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

ANNUAL REPORT 2019

No. 19

Prishtina, 2020

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Ombudsperson's statement

Ombudsperson's reporting on annual basis is an internationally supported standard through which establishment of interdependence among democracy, on one side, protection of human rights and freedoms as well as rule of law on the other side is intended, principles which are stipulated by the Constitution of the Republic of Kosovo as well.

These principles in themselves carry the liability that the State guarantees democracy, protection of human rights and the rule of law, and carries the full responsibility for their implementation.

Ombudsperson's Annual Report, in the spirit of the above mentioned principles as well as the constitutional and legal mandate, aims to provide a general overview of the challenges in the human rights protection system in the Republic of Kosovo. With particular emphasis on the issues of systematic problems in all three pillars of the power: in legislature, in executive and judiciary, with a strong believe that in this way this Report will serve also as a tool for strengthening democracy in the country.

Constitution of the Republic of Kosovo determines the Ombudsperson as an independent institution in exercising its duties, without intrusions by bodies, institutions or other authorities exercising power in the Republic of Kosovo. Pursuant with this right, the Ombudsperson has repeatedly called upon public institutions to respect human rights and freedoms, which are determined by the Constitution, Laws and International Convents, and are directly applicable in the domestic law.

The work of the Ombudsperson during 2019 is best reflected in this Report, the 19th in a row, which involve in itself collection of information on actions undertaken by the Ombudsperson, specifically on monitoring as well as protection and promotion of rights and fundamental freedoms. Furthermore, the Report presents the state of human rights, equality and the rule of law.

Through this Report we present to the Assembly of the Republic of Kosovo a comprehensive summary of the situation of human rights in the country as an obligation arising from the Constitution. At the same time this Report aims to draw institutions' attention that respect for human rights is not left on the mercy of free political actions but, through executive instruments, ensure their implementation.

The meritorious treatment of the Report by members of the Assembly of the Republic of Kosovo also assists to improve the accountability by authorities who have abused or violated human rights, regardless addressing of this issue by the institution I represent. However, I would like to stress out that during the years of my mandate, a huge progress has been noticed as per implementation of Ombudsperson's recommendations by the central level authorities, where in 2015 the percentage of implemented recommendation was only 11%, and gradually, year per year, implementation of the Ombudsperson's recommendations by central level authorities this year (2019) has reached 54%. However, a considerable number of recommendations has failed to be implemented by authorities, particularly from local authorities, from whom I expect broader and more responsible cooperation, with the aim and on the interest of protection of human rights and fundamental freedoms in their municipalities.

Furthermore, I would like to give emphasis to the fact that the merit-based treatment of the Ombudsperson's Annual Report is an appropriate opportunity to combat the culture of treating human rights only as (moral) value, which is not applicable, but in the best-case a right to complain about, infringement of which has no legal but possibly moral consequences.

Rights and freedoms guaranteed by the Constitution of the Republic of Kosovo are not abstract legal concepts, which should necessarily be disaggregated into more appropriate legal documents in order to be applicable. As guaranteed by State's Constitution, rights and freedoms are nothing less than the lifestyle of citizens of the Republic, which are guaranteed by the State and which holds accountable for their violations.

I and my associates strongly believe that deliberation of this Report will take place in a plenary session of the Assembly of the Republic of Kosovo, unlike the Report of 2018, which failed to achieve this much-needed goal, due to political developments in the country.

Hilmi Jashari
Ombudsperson

I. Ombudsperson Institution

I. Ombudsperson Institution

The Constitution of the Republic of Kosovo defines the Ombudsperson Institution (OI) as a constitutional category, specifically as an independent constitutional institution.[1] The Ombudsperson defends, monitors, and promotes the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.[2] The function of the Ombudsperson is exercised pursuant to Law no. 05/L-019 on Ombudsperson according to which the Ombudsperson serves as a 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 actions of public authorities, institutions and persons or other bodies, exercising public authorizations in the Republic of Kosovo (further in the text: *public authorities*), and as National Mechanism for prevention of torture and other cruel, inhuman and degrading treatments and punishments.[3]

Similarly, the Ombudsperson is a mechanism of equality for promoting, monitoring and supporting equal treatment without discrimination on grounds protected by the Law on Gender Equality and the Anti-Discrimination Law.[4]

According to the Law no. 05/L-019 on Ombudsperson, the OIK is composed of: Ombudsperson, five (5) Deputy Ombudspersons and staff of the Ombudsperson Institution.[5]

Mandate of the Ombudsperson Institution

The mandate of the Ombudsperson Institution is defined by the Constitution of the Republic of Kosovo and the Law on Ombudsperson, according to which the Ombudsperson receives and investigates complaints from any person, inside or outside the territory of the Republic of Kosovo, who claims that his or her rights and freedoms have been violated by public authorities in Kosovo.

Ombudsperson Institution is independent in the exercise of its duties and does not accept instructions or intrusions from public authorities, which are obliged to respond to the requests of the OIK and submit all requested documentation and information in conformity with the law.

Within its activity, Ombudsperson is governed by the principles of impartiality; independence, pre-eminence of human rights, confidentiality and professionalism[6], and enjoys organizational, administrative and financial independence in the implementation of tasks set forth by the Constitution and the Law.[7]

In the framework of its powers, the Ombudsperson investigates complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws, international instruments of human rights, particularly the European Convention on Human Rights (ECHR)[8].

[1] Constitution of the Republic of Kosovo, Chapter XII, Articles 132 – 135.
[2] Ibid., Article 132.
[3] Law no. 05/L-019 on Ombudsperson, Article 1, paragraph 1.
[4] Ibid., Article 1, paragraph 2.
[5] Ibid., Article 5.
[6] Ibid., Article 3, paragraph 1.
[7] Ibid., Article 3, paragraph 3.
[8] Ibid., Article 16.

The Ombudsperson may conduct investigations on his own initiative (*ex officio*) if testimonies, facts, findings or knowledge gained from public information or other sources provide an indication of the violation of human rights. Likewise, the Ombudsperson uses mediation and reconciliation, and can also provide good services to citizens of the Republic of Kosovo located abroad. It provides services free of charge.

If during the investigation conducted, the Ombudsperson observes the presence of criminal offence, he/she shall notify the competent body on initiation of investigation. Similarly, the Ombudsperson may appear in the capacity of the Court's friend (*amicus curiae*) in judicial proceedings dealing with human rights, equality issues and protection from discrimination. The Ombudsperson does not intervene on cases and other legal procedures, except in the cases related to delays of judicial procedures. However, the Ombudsperson may provide general recommendations on the functioning of the judicial system. Similarly, the Ombudsperson may initiate matters to the Constitutional Court in accordance with the Constitution and Law on the Constitutional Court[9].

The National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments (NPM) functions within the Ombudsperson.[10]

In the framework of responsibilities as NPM, the Ombudsperson is obliged to visit regularly and without notice all places where persons deprived of liberty are held (including police custody, detention on remand, stay at medical institutions, customs detention, immigration detention, and any other place when it is suspected that there may be violations of human rights and freedoms). The Ombudsperson cooperates with international and domestic mechanisms in the field of the prevention of torture and other forms of cruel, inhuman, or degrading treatment or punishment. In addition, the Ombudsperson may issue suggestions and recommendations to persons and responsible institutions where persons deprived of liberty are held, of whatever kind and in whatever premises and circumstances in which they are being held, with the aim of improving their treatment and conditions.

The Ombudsperson performs other work defined by the Law on protection from discrimination, Law on Gender Equality, and other legislation in force; Collects statistical data regarding the issues of discrimination and equality presented to the Ombudsperson, and publishes them; Publishes reports and makes recommendations on policies and practices on combating discrimination and promoting equality; Cooperates with social partners and NGOs dealing with issues of equality and non-discrimination, as well as similar international bodies like the Ombudsperson.[11]

The Ombudsperson also has further legal responsibilities: not only to investigate alleged violations of human rights and acts of discrimination, but to show commitment to eliminate them; to draft and adopt specific procedures for receiving and handling complaints from children, and the creation of a specialized team for children's rights and a permanent program for children to become aware of their rights and the role of Ombudsperson institution in their protection; to inform about human rights and to make recommendations to the Government, the Assembly and other competent institutions of the

[9] Constitution of the Republic of Kosovo, Article 113, paragraph 2, Article 135, paragraph 4, Law no. 05/L-019 on Ombudsperson, Article 16, paragraph 10. Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, Article 29.
[10] Law no. 05/L-019 on Ombudsperson, Article 17.
[11] Ibid., Article 16, paragraph 13 to 16.

Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination; to publish notifications, opinions, recommendations, proposals and his/her own reports; 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; to prepare annual, periodical and other reports on the situation of human rights; to recommend to the harmonization of domestic legislation with international standards for human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination; 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; keep-safe the confidentiality of all information and data they receive, paying special attention to safety of complainants, damaged parties and witnesses, in accordance with the Law on personal data protection.

Citizens can file complaints against public administration, according to a simple and free of charge procedure. Complaints addressed to the OIK can refer to actions, inactions or decisions of public administration that applicants may consider unfair or unfavourable. When reviewing such complaints, actions of the OIK's lawyers involve offering legal advice, accompanied by requests for data from the public administration, the courts and other important institutions concerning the complaints filed, as well as by supervision of certain administrative and judicial proceedings.

In cases that require immediate action, the Ombudsperson submits requests for interim measures. If Ombudsperson considers that immediate measures must be taken by public authorities, he/she may legally request that the competent administrative body undertake or suspend a particular action, as an interim measure to prevent irreparable damage to complainants or to their property.

If the requests for intervention and efforts to mediate are not successful, the Ombudsperson may issue a report, ensuring public analysis and exposure for violations of human rights or of applicable laws, along with recommendations for the public institution, to avoid violations. The report is addressed to the authority that has committed the violence, while the copy of the report is delivered to the Assembly of Kosovo and to other relevant organisations. Meanwhile, the Ombudsperson presents to the Assembly of Kosovo the Report for the previous year till 31 March of following year, which the Assembly reviews in the plenary session, during spring session.[12]

The Ombudsperson’s powers to review issues related to protection from discrimination in general, and gender discrimination in particular were provided by two other basic laws on human rights (Law on Protection from Discrimination and Law on Gender Equality).

Therefore, according to the Law on Gender Equality, the Ombudsperson is a gender equality institution that handles cases related to gender discrimination, in accordance with procedures established by the Law on Ombudsperson.[13]

On the other hand, according to the Law on Protection from Discrimination, the Ombudsperson carries out the promotion and protection of human rights and handles cases related to discrimination under the relevant Law on Ombudsperson.[14]

[12] Ibid., Article 29.
[13] Law no. 05/L-020 on Gender equality, Article 13.

The Office of Good Governance (OGG) within the Office of the Prime Minister (OPM) is responsible for monitoring the implementation of the Ombudsperson's recommendations dealing with the implementation of the Law on Protection from Discrimination.[15]

Promotion of Human Rights

Even during 2019, the Ombudsperson remained committed to fulfilling the legal mandate deriving from Law no. 05/L -019 on the Ombudsman and the setting of international standards for promotion of human rights and fundamental freedoms.

As a result of its commitment and dedication to the protection and promotion of human rights and fundamental freedoms, the Ombudsperson Institution remains the most trusted institution in the country and beyond. [16]

Kosovo 2019 Report of the European Commission, published in May 2019, highlighted that "*The Ombudsperson Institution of Kosovo continued to advance its mandate in promoting, protecting and upholding fundamental rights and freedoms for all and to strengthen its capacity to review cases. It remains the most trusted institution in Kosovo".*

In order to fulfil its mandate for promotion of human rights and fundamental freedoms, during 2019, the Ombudsperson Institution continued organizing educational activities with the aim of raising awareness of human rights and fundamental freedoms with information activities promoting the role and mandate of the Ombudsperson Institution, as the only national institution for the protection of human rights, equal treatment and non-discrimination.

In order to increase the Ombudsperson Institution's credibility, and promotion of human rights and fundamental freedoms, set forth in the Strategy and Development Plan of the Ombudsperson Institution 2017-2019, various activities of information, educational, awareness nature were organized such as training sessions, conferences, awareness campaigns, roundtables, workshops etc.

Taking into consideration the important role and contribution of the media in promoting human rights, the Ombudsperson Institution continued to be present in media, radio, television, newspapers, portals, etc.

Inter-institutional cooperation and promotion of human rights

Inter-institutional cooperation in the field of human rights with local institutions, international organizations in Kosovo and civil society has continued throughout this year as well. The Ombudsperson Institution has participated in about 50 (fifty) roundtables, 20 (twenty) conferences, 35 (thirty-five) workshops, 24 (twenty-four) training sessions, 28 (twenty-eight) public debates, consultative and thematic meetings as well as 9 (nine) cultural and artistic activities organized by public institutions, international organizations and civil society. The activities covered various topics in the area of human rights and fundamental freedoms such as: non-discrimination, gender equality, rights of non-majority communities, women's rights, children's rights, drug abuse, rights of people with disabilities, the rights of vulnerable communities and others, the right to a safe and healthy

[14] Law no. 05/L-021 on Protection from Discrimination, Article 9.
[15] Ibid., Article 10, paragraph 1, subparagraph 1.2.
[16] Kosovo 2019 Report, published by European Commission, in 2019, p. 7

environment, the right to access public documents, the right to education, the rights of persons deprived of their liberty, compensation of crime victims, etc.

