the computer database on the services offered to these patients, therefore these centres are lacking the information required related to the therapeutic treatment of these patients and the time of administration of therapy (*according to medical protocols, these patients should take parenteral therapy every 21 days*). According to him, an issue in itself is presented in cases when the cooperation of family members with Mental Health Centres is lacking, therefore, the treatment of patients in these cases is very difficult. He informed that in relation to the treatment of Mr. B.D., on 10 July 2015, Basic Court in Gjakova modified the treatment measure from *Mandatory Psychiatric Treatment in custody*, substituting it with the measure of *Mandatory Psychiatric Treatment at liberty*.

Legal grounds

15. Constitution of the Republic of Kosovo, Article 25, and paragraph 1 sets forth: *“Every individual enjoys the right to life”*, while Article 26 sets forth: *“Every person enjoys the right to have his/her physical and psychological integrity respected [...]”*
16. Constitution of the Republic of Kosovo, Article 29, paragraph 1 sets forth: *“Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:*
 - *pursuant to a sentence of imprisonment for committing a criminal act;*
 - *for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law;*
 - *for the purpose of educational supervision of a minor or for the purpose of bringing the minor before a competent institution in accordance with a lawful order;*
 - *for the purpose of medical supervision of a person who because of disease represents a danger to society; [...]”*.
17. European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 2, sets forth: *“Everyone’s right to life shall be protected by law [...]”*, while Article 5, paragraph 1 sets forth: *“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...]”*.
18. Criminal Code of the Republic of Kosovo No. 04/L-082, Article 87, par. 1 sets forth: *“A perpetrator with a mental disorder, or a person who is being treated as such, shall be treated with humanity and respect for the inherent dignity of the human person”* while paragraph 2 sets forth *“International standards applicable to persons with a mental disorder shall apply to a perpetrator with a mental disorder to the fullest extent possible, with only limited modifications and exceptions that are necessary in the circumstances.”*.
19. Criminal Code of the Republic of Kosovo No. 04/L-082, Article 88 sets forth: *“The measures of mandatory treatments that may be imposed on a perpetrator who is not criminally liable, has substantially diminished mental capacity or is addicted to drugs or alcohol are:*
 - *mandatory psychiatric treatment and custody in a health care institution;*
 - *mandatory psychiatric treatment at liberty; and*
 - *mandatory rehabilitation treatment of persons addicted to drugs or alcohol”*.
20. Law on Out Contentious Procedure no. 03/L-007, Article 75 sets forth: *“According to the rules of this procedure the court with an act-judgment decides for the maintenance of a mentally (psychic) sick person in a health institution, where because of the nature of sickness it is indispensable that such person gets restricted in the freedom of movement and communication with people outside the noted institution”*.
21. Law on Protection against Domestic Violence no. 03/L-182, Article 4, paragraph 1 sets forth: *“The protection measure for psycho-social treatment may be issued to a perpetrator of domestic violence in combination with any other preventing measure with the aim of eluding violent behaviours of the perpetrator or if there is a risk to repeat the*