Whereas, in order to fulfil the mission of educating and raising public awareness of fundamental human rights and freedoms and promoting the mandate of the OIK, in 2019 the Ombudsman held 10 (ten) lectures with students of public and private universities in Kosovo.

Roundtables and conferences were organised within the framework of planned activities, with a view to discussing about human rights and fundamental freedoms during 2019. On 26 February 2019, a roundtable discussion was organized with representatives of the Governmental Commission for the Recognition and Verification of the Status of Victims of Sexual Violence during the Kosovo War, as well as four NGOs authorized to receive and submit applications. The meeting discussed important issues related to the process of recognizing and verifying the status of victims of sexual violence, such as: lack of reasoning in committee's decisions; time limits for processing applications and delays in processing them; and the manner in which cases are processed to the court when administrative conflict is initiated for having had the status of victim of sexual violence rejected. The Ombudsperson instructed that decisions be in conformity with legal provisions, in order to guarantee the parties' right to effective legal remedies.

On 21 March 2019, the OIK supported by the U.S. Embassy in Prishtina, and in cooperation with the Kosovo Society for human rights and justice, organised the roundtable: "*State's legal Responsibility for Human Rights Violations*". During this roundtable were discussed with stakeholders the regulation of the state's legal responsibility as a constitutional obligation stemming from the positive obligations of the state, as well as the need to take legislative initiative that would ensure the state's legal responsibility in the service of effective protection of human rights, as well as increasing the level of state accountability to citizens.

On 23rd of April 2019, the Ombudsperson has organised a roundtable with representatives from the Ministry of Health, HUCSK, Chamber of Pharmacists, KMA, Competition Authority, Health Insurance Fund, Pharmacists Association of Kosovo and representatives from the Clinic of Oncology, whereby it was discussed about the lack of medicines from the essential list in UCCK. The key point of discussion was the lack of cytostatic in the Oncology Department, and the failure of tendering procedures due to biddings of extremely high prices by companies with monopolistic positions. The recommendations derived from this meeting were: launch of an investigation by the Competition Authority against pharmaceutical companies for abuse of monopolistic position, and the need to revise the essential list of medicines

On 16 April 2019, a conference related to the conclusion of the project "Strengthening of the National Preventive Mechanism against Torture", funded by the Council of Europe, Swiss and Norwegian Governments, attended by all relevant institutions in the Republic of Kosovo. As part of this project, intensive training sessions were organized by experts of the European Committee for the Prevention of Torture to monitor all places where persons deprived of their liberty are held.

Special attention has also been paid this year to discussing and addressing environmental problems and impacts on human rights. In the framework of the activities for promotion of the right to safe and healthy environment, on 5 June 2019, on the occasion of the World Environment Day, the OIK in

cooperation with the National Audit Office in Kosovo organized a roundtable on “Safe and Healthy Environment – a Human Right and a Constitutional Responsibility”. The purpose of the roundtable was to discuss the state of the environment in Kosovo, with the aim of finding modalities for adequate addressing of environmental problems by the competent institutions in the country. The purpose of the roundtable was to highlight the importance of the cooperation of public institutions with the Ombudsman and the Auditor General for the implementation of recommendations addressed to central and local level institutions in order to improve the state of the environment in the country.

On 26 June 2019, on the occasion of marking the International Day in Support of Victims of Torture, the NPM organized the conference, where the NPM Annual Report was presented, and the challenges in implementing the NPM recommendations addressed to the responsible institutions were discussed. Participants in this conference were representatives of public institutions, representatives of the judiciary, Kosovo Police as well as representatives of diplomatic missions and civil society.

On 21 November 2019, a conference was organized to mark the 19th anniversary of the establishment of the OIK. The conference was attended by representatives of local and international institutions, representatives from diplomatic missions and non-governmental and international organizations, where the outcomes of the OIK were presented. Among other things, the Ombudsperson stated: “*There are 19 years of knowledge and experience accumulated throughout the country through feedback, opinions, recommendations and annual reports to become the most trusted institution in the country, and in the Balkans as well, for two consecutive years*". Furthermore, the Ombudsperson stated that he will continue to address the human rights issues for which he has drafted a plan and strategy. The event was followed by a workshop titled "Human Rights Cafe", which intended to conduct several rounds of discussions between the participants on human rights in a relaxed atmosphere.

In order to strengthen inter-institutional cooperation and cooperation with the civil society, the Ombudsperson has signed 4 cooperation agreements in 2019.

On 15th of March 2019, the OIK and the United Nations Development Program (UNDP) signed a Memorandum of Understanding with the aim of providing a framework for cooperation within the project “Support to Strengthening the Rule of Law in Kosovo”. This project is funded by the Ministry of Foreign Affairs of Norway through the Royal Norwegian Embassy in Kosovo, which aims to support the justice sector reform, improving access to justice for citizens, promoting and protecting human rights, and providing support to the justice institutions in increasing efficiency.

On 23 April 2019, the OIK signed a Cooperation Agreement with the Council for the Protection of Human Rights and Freedoms (CDHRF) with the aim of co-operating in the field of protection and promotion of human rights and fundamental freedoms.

On 24 April 2019, a Memorandum of Understanding was signed between the OIK and the Swiss National Commission for the Prevention of Torture, with the aim of joint monitoring of forced return operations between Switzerland and Kosovo.

On 5 November 2019, a Cooperation Agreement was signed between the Ombudspersons of Kosovo, Albania, and Northern Macedonia and the Anti-Discrimination Commissioners with the aim of

coordinating activities in protecting and promoting the rights of Albanian citizens, and not only in the respective countries.

Cooperation in the field of human rights with international organizations in Kosovo, non-governmental organizations and civil society

Various international organizations, such as the European Commission, the Council of Europe, the OSCE, UNICEF, UNMIK, UNDP and other organizations have continued to support the OIK through different projects with regard to cooperation from the field of human rights and fundamental freedoms.

The commencement of the implementation of the project "Support to the Ombudsperson Institution in Kosovo" funded by the European Union can be considered as an important event for the OIK. The purpose of the project is to strengthen the institutional capacities and support the OIK in the effective protection and promotion of human rights of the citizens of Kosovo and raising the awareness of citizens and public institutions. In order to present the project activities and convey the message of cooperation, coordination among stakeholders and harmonization of activities in the field of human rights and fundamental freedoms, on 27 March 2019, in support of the project, the OIK organized a discussion meeting among stakeholders, non-governmental organizations in Kosovo, international organizations, diplomatic missions, and representatives of public institutions in the country.

In the framework of the project "*Advocacy for Environmental Protection and Energy Efficiency in Kosovo*" implemented by Environmentally Responsible Action (ERA) group in partnership with BIRN Kosovo, TV Mreža and Bankwatch, during June 2019, meetings were organised with citizens, journalists, human rights' activists and civil society representatives, in certain cities throughout Kosovo, such as Prishtina, Ferizaj, Gjilan and Gjakova. At these roundtables, the OIK representatives presented environmental issues addressed from the perspective of the OIK in the most systematic cases of violations of the right to safe and healthy environment. OIK's promotional activities on the right to a safe and healthy environment, and citizen's awareness raising about environmental rights information as well as the importance of public participation in decision-making processes in environmental impacts were also presented.

Within the framework of the 16 Days of Activism Against Gender-Based Violence, and marking the International Human Rights Day, in the framework of the activity "*Human Rights through Art*" the OSCE organized a public discussion with young people in Prizren, Peja, Obiliq, Gjilan and Mitrovica. The purpose of the activity was to discuss with young people about human rights, and defence mechanisms. During these discussions, the Ombudsperson informed young people of different ages on fundamental human rights, as well as the role and mandate of the OIK in promoting and protecting human rights.

On 10 December 2019, on the occasion of marking the International Human Rights Day, OIK launched the "Human Rights Platform", which aims to promote the implementation of fundamental human rights and freedoms, as guaranteed by the Constitution of the Republic of Kosovo, international human rights acts and applicable laws in Kosovo.

Similarly, on 10 December 2019, on the occasion of marking the International Human Rights Day, the Ombudsperson, in cooperation with civil society in Kosovo, organized for the third consecutive year the activity "Stand Up for Human Rights". This year the initiative aimed to send a message of

increased, inclusive and inter-institutional commitment for protection of human rights, with a particular emphasis on protecting the right to a safe and healthy environment, as one of the fundamental human rights. Through the march, we called on the institutions of the Republic of Kosovo to take more effective measures to protect the environment and the right of citizens to a healthy environment.

Promotion of children's rights

OIK has paid special importance to educating and raising the young generations awareness of human rights and fundamental freedoms and continued with information campaigns with pupils and teachers of primary and secondary schools in different regions and municipalities of Kosovo. During the reporting year about 68 information campaigns in primary and secondary schools with pupils and teachers were organized. In these meetings, they were informed at close hand of the role of the OIK in the protection and promotion of human rights as well as their about their right to address their complaints with the OIK through the online platform "Know Your Rights" among other ways.

On the occasion of the World Children's Day, the OIK hosted children of different age groups from the Municipality of Prishtina. During these meetings, the children had the opportunity to become more familiar with the OIK mandate, as well as to express their opinions on human rights through paintings and drawings.

On 21 June 2019, the Ombudsperson hosted 20 children from the Roma, Ashkali and Egyptian communities of the Municipality of Podujeva. At this meeting, the children had the opportunity to be heard by the Ombudsperson, respectively to express their opinions, attitudes or concerns about the various problems they face every day, not only at school, but also on the streets and elsewhere. At the meeting, children showed great interest on issues of concern to children living in Kosovo. Thus, they asked numerous questions on various issues such as the danger from stray dogs, violent behaviour in schools, transportation, etc.

On 27 September 2019, the Ombudsperson visited the Primary School "Shtjefën Gjeçovi" in Janjevo where students from three communities (Albanian, Croatian and Roma) are taught simultaneously. During the visit, the Ombudsperson informed the audience more closely about children's rights, protection from discrimination, and the functioning of the OIK.

On 6 November 2019, the Ombudsperson published the Regulation for Special Procedures of Receiving, Handling and Addressing of Complaints Submitted by Children Related to Child Rights, supported by the Non-Governmental Organization "Terre des hommes". This regulation establishes special rules for the reception, handling and addressing of complaints related to children's rights, while guaranteeing and respecting their rights and freedoms as provided by the Constitution of the Republic of Kosovo, laws and other acts, as well as by international human rights instruments, in particular the Convention on the Rights of the Child.

On 20 November 2019, on the occasion of the International Children's Rights Day, the Ombudsperson organized an open day for children. On this day the children were given the opportunity to be heard by the OIK, namely to express their thoughts, attitudes or concerns about the various problems they face on a daily basis.

Launch of the Human Rights Platform and education and information videos

On 10 December 2019, on the occasion of the International Human Rights Day, the OIK launched the Human Rights Platform, which aims to promote implementation of fundamental human rights and freedoms, as guaranteed by the Constitution of the Republic of Kosovo, international human rights acts, and applicable laws in Kosovo. The Platform contains two guidelines: the Guideline on Human Rights and the Guideline on Sustainable Development Goals (SDGs), which will serve to provide easier access to information about local and international human rights laws through structured links between legal instruments that are directly applicable to the legal system of the Republic of Kosovo, and to demonstrate the links of the SDGs to fundamental human rights and freedoms. The platform was designed by the OIK and developed in cooperation with UNDP, with the financial support of the Norwegian Ministry of Foreign Affairs.

During the reporting year, the OIK launched three education and information human rights video spots. The videos addressed various human rights issues in order to raise awareness and promote the right to a safe and healthy environment and to protection from discrimination by sending a message to the responsible authorities in order to take the necessary actions. These video spots were broadcast on TV and posted on social media.

Access to the Ombudsperson Institution

The OIK receives every working day (Monday to Friday) from 8:00 to 16:00 at its offices citizens who claim that their rights have been violated. They are received by OIK legal advisors who handle cases with care, confidentiality and professionalism.

To facilitate access to the OIK for Kosovo citizens, in addition to the Headquarters in Prishtina, the OIK also has regional offices in Ferizaj, Gjakova, Gjilan, South Mitrovica, North Mitrovica, Peja, Prizren and Gracanica.

The OIK offices consist of professional staff that serve the citizens, respond to their requests and complaints, and protect the rights they consider to have been violated.

One of the forms to ensure easier access of citizens to the OIK is the organization of Open Day events by the Ombudsperson and his deputies. They are organized in Prishtina and in the regional offices. The regional offices inform the respective municipality citizens of the open days by publishing the dates in municipalities, in the local media and on the OIK official website.

Citizens can also access the OIK by mail, telephone and email, which is increasingly used for citizen complaints. There is also a free hotline at the OIK Headquarters in Prishtina for emergency and other common cases.

OIK officials pay regular visits to all prisons and detention facilities in Kosovo. To enable direct communication with prisoners, in cooperation with the Kosovo Correctional Service authorities and the responsible prison authorities in Kosovo, in 2004 the OIK placed mailboxes in visible places at all prisons and detention centres in the Republic of Kosovo. These boxes can only be opened by OIK representatives.

This practice has helped many prisoners or detainees to establish first contact with the Ombudsperson. Similar boxes are also placed in Mental Health facilities and centres, which make it easier for patients to access the OIK.

II. Human Rights situation in the Republic of Kosovo

II. Human Rights situation in the Republic of Kosovo

Legislative power

The Ombudsperson has, based on its powers, followed the legislative process in the field of human rights. The 2019 Legislative Program of the Government of the Republic of Kosovo was adopted at the 81st meeting of the Government of the Republic of Kosovo, with the Decision No. 03/81[17] dated 24 December 2018. In the 2019 legislative program, the Government of the Republic of Kosovo has foreseen the review and adoption of 78 draft laws (58 new draft laws and 20 draft laws amending and supplementing existing laws). The Ombudsperson noted that the percentage of draft laws amending and supplementing existing ones continued to decline during 2019 as well.

In 2019, the Government of the Republic of Kosovo has foreseen the review and adoption of 20 draft laws amending and supplementing existing laws or 26% of the legislative program, proving that in recent years (2017- 42%, 2018 - 31%) the Government of the Republic of Kosovo has made progress in reducing the number of draft laws amending and supplementing existing laws, therefore reflecting stability of laws adopted by the Assembly of the Republic of Kosovo.

The Assembly of Kosovo during the review and adoption of laws in 2019 has adopted 29 laws. The Ombudsperson considers that the small number of adoption of laws is a result of the irregular functioning of the Assembly, which during 2019 held a relatively large number of extraordinary sessions which were considered an obstacle to the proper functioning of the Assembly. The Ombudsperson noted that at the moment of dissolution of the Assembly, on 22 August 2019, 53 draft laws remained in the process of review and adoption. Proceeding of such a small number of laws is an indication that the Assembly of Kosovo has not been able to properly exercise its constitutional function with regard to adopting laws. It is worth mentioning that during the reporting year, none of the laws adopted by the Assembly of Kosovo represented legislation of vital interest.

During the reporting year, the Ombudsperson has identified cases where the Assembly of Kosovo adopted laws that collide with other applicable laws in terms of the substance. The Assembly of Kosovo on 17 May 2018 adopted the Law No. 06/L-012 on the Capital City of the Republic of Kosovo, which with regard to competence on public security matters is in collision with the provisions of Law No. 04/L-076 on the Police. In relation to this situation, the Ombudsperson on 14 February 2019 published a Report with Recommendations A.nr 683/2018 and recommended the Assembly of Kosovo to take the legislative initiative to amend and supplement the Law No. 06/L-012 on the Capital City of the Republic of Kosovo, Prishtina, respectively its harmonization with Law No. 04/L-074 on Police regarding aspects of public safety. The Ombudsperson has recommended giving priority to the Law No. 04/L-074 on Police as a special law in situations of conflict of competence regarding public safety issues, until harmonization of these laws.

During the reporting year, the Ombudsperson has identified cases of discrepancies between versions of normative acts in other languages. In this regard, during the investigation of the complaints received and analysis of the Law No. 03/L-040 on Local Self-Government and the Administrative Instruction

[17] 2019 Legislative Program was approved on the 81st meeting of the Government of the Republic of Kosovo, with the Decision No.03/81, dated: 24.12.2018, amended and supplemented by Decision No. 07/85 dated: 22.01.2019 and Decision No. 03/87 dated: 29.01.2019

MLGA No. 2014/01 on the Procedure of Appointment of Deputy Mayors in Municipalities, the Ombudsperson has identified discrepancies between the versions in the Albanian language and the one in Serbian in said acts, which in practice may bring about uncertainty regarding implementation. In this regard, the Ombudsperson, on 31 July 2019 has published the Recommendation Letter A.no 9/2019 and has recommended the Ministry of Local Government Administration to take appropriate actions in order to harmonize the MLGA Administrative Instruction No. 2014/01 on the Procedure for Appointment of Deputy Mayor in Municipalities, and in co-operation with the Assembly of Kosovo to take measures in order to harmonize the Law No. 03/L-040 on Local Self-Government in terms of language. In this regard, the Ministry of Local Government Administration welcomed the Ombudsperson's recommendations and pledged to undertake adequate actions for harmonization of the Law on Local Self-Government and Administrative Instruction in question in terms of their language versions.

In its 2018 report, the Ombudsperson considered that the Assembly of Kosovo should take measures to ensure professional development of the support staff of the Committees in order to train them regarding interpretation of laws. Such an assessment was based on the fact that the Kosovo Assembly is not interpreting the laws, and this is bringing uncertainty and misunderstanding of the spirit of the laws by their users[18]. The Ombudsperson continues to reiterate his position on this issue in order for the Assembly to ensure professional development of its staff in order to train them regarding interpretation of laws.

In its report last year, the Ombudsperson noted that the process of drafting laws was accompanied by a lack of linguistic and terminological consistency, as a result of the lack of unique legal terminology. The Ombudsperson thinks that this has caused difficulties in terms of proper implementation of the laws, but also in interpretation during their implementation. In the reporting year, the Ombudsperson considers that it is necessary to standardize the legal terminology as soon as possible by drafting a legal terminology dictionary, which would assist sponsors of laws, as well as the deputies in the process of drafting and adopting laws.[19]

Just like last year, the Ombudsperson continues to draw attention to the need for the Government to draft a Legal Approximation Plan, under which the Assembly of the Republic of Kosovo would monitor the process of approximation of national legislation with that of the European Union. In this regard, it is necessary to include the secondary legislation adopted by the Government in this Plan monitored by the Parliamentary Committee on European Integration. In order for the Assembly to be more efficient in implementing this plan, the Ombudsperson considers that the Government and the Assembly should have close cooperation, in order to draft and supervise the approximation of domestic legislation with the European law.[20] Also, the Ombudsperson considers that the Assembly of the Republic of Kosovo should be more active in exercising its function with regard to oversight of the implementation of laws. In this regard, by overseeing the implementing laws, the Assembly would be able to identify difficulties with regard to the implementation of existing laws and would therefore be able to take adequate measures to eliminate barriers to the implementation of laws.

[18] Annual Report 2018 of the Ombudsperson, page 31.
[19] Ibid, page 31.
[20] Ibid, page 31.

The Ombudsperson considers the process of codifying laws to be of great importance. This process would enable aggregation of laws that regulate the same or a similar field into a single document. In other words, codification allows aggregation of laws of the same field in a single document. This process would ensure that the entire legislation of a field is contained in a single document and would also make it easier for law enforcement to identify and access laws of the same field.

The process of implementing laws in practice is linked to their clarity. With regard to this matter, in the 2018 report, the Ombudsperson considered it necessary to change the techniques of drafting legislation, respectively considered regulating the process after adoption of the laws amending and supplementing existing ones necessary. In this regard, the Ombudsperson considered that the Government of Kosovo in cooperation with the Assembly, through a law on legal acts, should regulate the procedure according to which after the adoption of the law amending and supplementing the existing law, those amendments and supplements should be incorporated into the basic law and exist as a single law. Such a regulation would make the legislation undergoing amendments and supplements easily accessible and usable. The Ombudsperson emphasizes that such action is necessary in order to facilitate these procedures for the practical implementation of laws.[21]

The process of adopting laws and promulgating the same in the Official Gazette is the process by which the laws enter into force. In this regard, the Ombudsperson has noted that in some cases when the law was published in the Official Gazette and entered into force at a later period, the same law repeals the previous law; however, in the Official Gazette, the previous law is repealed immediately upon publication and not at the moment of entering into force. These situations confuse law enforcement institutions since according to the Official Gazette there is a repealed law which is actually repealed when the new law enters into force and not when it is published in the Official Gazette. Such a situation arose with the adoption of the Law No. 06/L-005 on Property Tax, which was published in the Official Gazette on 15 February 2018 and which entered into force on 1 October 2018, while abolishing the Law No. 03/L-204 on Property Tax. In this case, the Official Gazette has placed the sign "REPEALED" on the Law No. 03/L-204 on Property Tax from the moment the new law was published on 15th of February 2018, i.e. misleading those who implement the law, as in reality the Law No. 03/L-204 on Property Tax was in force until the new law entered into force on 1 October 2018, thus resulting that the sign "REPEALED" was placed by the Official Gazette much earlier than needed.

Therefore, in order to avoid such situations, the Ombudsperson recommends responsible officials of the Official Gazette to be careful in this regard and correctly identify the period when the new law enters into force and only then announce that the old law has been abolished.

Within the constitutional mandate (Article 113, paragraph 2 of the Constitution) regarding possibility of raising issues of compliance of the laws, decrees of the President and the Prime Minister and the Government Regulations with the Constitution, the Ombudsperson, during the reporting year, has initiated 3 referrals before the Constitutional Court for the purpose of assessing compliance of the laws with the Constitution.

[21] Ibid, page 32.

In this regard, based on complaints received by the Kosovo Chamber of Notaries and the analysis made in the Law No.06/L-010 on Notary, in order to assess the compliance of the provisions of the Law No. 06/L-010 on Notary (Articles 32, 41 and 76) with the Constitution, the Ombudsperson on 19 April 2019 addressed the Constitutional Court a referral requesting assessment of compliance of Law No. 06/L-010 on Notary with the Constitution, and requested imposition of an interim measure pending a final court decision. The Constitutional Court, on 23 August 2019, with regard to this case, rendered a judgment according to which the contested provisions did not infringe the constitutional provisions.

For the purpose of assessing the compliance of the Law No. 06/L-114 on Public Officials with the Constitution, the Ombudsperson on 8 November 2019 submitted a referral to the Constitutional Court requesting an assessment of the constitutionality of the concerned law and the imposition of an interim measure by the court until the issuance of a final decision. With regard to the matter, the Constitutional Court, on 26 November 2019, published a decision ordering an interim measure and suspending the application of the Law No. 06/L-114 on Public Officials until 28 February 2020.

In order to exercise its constitutional mandate and its function as an institution ensuring equality in the country, the Ombudsperson, due to the numerous complaints received (over 40 complaints by the time of reporting) regarding Law No. 06/L-111 on Salaries in Public Sector, on 5 December 2019 submitted a referral to the Constitutional Court for assessment of the constitutionality of the Law No. 06/L-111 on Salaries in Public Sector, and for imposition of an interim measure pending a final decision by the Court on this matter. With regard to the matter, the Constitutional Court, on 19 December 2019, issued an interim measure suspending the application of the said law until 30 March 2020.

As for the publication of cases by the Constitutional Court judgments in the Official Gazette, the Ombudsperson noted that the laws published in the Official Gazette do not have notifications that provisions of laws have been repealed by the Constitutional Court. A concrete example is the assessment of the compliance of Article 14, paragraph 1, subparagraph 1.7 of the Law No. 03/L-179 on the Red Cross of the Republic of Kosovo with the Constitution. In this case, the Constitutional Court with Judgment KO 157/18 rendered on 28 March 2018, considered that paragraph 1.7 of Article 14 of the Law No. 03/L-179 on the Red Cross of the Republic of Kosovo is not in accordance with the Constitution and thus repealed the same. However, such notification cannot be found in the Official Gazette thus meaning that the Law on the Red Cross, respectively its Article 14, paragraph 1.7 is in force regardless of the fact that this provision has been repealed by the Constitutional Court. The same situation is present in the case of the Law No. 06/L-048 on Independent Oversight Board for Civil Service of Kosovo, the provisions of which have been repealed by the Constitutional Court under Judgment KO 171/18 dated 20 May 2019. The said provisions are Article 4, paragraph 1, in conjunction with Article 3 paragraph 1.1, Article 6, paragraph 1.3 and Article 19 sub-paragraphs 5, 6, 7 and 8, for which the Constitutional Court has ruled that they are not compliant with the Constitution and which are still present in the Official Gazette as if they were still applicable.

In this regard, the Ombudsperson considers that urgent action should be taken to place notices in the Official Gazette for all laws which have been partially or completely repealed by the Constitutional Court since they are not in accordance with the Constitution and that any continuation of their implementation constitutes a violation of the Constitution.

Judicial system

The Constitution of the Republic of Kosovo stipulates that everyone shall be entitled to judicial protection in the event of a violation or denial of a right guaranteed by the Constitution or the right to effective remedies if found that such rights have been violated. Everyone is guaranteed the right to a trial that is independent, impartial and based on the law.

The protection of human rights in court is complemented by the judicial control of the administration or the control of the legality of the acts of administrative organs, which determine the right, obligation or interest based on the law. By imposing this protection, citizens are, to some extent, safe from the unlawful acts of the administration.