- domestic violence*”, while Article 7, paragraph 1 sets forth: “*Removal from the apartment, house or other living premise may be imposed to a person who has committed violence against a member of the family sharing the same apartment, house or living premise if there is a risk to repeat domestic violence*”.
22. Law on Social and Family Services No. 02/L-17 Article 1. 3, sets forth: “*Person in Need shall mean any person found on the territory of Kosovo, regardless of status or place of origin, who is in need of social services because of [...] mental illness [...]*”.
23. Law on Social and Family Services No. 02/L-17 Article 3, paragraph 3 sets forth: “*On behalf of the Ministry, the Department of Social Welfare is responsible for the direction and oversight of all operational functions under this law [...] the approval of the establishment of residential care facilities by providers of Social and Family Services, [...]*”.
24. Law on Amending and Supplementing of Law no. 02/L-17, Article 13, paragraph 2 sets forth: “*If there are reasonable grounds to suspect that the vulnerable person lacks the capacity to act on their own behalf and it is necessary to protect the adult from serious harm, the Centre for Social Work must make application to the court for a Guardianship Order*”, while paragraph 4 sets forth: *Such an order specify the steps that the Centre for Social Work is empowered to take in order to safeguard the health, safety and wellbeing of the person in respect of whom the Order is being made. The powers that are available to the court are:*
- a. Supervision of the living circumstances of the vulnerable adult by a professional designated by the Centre of Social Welfare for the purpose, while remaining in their own home;*
 - b. Direction to the Centre of Social Welfare to place an adult who is lacking the mental capacity to care for themselves in a suitable residential facility [...]*”.
25. Law on Social and Family Services No. 02/L-17, Article 13, paragraph 5 sets forth: “*In no circumstances will the person who is the subject of a Guardianship Order be detained in a penal establishment*”, while paragraph 6 sets forth: “*If necessary, the courts can direct the Kosovo Police Service to assist the Centre for Social Work in the execution of a Guardianship Order*”.
26. Law on Mental Health No. 05/L -025, Article 1 sets forth: “*This law aims to protect and promote mental health, prevent the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders*”, while Article 9, paragraph 1 sets forth: “*Removing or limiting the ability to act for persons with mental disorders is prohibited, except the cases as provided with the legal provisions in force. In special cases, this measure can be proposed at the request of the psychiatric - legal commission. The respective decision is made by the court in accordance with the legal provisions in force*”.
27. Law on Mental Health no. 05/L-025, Article 5 paragraph 1 sets forth general principles of care in mental health services are:
- 1.1. “*equal treatment and without discrimination of persons with mental disorders, in order to respect the physical integrity and human dignity;*

- 1.2. *the provision of health care for persons with mental disorder in a less restrictive environment, mainly at the community level, to avoid at the maximum the displacement from family environment and to facilitate the social integration and rehabilitation;*
- 1.3. *creation of facilities through programs and projects to be implemented by competent bodies for these people and their families with a view to their inclusion in society;*
- 1.4. *provision of care for persons with mental disorders from **multidisciplinary teams** that respond in a complex manner to the medical, psychological, social and rehabilitation needs [...]*”.
28. Law on Mental Health No. 05/L -025, Article 29 paragraph 1 sets forth: “*Mental Health Professional Council is an advisory body of the Minister of Health. The scope, competencies, composition and the mandate of the Mental Health Professional Council shall be defined with sub-legal act proposed by the Ministry of Health and approved by the Government*”, while paragraph 2 of this Article sets forth: “*Mental Health Professional Council advises the Minister of Health to implement the obligations which come out of this law and for significant legal review, organizational and technical in the field of mental health*”.

Legal analysis

29. Constitution of the Republic of Kosovo is the highest legal act, which shall protect and guarantee human rights and fundamental freedoms, therefore the practical implementation and execution of these rights is on the interest of the functioning of the state and the law. Constitutional guarantees shall serve to the protection of human dignity and functioning of the legal state. Constitution in Article 21 expressly sets forth the obligation of all bodies to respect the freedoms and rights of others, therefore, this principle is imperative and must be respected by all, including here authorities to which this report is addressed.
30. Constitution in Article 25, paragraph 1 sets forth: “*Every individual enjoys the right to life*”. It can be clearly seen from this paragraph that the right to respect the life of an individual lies at the centre of the constitutional system on the protection of human rights and the right to life (its indefeasibility) is an absolute human right, which can be restricted in no circumstances, and eluding from this right is not allowed. The Ombudsperson points out that when it is about the right to personal integrity and the right to life, **state has positive obligations**, to undertake all measures to protect indefeasibility of physical and mental integrity of persons, in particular when integrity and human life is endangered. Constitutional Court of the Republic of Kosovo in the judgment KI. 41-12, found that there was violation of the right to life, in the cases when judicial bodies or other state bodies do not provide sufficient protection to citizens, and when this is so required by case circumstances. Constitutional Court points out that the right to life is the most important right of all human rights, from which all other rights come out and explains that there are positive obligations for state bodies to undertake preventive and operational measures to protect the life of all those who are exposed to risk.