A remaining challenge of the judicial system is the failure to implement human rights and freedom standards, as required by Article 53 of the Constitution, according to which the interpretation of human rights and fundamental freedoms should be made in accordance with judicial decisions of the European Court of Human Rights (ECtHR). References to the ECtHR's practice are scarce, and even in cases where there is reference; the same is made in a general manner without specifically defining ECtHR's assessment and relevance of the circumstances of the case in practice.

With regard to protection of human rights and freedoms, in the field of judiciary, the Ombudsperson has a limited mandate, which is defined by the Law on the Ombudsperson, whereby the Ombudsperson may make general recommendations on the functioning of the judicial system, without interfering in legal cases and legal proceedings being conducted before the courts, apart from cases related to allegations on the administration of justice, namely delays in court proceedings in filing complaints and in the execution of judicial decisions.

Based on the number of complaints submitted to the OIK during this reporting year, citizens continue to face delays of several years regarding adjudication as well as non-enforcement of final court decisions which in turn affect the realisation of their rights. Moreover, the Ombudsperson notes that citizens perceive that judges lack impartiality during the adjudication of their cases. Due to the above mentioned, the Ombudsperson has received requests to monitor court hearings.

Based on the applicable law, all final judgments must be published, as the publication of judgments helps the judicial system be more transparent and accountable before the citizens. Thus the Ombudsperson notes that there is an increase in the number of judgments published.[22]

Disciplinary liability of judges and prosecutors

The Assembly of the Republic of Kosovo adopted the Law No.06/L-057 on the Disciplinary Liability of Judges and Prosecutors,[23] which vests the Ombudsperson with additional competencies. This Law, in specific cases, vests the Ombudsperson with two types of competencies: (1) the competence to request the Prosecutorial Council and the Judicial Council to initiate disciplinary proceedings, and (2) the competence to appeal to the Supreme Court, in individual cases.

[22]https://www.gjyqesori-rks.org/2019/12/16/rritet-numri-i-aktgjykimeve-te-publikuara/
[23]Published in the Official Gazette No. 23/2018, dated 26.12.2018.

The Ombudsperson considers that both competencies set out in the Law exceed the ordinary competencies of the Ombudsperson, taking into account the Law on the Ombudsperson, other applicable laws and the opinions of the Venice Commission.

With regard to the competence to request disciplinary proceedings, the Law on the Ombudsperson recognizes this competence only in specific situations, namely in cases of failure to cooperate with the Ombudsperson: "Refusal to cooperate with the Ombudsperson by a civil officer, a functionary or public authority is a reason that the Ombudsperson requires from the competent body initiation of administrative proceedings, including disciplinary measures, up to dismiss from work or from civil service" (*ibid*, Article 25, paragraph. 2; emphasis added). Whereas, as seen above, the said Law exceeds this provision, thus giving the Ombudsperson the competence to seek the initiation of disciplinary procedures even in the event of failure to comply with the timeframes for making decisions, as well as in cases of dismissal of complaints without meeting the legal requirements.

According to the competence to submit an appeal to the Supreme Court, the situation is even more distinct. According to the Venice Commission *"In general, it would seem preferable to give the People's Advocate the power to make general recommendations about the functioning of the courts system, and exclude the power to intervene in individual cases...*"[24]

The Ombudsperson of the Republic of Kosovo's competencies to intervene in court cases are broader than recommended by the Venice Commission on national human rights institutions in general; however, even in Kosovo law, the Ombudsperson is not given powers to initiate judicial complaints regarding individual cases. Instead, the Ombudsperson, under other applicable laws, has the right to only: (1) initiate court cases in general cases, but not in individual cases, or (2) intervene in individual cases, but not initiate complaints in such cases. For example, the Ombudsperson:

- may present arguments in support of any party to the proceedings in the capacity of *amicus curiae,*[25] however, the same may not submit complaints on behalf of that party;
- may initiate administrative conflict where such action is in the interest of the general public, or protect its rights,[26] but not in the case of individuals; and
- may request the Constitutional Court to carry out abstract review of the constitutionality of laws, decrees of the President and Prime Minister, regulations of the Government and the Statutes of the Municipalities[27]; however, he may not file a complaint for the protection of the rights of individuals.

By granting the Ombudsperson the competence to file complaints directly with the Supreme Court in individual cases, the law in question significantly exceeds not only the international standards set by the Venice Commission, but also exceeds the Ombudsperson's current competencies under previous laws of the Republic of Kosovo.

[24] CDL-AD(2007) 024, Opinion on the draft law on the People's Advocate of Kosovo adopted by the Venice Commission at its 71st Plenary Meeting (Venecia, 1-2 qershor 2007), §19)
[25] see Law on the Ombudsperson, Article 16, paragraph 9; and the Law No. 05/L-021 on the Protection from Discrimination, Article 9, paragraph 2, sub paragraph 13
[26] see Law on Administrative Disputes, Article 10, paragraph 2, and Article 18
[27] see Constitution, Article 113, paragraph 2

Based on the above-mentioned law, the Ombudsperson has received a number of complaints against judges and prosecutors, which he has proceeded within the deadlines as stipulated by the Law on Disciplinary Liability of Judges and Prosecutors.[28] It is worth mentioning that the Ombudsperson has received responses in all these cases and has had good cooperation.

Delay of judicial proceedings

As in previous years, the Ombudsperson continues to receive complaints against courts regarding delays in court proceedings.

Complaints are mainly related to procedural delay regarding disputes of civil, property or employment relationship nature. This comes as a result of the large number of old cases pending and the presentation of new cases.

KJC in its nine-month statistical report of courts - 2019 reported that the number of cases remaining unsolved is 219,922. According to this report, courts had at a work a total of 328,080 court cases, and have resolved 108,004. During this reporting period, citizens have filed 82,521 new court cases.[29]

In light of the above, it can be concluded that there is a large number of cases before courts pending review and adjudication that should be resolved in accordance with the legislation, which requires the KJC and other responsible institutions commitment toward finding a legal solution.

The Ombudsperson observed that when it comes to procedural delays, particularly in cases that bounce from one instance to another during the review process or in situations when cases are returned for re-trial, the tendency of the courts is to calculate the period of deliberation from the day when the case was referred to that court, whereas according to ECtHR case law, the calculation period for resolving a court case commences from the day the citizens file the lawsuit with the competent court,[30] moreover, when filing before an administrative authority is a prerequisite for filing before the court, the time limit may also include the duration of the preliminary mandatory administrative procedure.[31]

Another factor contributing to prolonged judicial procedures before courts is the registration of cases returned for re-trial with a new number, which in fact does not represent the accurate timeframe when the lawsuit was initiated before the Court and causing new delays, thereby resulting in the case not being addressed within a reasonable time-limit. In this regard, the Ombudsperson in 2018 recommended the Kosovo Judicial Council to stipulate with an internal act that cases returned for re-adjudication should be treated with priority over new claims.[32] This recommendation has received positive feedback from the KJC and according to the KJC this recommendation is expected to be implemented through the Case Management Information System (CMIS).

[28] A.nr. 749/2019, A.nr. 682/2019, A.nr. 672/2019, A.nr. 652/2019, A.nr. 627/2019, A.nr. 591/2019
[29] https://www.gjyqesori-rks.org/wp-content/uploads/reports/25932_Raporti_Statistikor_Gjykatave_Nentemujor_2019.pdf , faqe 3
[30] Poiss vs. Austria, § 58 and Bock vs. Germany § 35.
[31] Konig vs. Germany § 98 ; X vs. France § 31 ; Kress vs France (GC) § 90.
[32] Ex officio Report with Recommendations A.no. 445/2018

However, the Ombudsperson considers that delays in the processing of court cases violates the right to a fair trial, due process within a reasonable time, the right to effective remedies and the right to judicial protection of the rights set forth in Article 54 of the Constitution of the Republic of Kosovo.[33]

Also, the failure of the Assembly of Kosovo to appoint members of the Independent Oversight Board for Civil Service of Kosovo contributes to increasing the number of cases in the courts. The council has not been functional since 21 January 2019 due to a lack of quorum and as a result, hundreds of complaints regarding employment disputes of civil servants and candidates for admission to the civil service have not been reviewed.

Non-execution of court decisions

The Ombudsperson has received a considerable number of complaints[34] during this year with regard to the non-execution of court decisions.

The number of civil executions cases at the national level remains low, which is of concern to the Ombudsperson. The KJC's nine-month report of 2019 on civil execution cases shows that the courts have had 10,516 cases, of which 5,073 were resolved and 5,443 remain.[35]

In this case, the Ombudsperson draws the attention of the relevant authorities that, according to the practice of ECHR and the ECtHR, the enforcement of final decisions is part of the right to a fair and impartial trial which obliges them to take the necessary measures for the implementation of this right.

The number of complaints submitted with the OIK indicates that citizens have great difficulties in exercising and protecting their rights in the first instance proceedings before the Basic Court in Prishtina - Department for Administrative Matters. They are related to inefficiency of this court in administrative disputes. The investigations indicate that this court, when reviewing administrative disputes, in addition to delaying cases, does not decide on the substance of the case, but only on procedural violations, returning the case for decision-making to the administrative body[36], while administrative bodies during review mainly render rejecting decisions and the case ends in court again.[37]

This situation is concerning for the Ombudsperson as citizens are deprived of their right to effective remedies. In particular, this situation affects people with disabilities applying for disability pensions at the Department of Pension Administration of Kosovo (DPAK) and MLSW, who are hereby obliged to follow repeated procedures.

Private enforcement agent

The right to a fair and impartial trial, which includes the issue of final decisions in administrative and judicial procedures, have been enforced by private enforcement agents, improving the level of

[33] A.no. 558/2019, A.no. 925/2017. In both cases, the claims were filed in 2012 with the Basic Court in Pristina.
[34] A.no.189/2019, A.no.270/2017, A.no.418/2019, A.no.628/2019, A.no.801/2019; A.no.461/2018 A.no.850/2018
[35] https://www.gjyqesori-rks.org/wp-content/uploads/reports/25932_Raporti_Statistikor_Gjykatave_Nentemujor_2019.pdf , faqe 38.
[36] A.nr. 543/2016
[37] A.nr. 329/2018, A.nr. 92/2018, cases have not yet been decided upon by the Basic Court in Pristina.

execution of administrative and judicial decisions [38] and the citizens have been offered more efficient and effective ways to realize their rights. But in some cases private enforcement agents have exceeded legal norms, which set limits and exemptions regarding the execution of decisions3 [39], by issuing enforcement orders to commercial banks, in which case they freeze the claimants' bank accounts.

The Ombudsperson during the investigation noted that the bank accounts were frozen by the private enforcement agents due to non-payment of debts; however, the same bank accounts were used by parties to receive pensions thus also resulting in freezing of this income in contradiction to the law which sets out legal limitations with regard to amounts that cannot be subject to enforcement. Following the Ombudsperson's intervention with the private enforcement agent in terms of restructuring debt, the complainants' issues were resolved so that their bank accounts could be freed and seized in accordance with the law.

Executive power

Good governance, good administration and human rights are interwoven in such a way that they are inseparable and empower each other. The work of state bodies is closely linked to human rights and freedoms.

Ombudsperson Institution, as a state administration control mechanism, has an important role in strengthening the accountability of the state administration. It can also contribute to improving the quality of administration by detecting cases of "mismanagement" to raising the awareness of civil servants, in public expectations, with regard to good governance and good administration. This makes the administrative system more transparent and accessible to all citizens.

It is worth noting here that a significant number of complaints against the executive is about restricting access to public documents.

The Ombudsperson has opened 29 *ex officio* cases for investigation, out of which a significant number of issues relate to the work of the executive at both levels of government, regarding which the Ombudsperson has issued recommendations or expressed his views, in which case the following are worth mentioning:

- positive state obligations regarding protection against domestic violence for the right to life, deriving from the Constitution of the Republic of Kosovo and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- positive obligations guaranteed by the Constitution of the Republic of Kosovo and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the issue of children in street situation;
- evaluation of social service delivery system in Kosovo;
- situation of persons with disabilities in the Municipality of Gjilan;
- increasing the number of police officers in Janjeva;

[38] Law No. 04/L-139 on Enforcement Procedure, Law No.05/L-118 Ameding and Supplementing the Law No. 04/L-139 on Enforcement Procedure, Article 22, enforcement document.
[39] Ibid, Article 111, and article 112 Restriction of execution

- lack of effective legal remedies for the settlement of labour disputes from civil servants and candidates for admission to the civil service;
- treatment of persons with HIV and AIDS in Kosovo; etc..