31. The Ombudsperson notes that Constitution in Article 26 defines that every person enjoys the right to have his/her physical and psychological integrity respected, which among others includes the right that: *“the right not to undergo medical treatment against his/her will as, except in cases which are in accordance with law [...]”*, while Article 29, par. 1 sets forth: *“Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court”*. According to this Article, the person may be deprived of liberty among others also in the cases **for the purpose of medical supervision of a person who because of disease represents a danger to society, [...]**. Responsible authorities’ legal obligation is to keep persons with mental disorders presenting a potential risk to the family and society in adequate healthcare institutions and in a medical treatment for as long as necessary.
32. European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 2, sets forth: *“Everyone’s right to life shall be protected by law [...]”*, while Article 5, paragraph 1 sets forth: *“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law [...]”*.
33. Article 2 of Convention presents general state’s duties to protect the right to life and includes positive and negative aspects:
- a) positive obligation to protect life, and
 - b) negative obligation to restrain from unlawful deprivation of life.

Positive obligation imposes obligations of prevention and investigation. Prevention obligations according to the European Court of Human Rights (ECtHR), see the case *Osmani vs. Great Britain, dated 28 February 1998*), obliges state governments to prevent and fight criminal offenses. If it is confirmed that governments were informed, or should have been informed at the time of the existence of real and immediate risk for life to a person identified, from the criminal offenses of third parties and in case they have not undertaken appropriate measures within their own competences, which according to a reasonable assessment could have been expected, in order to avoid the risk for life, the same shall be responsible for the failure to execute positive obligations.

34. ECtHR during the interpretation of Article 2 of ECHR in the case ***Branko Tomašić and others vs. Croatia***, relating to positive obligations, analyses the case when a person has realised his previous threats to kill his partner and their little daughter. He was imprisoned for five months due to death threats he made earlier to his family, therefore, authorities ordered the measure of mandatory psychiatric treatment in custody. As soon as he was realised, he killed his wife and the child, before committing suicide. The Court has found that **authorities** were informed about the seriousness of threats, but **they failed in their positive obligations**, above all, **due to insufficient psychiatric treatment**, considering that the treatment lasted for a very short period, and it is not clear, whether treatment for this person was administered for real and properly. ECtHR found that there was no previous threat assessment before his release from the measure of mandatory psychiatric treatment in custody, while domestic legislation did not allow for the continuation of the mandatory psychiatric treatment also after serving custody, which according to the Court; it constitutes violation of Article 2 of ECHR. A similar situation is also in the

complainant's case, when her son with mental disorders, due to insufficient psychiatric treatment and frequent psychical assaults, it turned into a serious concern to the family and her neighbours, thereby risking their life and property.