The Ombudsperson, in addition to the above mentioned issues, has issued recommendations or expressed its opinions on complaints filed by natural or legal persons concerning:

- harmonization of the Law No. 06/L-012 on the Capital City of the Republic of Kosovo, Prishtina with Law No.04/L-076 on Police;
- amendment of the Administrative Instruction (MLGA) No. 2014/01 on the procedure of Appointment of the Deputy Mayors in the Municipalities;
- the issue of non-renewal of the work licences of the second category surveyors and for non-alignment of the legal provisions of the secondary legislation;
- administrative fee in the amount of EUR 30 set by the Chamber of Physicians for initiating disciplinary proceedings against physicians;
- amending Administrative Instruction No. 02/2014 on Registration and Functioning of Non-Governmental Organizations;
- conditioning the equipping with booklet of blindness to the membership in the Kosovo Association of the Blind, in order to obtain the rights and benefits guaranteed according to the Law No. 04/L-092 for Blind Persons;
- storing and deleting personal data of persons involved in the Kosovo Police Information System (KPIS).
- failure to take appropriate actions to free public spaces in Fushe Kosove;
- denial of the right to education for children with disabilities at the Learning and Counselling Resource Centre “Xheladin Deda” in Peja;
- professional assessment of children with disabilities in child friendly environments in order to provide them with adequate education in accordance with their individual needs;
- Inadequate management of the sanitary landfill of waste in Velekince, Municipality of Gjilan.

The number of recommendations that the Ombudsperson has addressed to the Government and its stakeholders is 41, out of which only 9 have been implemented so far, while others either have not been implemented or are pending implementation. It should be clarified here that the Ombudsperson separates the issue of implementing recommendations from the responses to the Ombudsperson's requests during investigation of cases. With the response to the Ombudsperson's requests during the investigation phase the situation is relatively satisfactory; however, some government officials are completely negligent to the Ombudsperson's requests, emphasizing the Ministry of Foreign Affairs and the Ministry of Education, Science and Technology.

With regard to local government, the Ombudsperson has addressed 18 recommendations, out of which only 3 have been implemented, while the municipalities' responsiveness to the Ombudsperson's requests during the investigation stages is quite satisfactory.

The Ombudsperson points out that many of the issues presented in the 2018 Annual Report regarding executive power have remained unaddressed by the relevant authorities, but also by the Assembly of the Republic of Kosovo; whereas the 2018 Annual Report has not been reviewed by the Assembly, although it has been submitted within the deadline.

Public administration reform

The Ombudsperson welcomes the initiative for regulating public sector both in terms of organizing and in terms of regulating the wages issue, hence appreciating the European Union's assistance in the administration reform. A public administration reformed in accordance with the Constitution, the principle of separation of powers and the rule of law constitutes the basis of the functioning of the state. However, according to the Ombudsperson's assessment, the package of laws on administrative reform, in particular Law No. 06/L-114 on Public Officials and Law No. 06/L-111 on Salaries in Public Sector seem not to be in accordance with the Constitution and the rule of law in general.

The Law on Public Officials grants the Government of the Republic of Kosovo the competence to establish the legal basis for the employment of public officials in the institutions of the Republic of Kosovo, including therein public officials in independent institutions and other entities in the public sector, without taking into account the specifics of the constitutional status of such entities. The Ombudsperson considers that the Law on Public Officials did not take into account the fact that different entities in the public sector have their organizational, functional and activity issues specifically regulated, in accordance with the Constitution of the Republic of Kosovo and their organic laws.

The Law on Salaries in Public Sector, inter alia, determines the salary and reward system for public officials, who are paid by the state budget and the rules for determining the salaries of publicly owned enterprises' employees in Kosovo. The Law on Public Sector Salaries authorizes the Government of the Republic of Kosovo and the Assembly of the Republic of Kosovo to issue bylaws for the implementation of this law. The Ombudsperson considers that this law and Annex one (1) of this law have failed to convey the constitutional spirit in terms of separation of powers, equality before the law, and the guarantee of property rights. Furthermore, the Ombudsperson considers that this law is incompatible with the principles of the rule of law, due to deficiencies in terms of its clarity, accuracy and predictability. The Ombudsperson has received more than 40 complaints from various public sector entities filed against the Law on Public Sector Salaries, including complaints from health, education, police and civil service employees.

The Ombudsperson raised the issue of the compliance of the Law No. 06/L-114 on Public Officials and the Law No. 06/L-111 on Salaries in Public Sector with the Constitution of the Republic of Kosovo, and has also required the imposition of interim measures in both laws, in order to avoid the irreparable damage that could be caused by the application of these laws, in particular the Law on Salaries.

It should be mentioned that the Ombudsperson in the 2017 Report had informed the Assembly of his views regarding the salaries of the Government Cabinet, which he still considers to not have been based on the law and in contradiction to the Constitution. Such a raise of salaries has had a negative effect on the public sector, thereby exerting pressure on the Government and the Assembly upon

drafting the Law on Public Sector Salaries and that this law has undergone immediate changes, thus degrading the very purpose of the law and threatening budget sustainability and its implementation.

The Privatization Agency of Kosovo (PAK) and Special Chamber of the Supreme Court

Despite the Ombudsperson having received around 20 complaints against the PAK and the Special Chamber, the situation in terms of issues related to the PAK and the Special Chamber has remained almost unaffected.

The complaints mainly relate to delays in deliberation by the Special Chamber, either for compensation of unpaid salaries upon privatization of socially owned enterprises or in relation to property disputes over immovable properties privatized by the PAK.

The Ombudsperson considers that there are positive developments considering that the Law no. 06/L-086 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters has entered into force at the beginning of July 2019. This law has eliminated the obstacles to increasing the number of judges in the Special Chamber, an issue for which the Ombudsperson has reported to the Assembly several times. There are also positive developments regarding the implementation of the Law, as on 24 December 2019, the President of the Republic decreed 4 judges and the Judicial Council increased the number of professional associates, translators, and one legal officer promptly after the Law entered into force. Having said that, there are expected positive improvements with regard to the right to fair and impartial trial regarding the cases.

Public Enterprises

During the reporting year, 58 complaints were filed against publicly owned enterprises, out of which 21 were opened for investigation, while one case was subject to *ex officio* investigations.[40] The complaints were chiefly related to publicly owned enterprises' failure to reply in requests addressed to them, the restriction of access to public documents, non-enforcement of final court decisions, etc. During the investigation of the complaints and actions of the Ombudsperson, 7 complaints were resolved at the request of the complainants.

The Ombudsperson has issued a Report with Recommendations [41] concerning the conditioning of disconnection from the heating grid to the payment in full of the debt, in accordance with an internal TERMOKOS regulation. While handling this case, the Ombudsperson has found that the TERMOKOS's internal regulation is in violation of the Energy Regulatory Office's Regulation on disconnection and reconnection of customers in the energy sector and has addressed recommendations to TERMOKOS and ERO regarding the harmonization of internal regulation of TERMOKOS with ERO Regulation. The Ombudsperson has received a response from ERO with the commitment that these regulations will be harmonized.

The Ombudsperson notes that conditionality as a form of prompt debt collection is a frequently encountered method, not only in publicly owned enterprises but also in various executive departments,

[40] 595/2019 - OIK ./. N.P against the Public Enterprise (PE) "Ambienti" in Ferizaj, for having deprived the workers from the right to a break during working hours
[41] Case A.No. 131/2018

and that such cases have been reported through individual reports as well as annual reports of the Ombudsperson.

Responsibility regarding the living environment

The country's constitution lists responsibility for protecting the environment in the Chapter on Human Rights and Fundamental Freedoms,[42] and also environmental protection is defined in the fundamental values among the principles on which the constitutional order of the country is based.[43]

The Ombudsperson Institution during the reporting year has continued investigation, overseeing cases related to the right for a safe and healthy environment, and promoting such rights. These investigations have shown that actions to strengthen law enforcement, give proper orientation to environmental protection and remediation policies and improve the state of the environment must be given priority.

The situation with the air, water and land during the reporting year has not improved much. Having such environmental situation threatens the health of citizens. No significant activity was observed that would directly improve air quality. The construction of hydropower plants has caused the public's dissatisfaction and reaction.

There were no improvements made in terms of the right to privacy and enjoyment of home and protection against noise. The competent bodies have not yet managed to adopt the new law. The ecological tax, foreseen under the Law on Road Tax and Ecological Vehicle[44] continues not to be used pursuant to its purpose of collection. The coordination and co-operation of the competent institutions' activities for effective resolution of environmental problems still remains a challenge. No long-term plans for improving spatial planning as well as waste and landfill management have been noted.

In general, there is little progress in the area of the environment which is mainly marked by the adoption of relevant strategies in environmental issues.[45]

Promoting and educating citizens on the right to a safe and healthy environment remains at an early stage. There has been an improvement in public information and education on the impact of the environment on public health by competent health institutions, and unlike previous years there has been an increased civil society commitment to the field of environmental protection. The role of the media, in terms of raising public awareness and education on the importance of protecting the environment and good practices and their impact on human rights remains to be strengthened.

[42]Constitution of the Republic of Kosovo, Article 52, par. 2, Environmental Responsibility, "Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live."

[43]Ibid, Article 7 [Values]

1. Ibid, 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 economy.

[44]Law No.04/L-117 on Road and Ecological tax for Vehicles, Article 1 This law also regulates establishment of ecological tax for vehicles registered in Kosovo and for foreign vehicles. Ecological tax aims at increasing the quality of environment protection.

[45] Country Report * 2019 Kosovo, "Kosovo is at an early stage of preparation on environment and climate change. Some progress was achieved, notably through the adoption of the relevant strategies, but serious environmental problems continue to impact people's livelihoods and health."

No serious efforts have been noted to take action towards joining the Global Initiative on Sustainable Development Goals.[46]

The Ombudsperson has distributed the leaflet "*Responsibility for the living environment*"[47] with the purpose of informing citizens of their right to a safe and healthy environment, as well as informing the responsible institutions that ensure respect for this right.

On 25th of February 2019, the Ombudsperson, in response to the dissatisfaction expressed by citizens and civil society over the construction of hydropower plants on the Lumbardhi River, through a press release, urged the authorities to respect the right of public participation in decision-making and the right on information for environmental issues, as processes that must precede any project with environmental impact. It also demanded that the state strike a fair balance between citizens' interests in environmental protection, sustainable development, and hydro-energy development.

On 22 March 2019, the Ombudsperson on the occasion of World Water Day, through a press release, urged citizens and institutions that, in addition to constitutional obligation to protect the environment, should respect everyone's right to access information, participate in water-related decisions, and exercise the right to justice. Also, the video entitled "*The Right to a Safe and Healthy Environment*!" was released, with the purpose of conveying the message that "*by protecting the environment, we are protecting the Constitution, our lives and our country*." The video highlights the impact of air, water and soil pollution on human health and their vital role in human well-being.

On March 22, 2019, the video spot "Stop Discrimination" was launched, with the aim of promoting an environment of equal access and non-discrimination for all, regardless of the street and the facilities.

The Ombudsperson in cooperation with the National Audit Office in Kosovo, on 5 June 2019 during the World Environment Day, organized a roundtable with the theme: "*Safe and healthy environment - a human rights and constitutional responsibility"*. The roundtable was organized with the aim of discussing the state of the environment in Kosovo and finding modalities for adequate addressing of environmental problems by competent institutions. The importance of the cooperation of public institutions with the Ombudsperson and the General-Auditor was also emphasized in order to take actions to improve the environmental situation in the country.

The Ombudsperson was part of the activities organized in June 2019 as part of the project "*Advocating for environmental protection and energy efficiency in Kosovo"*, implemented by Environmentally Responsible Action (ERA) group, in partnership with BIRN Kosovo, TV Mreža and Bankwatch. Meetings were held with citizens, journalists, human rights activists and civil society representatives in Pristina, Ferizaj, Gjilan and Gjakova, whereby environmental issues addressed by the Ombudsperson' perspective were presented.

[46]Sustainable Development Goals: access to clean water and sanitation; ensuring affordable, reliable, sustainable and modern energy access for all; making cities and towns inhabited by people inclusive, appropriate and sustainable; taking urgent action to combat climate change and its impacts; water protection; protection, restoration, and sustainable promotion of the terrestrial ecosystem, sustainable management of forests, combating desertification, preventing land degradation and preventing loss of biodiversity.

[47]https://www.oik-rks.org/2018/11/01/e-drejta-per-mjedis-te-sigurt-dhe-te-shendetshem/

On 16th of September 2019, the Ombudsperson attended the Kosovo Sustainable Development Week (KSDW), with theme: "*Environmental Protection: Request for Regional Cooperation and Good Governance"*. In this event were discussed environmental law issues from the perspective of the Ombudsperson.

On 10th of December 2019, upon the marking of the International Human Rights Day, the Ombudsperson in cooperation with civil society organized the ""Stand up for Human Rights" march. The aim of this march was to send the message of increased, inclusive and inter-institutional commitment to the protection of human rights, with a particular emphasis on protecting the right to a safe and healthy environment. The Ombudsperson, in his closing remarks, expressed concern about the environmental problems facing the country such as: air, water and land pollution, lack of green spaces, degradation of land and rivers, construction of hydropower plants, problems with noise, poor waste management.

Air

Air quality remains one of the enduring problems with grave impact on citizens' right to safe and healthy environment, and serious threat to citizens' health[48]. Although there is no detailed study on distribution and concentration of pollutants, the energy sector [49], transport and industry (quality of petroleum products[50].), agriculture, and waste[51] as well as the non-ecological heating system (wood and coal [52]) remain the largest polluters in the country.