35. ECHR, Article 5, paragraph 1, allows detention as lawful for the cases of detention of “*persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants*”. Regarding the reason why persons falling in some of these categories can be detained, the Court said that “*Not only should they be considered as dangerous cases for public security, but also their own interest may require the respective detention*” (see the case *Guzzardi vs. Italy no. 7367/76*)
36. Criminal Code of the Republic of Kosovo No. 04/L-082, Article 87, paragraph 1 sets forth obligations of the authority against a perpetrator with a mental disorder, or a person who is being treated as such, shall be treated with humanity and respect for the inherent dignity of the human person, while paragraph 2, imposes on authorities that international standards applicable to persons with a mental disorder shall apply to a perpetrator with a mental disorder to the fullest extent possible, with only limited modifications and exceptions that are necessary in the circumstances.
37. Criminal Code of the Republic of Kosovo No. 04/L-082, Article 88, sets forth the measures of mandatory treatment that may be imposed on a perpetrator who is not criminally liable, has substantially diminished mental capacity or is addicted to drugs or alcohol. These measures according to the Criminal Code are: *mandatory psychiatric treatment and custody in a health care institution; mandatory psychiatric treatment at liberty; and mandatory rehabilitation treatment of persons addicted to drugs or alcohol*. Criminal Code further explains that the Court may impose the measure of mandatory psychiatric treatment to the person at liberty who has committed a criminal offense in a state of mental inability or diminished mental capacity, if it ascertains that there is a serious risk that the perpetrator will again commit a criminal offense, therefore mandatory psychiatric treatment at liberty is necessary to elude the commission of another criminal offense, as well as when it ascertains that the mandatory psychiatric treatment at liberty is sufficient to elude serious risk.
38. Law on Out Contentious Procedure No. 03/L-007, Article 75 sets forth the rules of the procedure that the court with an act-judgment decides for the maintenance of a mentally (psychic) sick person in a health institution, where because of the nature of sickness it is indispensable that such person gets restricted in the freedom of movement and communication with people outside the noted institution. The Ombudsperson has found in previous cases that legal provisions related to this issue were not respected, therefore, the Ombudsperson issued a report with recommendations to put an end to such violations (see the report published by OI, with protocol no. 1488, dated 3 November 2015), whereas upon the entry into force of the Law on Mental Health No. 05/L-025 (December 2015), which was immediately succeeded by the drafting of *Regulation for Acceptance and Treatment of Persons with Mental Disorders in Mental Health Professional Institutions*, this issue was resolved.
39. Law on Protection against Domestic Violence No. 03/L-182, Article 4, paragraph 1 sets forth cases when the protection measure for psycho-social treatment may be issued to a

perpetrator of domestic violence in combination with any other preventing measure with the aim of eluding violent behaviours of the perpetrator or if there is a risk to repeat the domestic violence, while Article 7, paragraph 1 sets forth cases when protection measure of removal from the apartment, house or other living premise may be imposed to a person who has committed violence against a member of the family sharing the same apartment, house or living premise if there is a risk to repeat domestic violence. It can be clearly seen from the complainant's complaint that the court has taken a decision for mandatory psychiatric treatment in conformity with the legislation in force, but the concern of the complainant is addressed to the failure for **continues psychiatric treatment** and the removal of the person with mental disorders from the institute (psychiatric treatment and custody) and his outpatient clinic treatment (psychiatric treatment at liberty).

40. Law on Social and Family Services No. 02/L-17, Article 1.3 sets forth the expression *Person in Need*, who according to the law shall mean any person found on the territory of the Republic of Kosovo, regardless of status or place of origin, who is in need of social services because of:

- a. *children without parental care;*
- b. *children with antisocial behaviour, or is a juvenile delinquency;*
- c. *disordered family relationships, or is at advanced age;*
- d. *physical illness or physical or mental disability;*
- e. *mental illness;*
- f. *vulnerability to exploitation or abuse, domestic violence or human trafficking;*
- g. *addiction to alcohol or drugs;*
- h. *natural or contrived disaster or emergency or other cause that renders them in need.*

Analysing from the above-mentioned, it can be clearly seen that the complainant's son should be qualified as *a person in need* and the same should be treated in conformity with the Law on Social and Family Services.

41. Law on Social and Family Services No. 02/L-17, Article 3, paragraph 3 sets forth the obligation that on behalf of the Ministry of Labour and Social Welfare (MLSW) the Department of Social Welfare is responsible for the direction and oversight of all operational functions under this law, where among others is also mentioned the obligation for the approval of the establishment of residential care facilities by providers of Social and Family Services, whereas Law on Amending and Supplementing of Law No. 02/L-17, Article 13, paragraph 2 sets forth that if there are reasonable grounds to suspect that the vulnerable person lacks the capacity to act on their own behalf and it is necessary to protect the adult from serious harm, the Centre for Social Work must make application to the court for a Guardianship Order, while paragraph 4 sets forth that such an order should specify the steps that the Centre for Social Work is empowered to take in order to safeguard the health, safety and wellbeing of the person in respect of whom the Order is being made. The powers that are available to the court according to this law are: Supervision of the living circumstances of the vulnerable adult, therefore supervision

should be done by a professional designated by the Centre of Social Welfare for the purpose, while remaining in their own home, and the Direction to the CSW to place an adult who is lacking the mental capacity to care for themselves in a suitable residential facility.