Even in 2019, in some localities of the country were observed particles exceeding PM 10 and PM2.5[53]. Significant exceeds of Maximum Allowed Values (MAV)[54] were registered at most monitoring stations during January, February, October, November, and December.[55]

Despite serious problems with air quality, finding a place without an action plan and additional safeguards, this year as well, in times of extreme crisis, January-February and October, November and December, is indicative of the failure of the competent authorities to respect constitutional responsibility for the protection of the environment and to fulfil the obligations set out in Law No. 03/L-160 on Air Protection from Pollution Law No. 03/L-025 On Environmental Protection An inter-ministerial Task Force On Air Protection from Pollution has not yet been established.

No action was taken in compliance with the obligations arising from the resolution of the Assembly of Kosovo on air pollution of 2 February 2019.[56] The state's obligation to apply energy efficiency

[48] Report for Kosovo 2019, "Air Quality Continues to Pose Major Threat to Human Health", p. 84
[49] Kosovo Environmental Protection Agency, Kosovo State of Environment Report for 2018.
[50] National Audit Office, Report, October 2019, Petroleum Quality Control, and Monitoring System, "The existing petroleum quality control and monitoring system is unable to ensure the quality of petroleum products in imports and in the internal market ","The quality of imported petroleum derivatives has not been ensured to the proper level ".
[51] Institute for Development Policy / INDEP, Kosovo Air Quality, Towards European Standards, p. 14.
Kosovo Agency of Statistics, Series 2: Agricultural and Environmental Statistics Industrial Waste Survey, 2018, December 2019.
[52] Institute for Development Policy / INDEP, Kosovo Air Quality, Towards European Standards, p. 5.
[53] Kosovo Environmental Protection Agency, Kosovo State of Environment Report for 2018.
[54] Administrative Instruction No.02/2011 On Air Quality Assessment,35 days allowed to exceed PM10 within one year
[55] https://kallxo.com/gjate/perballja-e-kosoves-me-vrasesin-e-heshtur/ "In Kosovo, the number of days with allowed pollution is 35 while only this year (2019) this number has reached 50 days with air pollution above the permitted values ".

measures remain at the will of the individual, without institutional support and without any form of state subsidy. No significant change was observed in the expansion of the co-generation network[57], expanding and re-cultivating green spaces and forests;[58] providing citizens with facilities to replace harmful non-ecological heating methods with clean alternative ecological methods;[59] improving public transport[60]; in the roadworthiness of vehicles or in the management of urban and industrial waste. The failure of competent authorities to take concrete and effective actions to improve the air condition is an indication of the restriction of the right to a safe and healthy environment, given the short-term effects of air pollution from particles, which lead to an increase in the number of patients with bronchial asthma, chronic bronchitis, chronic obstructive pulmonary disease in the elderly, increased hospital admissions for cardiovascular and respiratory diseases, cancer, shortening of life, and increased mortality rates [61].

There has been improvement in the air quality information system. The monitoring day continues to be selected by the operator itself, and may not reflect the actual status of operator discharges, and the accuracy of operator reporting is still indicative and unrealistic. Operator reports are not verified by the competent supervisory bodies/inspectorates. Air measurement assets have been received this year, but they have not been made operational until the end of the year. Monitoring stations have continued to operate with various problems. The data generated by these stations report the overall state of air quality without identifying the source of emissions (energy, transport, households, heating, etc.). The deficiencies in the functioning of some of the parameters during different time periods due to damages, failures or simply a lack of service[62] questions the relevance of such information.

One of the problems identified, with an impact on air pollution, is the lack of waste management and the impact of odours on the environment. Regarding the situation at the transfer waste landfill in the "Ali Ibra" street in Gjakova, the Ombudsperson has addressed the National Institute of Public Health (NIPH)[63], with a request to assess the impact of the odours on public health. On 1st of November 2019, the NIPH through Assessment No. 01/1261, on the sanitary-hygienic and epidemiological situation, found that the "*situation in 'Ali Ibra' neighbourhood in Gjakova poses a risk to the health of citizens, although it was found that there is currently no epidemic, but that may occur as a result of the situation created on the ground*". The relocation of the landfill is one of the 15 recommendations of the NIPH to the MESP and Municipality of Gjakova, and implementation of these recommendations is being monitored by the OIK.

Spatial planning problems and omissions in the process of construction control have made ventilation systems and building chimneys limit the right to a safe and healthy environment, the right to privacy and the right of citizens to home enjoyment.[64]

[56]Resolution of the Assembly of Kosovo on Air Pollution, 2 February 2019, Article 7. "
[57] Ibid, Article 7. "
[58] Ibid, Article, 8.
[59] Ibid, Article 9
[60] Ibid, Article 13
[61] National Institute of Public Health of Kosovo, Air Pollution Analysis in Kosovo, Pristina, 24 December 2019
[62] Ibid, pg.27
[63] A. No. 750/2019
[64] A. 342/2018

Water

This year the legal obligation for sustainable development and utilization of water resources, as something indispensable for public health, environmental protection and socio-economic development of the country has continued to face numerous ambiguities. The competent bodies for water resources administration and management[65] have failed to provide resource protection against pollution, overuse and misuse.

Failure to manage waste, particularly mining wastes [66], the operator discharges, uncontrolled urbanization, and intensive agriculture are the factors that have continued to affect water pollution. Uncontrolled exploitation of water resources and damaging riverbeds, by exceeding capacities, remains one of the forms of water resources degradation, with irreparable consequences to the ecosystem. The compacting of river subtract with machinery is still continuing; as well as excavation of borrow pits, both near and inside the rivers; excavation at the confluence of tributaries joining the mainstreams; construction of roads on riverbeds; changing the natural riverbed flows; soil erosion; reduction of river substrate stability especially in case of floods; as well as natural change in the river's flora and fauna ecosystem.

Preventive measures, measures to minimize the use and prevent pollution, the polluter pay and the user pays principle still remain unenforceable legal provisions. Although prohibited by law, the extraction of sand, gravel, stones, soil deposition, disposal of waste, solid materials and discharge of untreated liquid matter into water streams, lakes, accumulations, and their shores has continued. Extreme pollution from untreated sewage discharge into rivers and smells continued to limit not only the right to a safe and healthy environment but also the privacy of citizens and the enjoyment of citizens' property. The lack of river treatment prior to the discharge in rivers is estimated to be one of the main pollutants of surface water. The number of implants remains limited while their installation is still in the planning phase. The discharges of sewage and industrial water make the rivers Sitnica, Ibar, Drenica, etc. to be the most polluted rivers in Kosovo. During the reporting year, the Ombudsperson investigated the degradation of the Gracanka River, and the impact of pollution on citizens' rights [67].

Kosovo, in particular the eastern part, during the reporting year was characterized by low rainfall and low water levels.

The country's water resources continue to be used by both the operators and the industry. The biggest water users continue to be KEK, Feronikeli, and Sharrcem. The uncontrolled runoff of waters from the Mirash landfill and ash landfill in Obiliq (the blue lake where discharges take place) and their penetration into the groundwater[68] is considered to be alarming. Also, the discharge of heavy metals emissions during the technological process by Feronikeli still continues. Heavy metals content in the

[65] Law No.04/L-147 On waters of Kosovo Article 13 Responsibilities of the Ministry 1. The Ministry is responsible for: 1.5. Administration and management of all water resources in the territory of the Republic of Kosovo; 1.6. Conducting all operations and administrative activities, and professional jobs and other organizational development that are obliged by this Law;

[66] Kosovo Report 2019, "Hazardous Mining Waste, as well as Industrial Discharges Directly into Rivers and Industrial Landfills, continue to pose a serious risk to soil and water".

[67] Ex Officio, 631/2019.

[68] Hydrogeochemical analyses of the ground water in the Mirash landfill area and problem analysis Control report, GIZ 2016, M. Sc. Eng. Evelina Rathje and the show "Aunt in Kosovo", May 24, 2018.

initial ore such as Fe, Ni, Co, Cd, Cr, As, Pb, etc. and the metallurgical processes that accompany the whole process characterize the Category A pollutant - Feronikel[69].

Hydropower plants

The construction of hydropower plants in the country has incited a lot of reaction and dissatisfaction from citizens and civil society. The process of hydropower plants operation has been accompanied with great uncertainty due to the lack of transparency by the institutions responsible for the legality of their operation, especially regarding the respect of public participation processes in decision-making and access to information. The low energy production capacity in relation to the serious impact on the environment, disruption of watercourses and deterioration of habitats are sufficient indications of the immediate need for a careful reassessment of hydropower operation policies and the use of water for power generation.

Considering that the issue of hydropower operation in Deçan and Shterpca is being accompanied with great uncertainties and the responsible institutions have never been sufficiently clear regarding the legality of hydropower operation with their actions towards resolving the issue stagnating, whereas the reactions and dissatisfaction of citizens and civil society increasing, on 17th of July 2019, the Ombudsperson has addressed a request for interim measures to the minister of MESP.

While a broad and comprehensive debate is taking place in public on this issue, the responsible institutions have never been sufficiently clear about the legality of hydropower operation and their actions have remained weak in terms of resolving the issue, while reactions and dissatisfaction of citizens and civil society are on the rise. All efforts by the authorities so far to address the problem and citizens' dissatisfaction are proving to be ineffective in terms of resolving the problem.

Noting that in this particular case we are dealing with environmental and water impact, the Ombudsperson, based on Law No.04/L-147 on Waters of Kosovo, whose purpose is to protect water resources from pollution, overuse and misuse, and which clearly establishes that the Ministry of Environment and Spatial Planning is responsible for enforcing laws and sub-legal acts in the field of water resources, including other laws in the field of environment, considers that the Ministry is the competent body which should provide clear explanations on this matter.

Earth

Citizens' right to a safe and healthy environment continues to be limited by soil pollution and degradation. Specific policies and measures that would affect land protection, and which would prevent the environmental and socio-economic consequences of land degradation, have been lacking.

Changing of land use from agricultural land to construction land, occupation of the land with different types of waste generated by industry, mining, quarrying, transport, radioactive materials and urban waste, coal mining by surface mining, wastewater discharge, have continued to cause changes in the chemical, physical or biological properties of the soil resulting in the weakening of its productive potential[70]. The Ministry of Agriculture, Forestry and Rural Development and municipalities do not

[69]Kosovo Environmental Protection Agency, Kosovo State of Environment Report 2018, p.52
[70] Ibid., P. 27. "Land area with constructions in 2001, 24978.47 ha, reached 51057.52 ha in 2018"

have accurate information regarding the land area that has been changed. The land information system is still lacking.

Despite the requirements emerging from of the Law on Spatial Planning for sustainable and balanced development, protection of agricultural land, and the environment, there is still serious lack of engagement by the competent central and local level bodies to control the rapid transformation of agricultural land into construction land.

Installation and operation of quarries in the country, particularly illegal operators[71], has continued to be one of the serious problems in the country. The issue of operation, compliance with the procedures for legality of operation remains an issue to be carefully considered, due to procedural uncertainties.

During the reporting year, the Ombudsperson has investigated the legality of the operation of the installed stone quarry of the site "Kusari Cave", in the village called Kusara, in the municipality of Gjakova [72]. Following complaints and reactions in the form of protests by residents of the villages of Kusar, Dol, Petershan, Lipovec and Raça for environmental impacts and irregularities in the operation of the quarry, the Ministry of Environment and Spatial Planning withdrew the environmental consent for the operation of the quarry.

The inclusion of forest areas within the protected areas has failed to prevent further damage to forest areas. Deforestation, illegal construction in protected areas and road construction continued. Reforestation is not being achieved in proportion to the degradation of forest areas.

Waste

Despite the impact of waste pollution on the environment and human health, as well as the long-term and irreparable consequences, the competent authorities have not yet been able to take effective actions to improve waste management and landfills. No steps have been taken to align with the global sustainable development initiative, which would include reuse, treatment and recycling of wastes. The collection, transportation, treatment, and final disposal of waste, including monitoring and care even after these activities are completed, are issues that now require more rapid action and serious state scrutiny.

Regional sanitary waste landfills in Mirash (Prishtina), Dumnica (Podujeva), Velekinca (Gjilan), and Landovica (Prizren), despite the obligations deriving from Law No. 02/L-30 on Waste, for proper waste management, creating conditions for reducing the risk of waste, continue to operate with problems such as: malfunction of wastewater pumping systems; poor compression of stored waste and insufficient waste coverage; discharge of untreated waters from landfills, into rivers and their penetration into groundwater.

Pollution from plastic packages and bags requires serious scrutiny and prohibition of use and replacement with recyclable materials.

[71] https://www.kosovo-mining.org/aktivitet/komunikate-per-media-prishtine-31-dhjetor-2019/, "During 2019, ICMM Inspectorate has had an action to implement Operative Plan for prevention and cease of illegal operations together with Kosovo Police, Inspectorate of Environments, Inspectorate of Forestry ad Municipal Inspectorates. Upon completion of this action, tapes to cease the work have been put in 194 illegal operations sites, 99 separation plants, 16 mining, 78 concrete and asphalt bases and one processing plan".