42. Law on Social and Family Services No. 02/L-17, Article 13, paragraph 5 sets forth in no circumstances will the person who is the subject of a Guardianship Order be detained in a penal establishment, while paragraph 6 sets forth that if necessary, the courts can direct the Kosovo Police Service to assist the Centre for Social Work in the execution of a Guardianship Order. From the analysis of the case it can be seen that the person with mental disorders was not taken the capacity to act in accordance with the law, therefore, he is found liable by the court for the criminal offenses committed by him, as well as his free movement on the street turned into an obstacle and a serious threat to other persons, and as a result of mental illness, he could not take care of himself, therefore, he suffered a traffic accident by a police car (see paragraph 5).
43. Law on Mental Health No. 05/L-025, which entered into force in December 2015, as a main purpose in Article 1 presents the protection and promotion of mental health, prevents the problems associated with it, guaranteeing the rights and improving the quality of life for persons with mental disorders. This law defines the procedures, conditions for the protection of mental health by providing health care, proper social environment for people with mental disorders and preventive policies for the protection of mental health.
44. Law on Mental Health No. 05/L-025, Article 5 sets forth general principles of care of mental health services, which among others foresees provision of care for persons with mental disorders from **multidisciplinary teams** that respond in a complex manner to the medical, psychological, and social and rehabilitation needs of these persons. According to this law, **multidisciplinary teams** are composed of specialists from several fields such as physicians, nurses, psychologists, social workers, psychosocial advisors, work therapists, logopedes, development therapists or other professionals, who act in a coordinated manner, according to the respective protocols for maintaining and improving mental health.
45. Law on Mental Health No. 05/L-025, Article 9 paragraph 1 set forth that Removing or limiting the ability to act for persons with mental disorders **is prohibited**, except the cases as provided with the legal provisions in force. According to this provision, in special cases, this measure can be proposed at the request of the psychiatric-legal commission and the respective decision is made by the court in accordance with the legal provisions in force for removing or limiting the ability to act.
46. Law on Mental Health No. 05/L-025, Article 29, sets forth the establishment of Mental Health Professional Council as an advisory body of the Minister of Health, upon which case the scope, competencies, composition and the mandate of the Mental Health Professional Council shall be defined with sub-legal act proposed by the Ministry of Health and approved by the Government. According to this Article, Mental Health Professional Council advises the Minister of Health to implement the obligations which come out of this law and for significant legal review, organisational and technical in the

field of mental health, but regardless of the fact that this law entered into force as of December 2015, such an action has still not taken place by the *Minister of Health*.

Findings of the Ombudsperson

47. Based on all evidences presented and facts gathered, as well as based on relevant laws, which determine the right to private and family life, as well as the right to health, the Ombudsperson **finds that the complainant's complaint is reasonable and lawful**. In the concrete case, **the Ombudsperson finds that there was violation of Human Rights and Fundamental Freedoms**, since responsible authorities, which according to health legislation in force are given the powers and are under the obligation to undertake positive obligations related to the case have failed in meeting the citizen's duties and responsibilities.
48. The Ombudsperson finds that based on ECtHR decisions, relevant authorities have failed to undertake concrete actions and have not implemented positive obligations to undertake proper actions in respect of mandatory psychiatric treatment until the ability to act is taken from the person with mental disorders, by preventing the exert of domestic violence against third persons. The Ombudsperson finds that as a result of inappropriate psychiatric treatment, the person with mental disorders caused violence in his family, and to other persons, seriously endangering their life and their property, therefore under the circumstances of this case, it is found that Mr B.D., exerted physical violence against the members of family and life-endangering them, but in certain cases, neighbours and other citizens were exposed to this violence as well (see paragraphs 3, 4 and 5). The Ombudsperson recalls that according to Article 53, of Constitution of the Republic of Kosovo, Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights, and from the decisions of this court, it can be seen that states have positive obligations towards their citizens (see paragraphs 34, 35 and 36).
49. The Ombudsperson finds that Mr. B.D. should have gone through necessary psychiatric treatment in relevant healthcare or to take his ability to act and to assign guardianship. From the circumstances of the case it can be clearly seen that leaving Mr. B.D., without a guardianship and his free movement on the street brought to the obstruction of road traffic and later to him having caused an accident, in which Mr. B.D., suffered serious body injuries by the Police car (see paragraph 5). The Ombudsperson finds that negligence of the family and absence of cooperation of responsible authorities contributed to this situation, which failed to provide proper care to Mr. B.D., as well as to provide him with proper health care.
50. The Ombudsperson finds that competent legal bodies have not done sufficiently in undertaking measures for **positive obligations**, namely protecting the indefeasibility of human health, especially in cases when it is endangered by dangerous actions of persons with mental disorders, when they are not under a necessary treatment, and when they are not limited in their movement. Such cases have unfortunately turned into a worrying phenomenon in the majority of cities in the Republic of Kosovo, therefore free walking on the street by the persons falling in the category with mental disorders and citizens facing their violent actions are turning into a serious concern and into a risk to their life and property.