[72] Ex Officio 416/2019.

The Ombudsperson has published the *ex officio* Report with Recommendations *No. 479/2017* regarding failure to manage the sanitary landfill in the Velekinca village of Gjilan. This report evidences problems in keeping the landfill under control and limiting the easy access of unauthorized persons, often juveniles, within the landfill, whereby the Ombudsperson found that not putting in place a fence that would prevent the entrance of unauthorized persons, which has even resulted in a loss of life, is an indication that the right to a safe and healthy environment for citizens is violated. The report also concludes the failure of the Inspectorate of Environment and Spatial Planning and Municipal Inspectorate to take measures in line with the applicable legislation for supervision of the operator managing the waste landfill.

Noise

The citizens' right to privacy and enjoyment of property continues to be violated from the noise, vibrations and noise emitted by industrial operators, hotels, transport and individuals. This year as well, the efforts of the Ministry of Environment and Spatial Planning to issue a law that would guarantee elimination, prevention or reduction on priority basis of adverse effects, including nuisance from exposure to environmental noise, have still remained as draft laws. Also, no interference was noted in the placement of panels in highways, which would protect the settlements near highways from the noise.

Area of special economic interest "Fusha e Mihjes së Re" [New Mining Field]

The residents of the special area of economic interest "Fusha e Mihjes se Re", who have not been expropriated, continue to be victims of the state's inability to find a solution. The state of the environment is far from desirable standards and pollutant rates, according to existing reports, often exceed the allowed limits established by local legislation. Despite the positive obligation of the State, the displacement, expropriation or movement of a significant number of residents from those areas, as a proportionate and effective measure to resolve the issue has not been completed since 2004. The decision to divert the mining line by surpassing the rest of the Hade village left the citizens in a limbo situation by restricting their right to a safe and healthy environment, the right to life, privacy and access to the property and freedom of movement.

Spatial planning

The failure to adhere to Article 52 of the Constitution, which guarantees the promotion of a democratic process of public participation in environmental planning processes, as well as the lack of transparency, have led to continued establishment of spaces that fail to create an environment that is balanced, sustainable, and based on public and economic needs.

The lack of coordination of actions between ministries, municipalities, and local and international organizations with the aim of harmonizing spatial planning in Kosovo has led citizens to still continue facing with the lack of regulated sustainable premises that will provide equal treatment, free movement, adequate access to public services, and high quality of life. The non-inclusion of all

citizens' interests, particularly the needs of people with disabilities, elderly people, children, youth[73] in detailed regulatory plans, is considered to have a serious impact on human rights.

The quality of citizens' life continues to be aggravated by the failure to adhere construction terms for buildings such as the percentage of the total area used for the footing of the building in relation to the surface of the cadastral parcel; percentage of total green area for absorption of atmospheric rainfall in proportion to the surface of the cadastral parcel; minimal requirements for vehicle parking; the right to natural lighting; unrestricted access to public roads and infrastructure; environmental and noise pollution restrictions[74]; conditions for protection against fire, floods, earthquakes, etc. The inspection supervision and final inspection continue to function with many problems. The failure of the State to respect human rights, equal treatment, free movement, adequate and non-discriminatory access of people with disabilities to public services due to the non-inclusion of their needs during the spatial planning, remains a concern. Also, no improvement has been noted in terms of facilitating access to buildings, particularly in the buildings of public institutions, as foreseen by Administrative Instruction No. 33/2007 for Construction Buildings Technical Terms of Accessibility to Disabled Persons[75].

During the reporting year, the Ombudsperson published the Report with Recommendations *Ex-officio* No.340/2017 on the situation of persons with disabilities in the Municipality of Gjilan, related to the access of persons with disabilities (PWDs) to public properties, road infrastructure, etc. The report found that failure to reasonably adapt/accommodate persons with disabilities, in accordance with their specific needs, constitutes discrimination based on a disability, as defined by Article 1 of the Law on the Protection from Discrimination. The Ombudsperson has recommended the adoption of the Municipal Strategy for PWDs, and the upgrading of school infrastructure, as well as building of slopes in pedestrian crossings for people with disabilities.

Arbitrary occupation of public spaces in urban areas and the continuous neglect by authorities responsible for their freeing such areas remains a serious problem. The Ombudsperson, in its Report with Recommendations on the failure to take adequate actions for the release of public spaces in the Municipality of Fushe Kosova[76], has concluded that the concerned Municipality by not freeing the occupied public spaces has prevented the free and unhindered movement of citizens, thus recommended the Municipality of Fushe Kosova to take immediate actions, in line with legal competencies and responsibilities and in cooperation with other responsible authorities for the freeing of occupied public spaces, so that citizens can be able to move freely and unimpeded.

Problems related to institutional supervision of the assessment of conformity of completed construction buildings with construction permission, other applicable regulations and requirements, remains a serious issue that requires immediate addressing, and which has a direct impact on the right to life, the right to safe and sound environment, and the right to property. The lack of supervision and final certification of the use of buildings represents the immediate need for the competent institutions to take measures to assess the safety of buildings for compliance with the rules laid down in the

[73]Administrative Instruction MESP - No. 01/2018 on Elements and Basic Requirements for the Design, Implementation and Monitoring of Detailed Regulatory Plans.
[74]Law No. 04/L-174 on Spatial Planning, Article 21, "Terms of Construction'
[75]Administrative Instruction no. 33/2007 for Construction Buildings Technical Terms of Accessibility to Disabled Persons
[76] A. No. 842/2017

construction legislation, and above all the rules for natural disaster safety and other disasters, and those against pollution and environmental degradation.

Roads

The condition of the pedestrians' sidewalks/paths remains the same. Such a situation impedes free and unimpeded movement of citizens, in particular persons with disabilities. The trend of constructions without improving the condition of paths for pedestrians has continued. Pedestrian sidewalks are still insufficient in width compared to the number of occupants; altitude outside defined norms; lack of access elements and ramps, which would enable uninterrupted connection between the different sidewalk levels. No change was observed in the uninterrupted connection to public spaces without barriers and access to mainstream roads. Public movement areas continue to be with holes and damaged manhole lids; occupied by cars, restaurant inventory and surroundings, construction merchandise and materials without any protective measures or warning signs.

Constructions of new neighbourhoods on agricultural lands, and in neighbourhood with low number of floors allowed, without assessing the environmental impact of increasing the number of inhabitants and without expanding existing roads have continued with the same trend. No improvements have been made in terms of underpasses and overpasses in settlements, which would allow easy, safe, fast movement on the main and regional roads. This situation is also a result of the non-inclusion of citizens in public hearings as a form of decision-making in road construction processes.

Actions should be taken to improve protective measures at school institutions and kindergartens, which would affect the safety of children.

The right to life and the right to a safe and healthy environment have continued to be constrained by problems and deficiencies in the country's road infrastructure. Over 10% of accidents in our country are caused by the "road" factor. The roughness of the road surface area, the micro and macro deformities of the roads, lack of street lighting, lack of adequate road signs and signalling, lack of railings around buildings near the road, and lack of proper maintenance are considered as elements that in our country comprise the second factors deemed as the cause of road traffic accidents.[77] Moreover, even the connection of heavy transport vehicles from construction sites to highways, without any preventive measures to prevent spread of mud increases the risk of occurring accidents.

Miscellaneous

The access to environmental information in the country faces difficulties despite the fact that such a right is integrated throughout the entire environmental legislation and guarantees every legal or natural person the right to be informed of the environment. For years the Ombudsperson has implemented the new Law on Access to Public Documents, in order to remove the documents with environmental content from the list of documents restricted by law. Article 17, paragraph 3.3 of the Law, regulating the "*Allowed basis for refusing access to public documents*" specifies that Access to public documents shall always be granted if *"the requested public document relates to the environment, waste,*

[77]National Audit Office, December 2019, Performance Audit Report on Road Traffic Safety

hazardous substances or information of environmental safety reports as provided for by the relevant environmental protection law".

During the reporting year, it was noted that the National Institute of Public Health of Kosovo, as the institution for monitoring and preventing environmental diseases, enhanced its commitments to inform the public about the impact of the environment on public health. It would be helpful to NIHPK's work if the health information system would be functionalized, whereby through factual data they would be able to elaborate the impact of environmental pollution in the lives and health of citizens, and would serve as an indicator to evidence the diseases coming due to pollution.

The right of access to public documents

Transparency and accountability are recognized among the most important principles in the democratic world, which are in the function of responsible and functional governance. In a democratic country, transparent and accountable governance is intended to be achieved by promoting public interest. In this regard, transparency in the function of responsiveness and accountability means easy and unimpeded public access to data and documents produced, received, maintained or controlled by public institutions.

The Constitution (Article 41) and the Law on Access to Public Documents guarantee and regulate the right of access to public documents, with the exception of information limited by law. This right is not an absolute right, but is a right that must be balanced with other rights.

The right of access to public documents, in addition to domestic legislation, is also guaranteed by the Universal Declaration of Human Rights (Article 19), the European Convention on Human Rights (Article 19), and the International Covenant on Civil and Political Rights and its Protocols (Article 19).

Law No. 06/L-081 on Access to Public Documents (LAPD) has entered into force in July 2019, which guarantees the right of every person, without discrimination on any grounds, to access public documents produced, received, maintained or controlled by public institutions, as well as the right to re-use the public sector documents. This law designates the Information and Privacy Agency, as an independent body, responsible for ensuring the implementation of the Law on Access to Public Documents and Law on Protection of Personal Data, in order to protect the fundamental rights and freedoms of natural persons in relation to processing of personal data, as well as guaranteeing access to public documents. The Information and Privacy Agency was established under the specific Law on Protection of Personal Data,[78] which stipulates that this agency is represented by the Commissioner, who is appointed by the Assembly of Kosovo and is responsible for ensuring the implementation of the Law on Protection of Personal Data and Law on Access to Public Documents. Among other things, this law regulates the procedures for administrative complaint, where the Agency serves as a second instance and is competent to impose fines on public institutions and responsible officials. Whereas the competence of the Ombudsperson under Article 21 of the LAPD is to assist citizens in realization of their right for access to public documents pursuant to Constitution, Law no. 05/L-019 on Ombudsperson.

[78]Law no. 06/L-082 on Protection of Personal Data

The trend of increasing the number of complaints submitted to the Ombudsperson regarding allegation of denial of the right of access to public documents has continued this year as well. While, in 2018 there were 61 complaints filed, of which 56[79] were initiated for investigation, in 2019 there were 106 complaints filed, of which 99 were initiated for investigation.

Out of 99 investigated complaints that were filed for violation of the right of access to public documents, 73 were filed from NGOs and the media, while 26 from natural persons. By the end of the reporting year, 36 complaints handled were closed with granting access to the requested documents, while in two of these cases the access to the requested documents was granted following the Ombudsperson's recommendations to the responsible institutions.[80] Other complaints are still under investigation and the implementation of recommendations given is still pending. The Ombudsperson considers that the increasing trend of complaints lodged with the OIK may be a result of citizens' awareness of their constitutional and legal rights, greater transparency and accountability by public authorities, lack of a Commissioner for Information and Privacy, but also as a result of increased trust in the Ombudsperson's with regard to handling complaints for access to public documents.

The majority of complaints received by the OIK during the reporting year related to access to public documents are mainly against public institutions at central level (Figure 1).

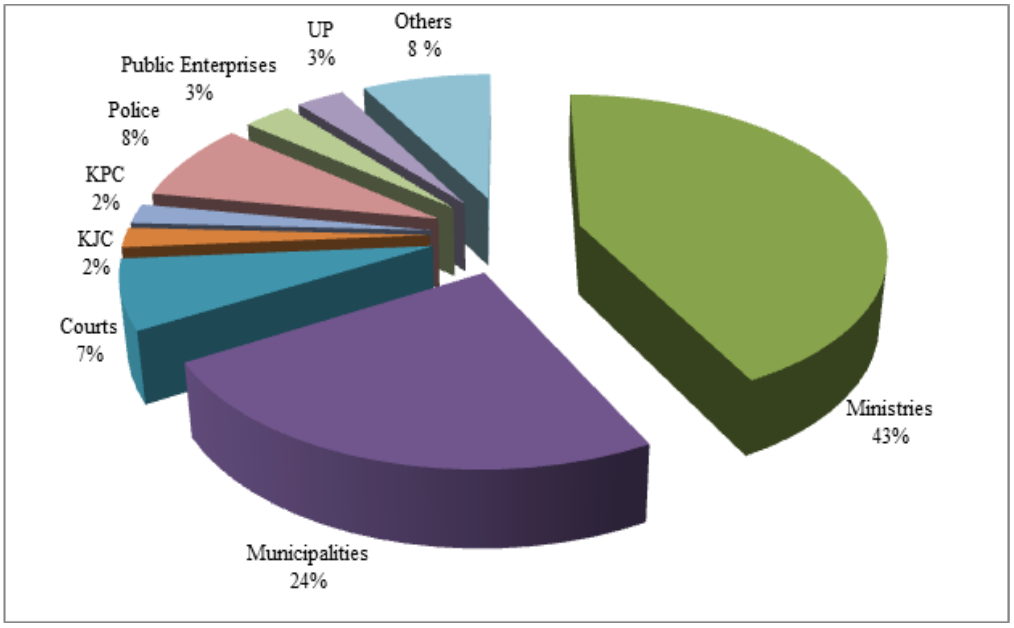

Figure 1. Responsible parties in claims related to APD

Investigations on these complaints revealed that the situation has not changed since last year. The violations of the right to access public documents reported in the Ombudsperson's 2018 Annual Report

[79] Annual report 2018 of Ombudsperson, page 73.
[80] A.no 260/2019 and A.no. 108/2019.

still continue to be evident.[81] The situations remains the same regarding the lack of classification of documents, lack of capacities of responsible officials in addressing requests for access to public documents, and lack of will of law enforcement institutions.