51. The Ombudsperson finds that regarding this matter, responsible authorities have not conducted necessary research on the ground and to date; **health authorities do not have an accurate number and necessary statistics for this category of persons.** In addition, there was no recommendation to date from responsible authorities on the measures to be taken, in order that these persons are removed from public places and placed on specific places, in which depending on their health needs they would receive necessary health treatment.
52. The Ombudsperson finds that there are many cases when this category of persons have caused physical violence with serious body injuries and with fatality (see paragraph 13), as well as property damage, therefore, competent authorities are under legal obligation to undertake necessary prevention measures so that these persons receive necessary psychiatric treatment, and perpetrators with a mental disorder, or persons who are being treated as such, **shall be treated with humanity and respect for the inherent dignity of the human person, in conformity with international standards applicable to persons with a mental disorder to the fullest extent possible, with only limited modifications and exceptions that are necessary in the circumstances.** The Ombudsperson finds that the entry into force of the Law on Mental Health No. 05/L-025, will considerably affect the regulation of this situation, however, drafting of sublegal acts and **establishment of Mental Health Professional Council and functionalization of multidisciplinary teams should be done as soon as possible and without delays.**
53. Based on the above-mentioned, and in conformity with Article 135, par. 3 of Constitution of the Republic of Kosovo: *“The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed”*. According to the meaning of Article 18, paragraph 1.2 of Law on Ombudsperson, the Ombudsperson *“(…) is responsible to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases (…)”*.

Based on these findings, and in conformity with Article 135, par. 3 of Constitution of the Republic of Kosovo, and Article 16, par. 4 of Law No. 05/L-019 on Ombudsperson, the Ombudsperson:

RECOMMENDS

- 1. Ministry of Health, in conformity with powers and legal authorisations and in cooperation with all other authorities responsible, should undertake measures for creation of a database through which the medical treatment of these persons could be followed (calendar of parenteral therapy – storage), which could be accessed by all mental health institutions in the Republic of Kosovo, in all (primary, secondary and tertiary) levels, taking into account the respect and provisions of Law on Mental Health.*
- 2. Mental Health Institutions, in conformity with powers and legal authorisations and in cooperation with other authorities responsible, should undertake necessary measures on the ground so that persons with mental disorders with predispositions to cause physical violence and property damage are removed from the public, and*

should be treated in Mental Health Institutions with beds, until they become harmless to environment and society.

3. *Ministry of Health, in conformity with powers and legal authorisations, should undertake all necessary measures for functionalization of multidisciplinary teams in order to protect mental health of these persons, maximally trying to integrate these persons and re-socialise them in family and society, as harmless persons, on the contrary (when rehabilitation treatment is unsuccessful or mental illness is incurable), one should take into account the possibility to file a request to remove the ability to act and place them in relevant institutions in conformity with legislation in force.*

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

Sincerely,

Hilmi Jashari

Ombudsperson