In cases where public institutions refuse to grant access or only grant restricted access, they mostly fail to make a decision and provide reasoning based on the law. The inaction of responsible authorities, despite being addressed by the Ombudsperson's recommendations[82] pursuant to the complaints received and investigations conducted regarding access to public documents, remains a concern.

Easy and unimpeded access to documents and information is an important tool that affects the establishment of trust between institutions and citizens with regard to the transparency of actions, efficiency and effectiveness of public administration. The implementation of the Law on Access to Public Documents is important in raising the awareness of the administration staff, and of their obligation to provide services to the citizens, but also in raising the awareness of citizens about the services they expect from the administration. However, implementation of this law, in practice, continues to be followed by difficulties of different nature. With the changes introduced by the new Law on Access to Public Documents and following the appointment of the Information and Privacy Commissioner, it is expected that these difficulties will be overcome.

[81] Annual report 2018 of Ombudsperson.

[82] A.no. 826/2018 against KP; A.no. 839/2018 against KJC; A.no. 869/2018 against MoF; A.no. 203/2019 against the Municipality of Fushe Kosova; A.no. 256/2019 against the Municipality of Podujeva; A.no.275/2019 against the Municipality of Skenderaj; A.no. 29/2019 against Kosovo Telecom; A.no.265/2019 against MFA; A.no. 292/2019 against the Ministry of Infrastructure and Transport; A.no. 337/2019 against KPC; A.no. 448/2019 against KPC; A.no. 496/2019 against MFA and A.no. 662/2019 against MEST; A.no.363/2019 against MFA.

III. Rights of the child

III. Rights of the child

Status of the rights of the child

Children's rights are an integral part of human rights. Even this year, the analysis of the situation of children reveals that children still face difficulties in fully enjoying their rights. These difficulties are present in almost all areas of their lives, especially in the realization of the right to education and social and health protection. A life free of violence is a fundamental right and a necessary precondition for the well-being and physical and mental health of the child. Nevertheless, violence still continues to be present in Kosovo. Children with disabilities and children in street situation are particularly at risk of having their rights violated, and run the risk of being subject to violence and discrimination. The lack of data in many of the filed discussed below such as children in street situation, drug abuse and children with disabilities make it difficult to develop effective and appropriate policies for children's needs. The OIK has included concrete recommendations for each of the areas addressed throughout the report. Naturally, it is essential that these processes incorporate the child's voice and view in accordance with the gradual development of his/her abilities. The completion of the legal framework upon the approval of the Law on Child Protection marks an important step towards the realization of their rights. However, the approval of laws remains only a symbolic step, if it is not followed by concrete steps and successful implementation.

Legal framework and children's rights

In June, the assembly approved the Law on Child Protection (LCP) six years after the initiation of the process for its drafting. This is the first law in the country that specifically addresses the rights of the child. The OIK has been actively involved in this process, being part of the working group, submitting comments on the draft law and participating in advocacy meetings for its approval. The law shall enter into force one year after its publication in the Official Gazette[83] and consists of nine chapters.

Also, based on the Law on Ombudsperson and the LCP, in October the OI issued a Regulation on Special Procedures for Admission, Handling and Addressing Complaints Filed by Children or Complaints relating to Children's Rights. The Regulation lays down specific rules for admission, handling and addressing complaints related to children's rights, while guaranteeing and respecting their rights and freedoms as set forth in the Constitution of the Republic of Kosovo, laws and other acts, as well as international human rights instruments, in particular in the CRC. The Regulation shall be implemented by the OIK staff during the procedures of complaints related to children's rights based on the principles of non-discrimination, protection of the best interest of the child, respecting the dignity and personality of the child, taking into account the child's opinion, addressing promptly and without undue delays, and providing personalized dhe specialized service for each child.[84] The Regulation also includes a specific provision regarding the child's active participation in handling the case,[85] the right to express his/her opinion on how to resolve the complaint, and the possibility of

[83] Law No. 06/L-084 on Child Protection, 2019, Article 66.
[84] Regulation No. 01/2019 on Special Procedures for Admission, Handling and Addressing Complaints Filed by Children or Complaints relating to Children's Rights, 2019, Article 3.
[85] LCP, Article 13.

interviewing, when deemed necessary, with the assistance of a psychologist or any other professional person.

Brief analysis of the Law on Child Protection

Chapter I contains general provisions regarding the purpose of the law, its scope and definitions. The law applies both to children with Kosovo citizenship inside and outside the territory of Kosovo as well as to stateless child, unregistered child, asylum-seeker, refugee or child with foreign citizenship who is staying within Kosovo. It is largely based on the Convention on the Rights of the Child (CRC) and in accordance with Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

The term "child" is defined in such a way as to include any human being under the age of eighteen (18), excluding the cases when the adult age is reached earlier, in compliance with the applicable legislation. In cases when the age of the person is not fully determined, but there are reasons which imply that the person in question is a child, according to the law he/she is considered a child. This is a progressive approach to child protection and is particularly important in the case of migrant and refugee children who may not possess identification documents proving their age. Whereas, the definition of the “child with disabilities” contain the social model of disability referring to the child with physical, mental, intellectual or sensory impairments which, in interaction with different barriers, may hinder its full and effective participation in society just as the rest of the society. The law also includes the definition of child-friendly justice and a detailed and comprehensive definition of violence.

Chapter II has included the basic principles recognized in the CRC: the right to life, survival and development, best interest of the child, gradual development of skills, and non-discrimination. Unlike the CRC, the LCP also lists the respect for the child's point of view as one of the fundamental principles.

Chapter III regulates the institutional framework by listing mechanisms of the rights of the child; both central and local.[86] The law provides for relevant duties and responsibilities for each mechanism, including the role of the OIK as well as the cooperation and coordination between central and local mechanisms in terms of implementing this law, legislation in force and state policies on the rights and protection of the child.[87] It has also foreseen the establishment of Multidisciplinary Roundtables for Support in Case Management, which implies a multidisciplinary group consisting of various professionals that interact and coordinate their efforts to address specific cases of child abuse, child ill-treatment and neglect based on the best interests of the child.[88] It has also been foreseen the

[86] The institutional structure and mechanisms for the rights of the child at central level are: Ombudsperson Institution; relevant ministries as per the field they cover, in relation to the rights of the child; the relevant unit for good governance, within the Office of the Prime Minister; Inter-Ministerial Committee on the Rights of the Child; and the Council on the Rights of the Child. Whereas, the institutional structure and mechanisms at local level are: municipalities; the relevant department as per the field they cover in relation to the rights of the child; centre for social work and the team for the rights of the child.
[87] LCP, Article 9 and 10.
[88] Ibid, Article 21.

establishment of a free of charge phone line for children's protection providing help to children in need of information and advice on their rights, and to report cases of violence.[89]

The Chapter IV covers child protection measures ranging from prevention, legal protection measures, parenting skills measures, legal requirements for reporting as well as protection of children without parental care. The law also provides for the establishment of child sheltering houses. These houses by applying the concept of friendly approach, urgent response and interdisciplinary action, shall also serve as centre for conducting procedures in all cases of violence, with special emphasis on offenses against sexual integrity, when the child is a victim or a witness.[90] Cases received by the OIK, especially this year's case related to the death of an 11-year-old boy, elaborated under the section of state's positive obligations regarding the protection of the right to life, shows that the establishment of these houses is indispensable for the protection and well-being of the child.

The Chapter V covers child protection in family and community and matters such as family, institutional, individual responsibilities, education, and prohibition of physical punishment, protection of the right to privacy, leisure and play. It also includes a specific provision for the protection of children with disabilities and protection against harmful practices and violence in general.

Chapter VI covers the principles of child labour, the minimum age for employment, and prohibited labour for children while Chapter VII covers specific forms of child protection. Specific provisions also address the child's capacity to take legal action, friendly justice, legal aid and access to justice, medical and psychological assistance, rehabilitation and reintegration measures and child participation in armed conflicts. The articles reflect the diversity of issues addressed by the law and its inclusiveness.

Chapter VIII contains punitive provisions for minor offenses. The last Chapter also contains obligations for relevant institutions to implement educational programs that raise awareness of child protection and care. The government is also obliged to launch a promotional campaign and develop a program on raising public's awareness regarding the law.

The law has provided 14 different areas to be regulated by sub-legal acts, which must be issued within one (1) year from the entry into force of this law. This is only one of the indicators indicating that much work remains to be done regarding its implementation. Although the adoption of the law marks a major step in the field of children's rights, in order for it to be implemented and children to truly enjoy their rights, the law must be fully and seriously implemented by the relevant institutions.

Complaints filed related to children's rights

The Ombudsperson during this reporting year has received 101 complaints, a number of which were mainly filed by the children's parents. Of this number, 29 were found as inadmissible considering that the matters they dealt with were outside the Ombudsperson's jurisdiction, there were no human rights violations, or the complainants were able to use or have used remedies. Out of the 72 complaints placed under investigation, 19 have initiated ex officio.

[89] Ibid, Article 22.
[90] Ibid, Article 30.

Children's right to education

Cases related to the right of education, which were investigated by the OIK, including cases initiated ex officio, have addressed the following: the lack of learning conditions in schools; learning difficulties and barriers for children with disabilities at the Learning and Counselling Resource Centre (LCRC); use of violence against children; not responding to complaints for the failure to pass the State Matura Exam; failure to respond in the complaint for treatment and evaluation of knowledge; failure to evaluate the State Matura Exam; loss of the school year; failure to be admitted to vocational schools; reorganisation of education in the municipality; school dropout due to the large home-school distance and the danger posed by passing through the mountains; non-adequate conditions for learning and suspension from school.[91] Out of 34 cases received, 16 are related to the rights of the child, 4 of which were closed, one was selected at the complainant's request, two were concluded to have had no rights violations and other case the complainant was instructed for the actions he/she should take.

The Ombudsperson last year recommended the municipalities of Podujeva and Decan to take action in renovating school facilities in two of their villages. The school in the Municipality of Podujeva was renovated last year, while the OIK was informed this year that the municipality of Decan has also taken appropriate action to renovate the school "Esad Mekuli" in Maznik village. Regarding the renovation and maintenance of school facilities and the lack of basic conditions for learning, the OIK also initiated *ex officio* investigations based on the article titled "Attending school alongside mice and insects" of the "Koha Ditore" newspaper. According to original information sent by the municipal authorities, the municipality has planned, inter alia, to repair the sanitary facilities at the school. The OIK will continue to address the issue in order to ensure that children are provided with the necessary learning conditions.

Also, based on an article published by the Newspaper "Express", the Ombudsperson has launched an *ex officio* investigation on the issue of some children not attending school for three years in a village of the Municipality of Vushtrri due to the long home-school distance and the danger to children resulting from passing through mountain roads. The Ombudsperson's representative had contacted the representatives of the school, the municipal directorate and one parent who claimed that despite verbal promises and possibilities mentioned by municipal authorities, his children were still not attending school due to lack of transport. The Ombudsperson's representative will meet other municipal representatives to make sure that authorities take necessary actions for ensuring that children are provided, in accordance with their best interest, with transportation so that they can continue their education as guaranteed by national and international standards of children's rights.

The Ombudsperson had issued a Recommendation Letter to the Mayor regarding the complaint received by a pupil.[92] Due to numerous unjustified absences (25) and non-disciplinary behaviour, the pupil was subjected to the disciplinary measure i.e., suspension from school for 1 month, with the obligation of being transferred to another school. However, the decision became unenforceable because the student was not admitted in any other school during that period. After the investigation, the Ombudsperson found that the school's decision was without legal basis and ascertained that it

[91] A. no. 254/2019; A. no. 457/2019; A. no. 497/2019; A. no. 538/2019; A. no. 569/2019; A. no. 745/2019; A. no. 779/2019; A. no. 796/2019; A. no.877/2019;A.no. 720/2019.
[92] A. no. 877/2019.

violated human rights and freedoms because it was in contradiction with the basic principles of the functioning of the democratic state such as the principle of legality, the constitutional rule of law principle and the principle of legal certainty. The Ombudsperson has recommended the municipality to urgently take adequate measures for treating the pupil's absences in the teaching process and also to compensate for the classes missed due to the enforcement of the unlawful decision.

Violence and security situation in schools

Violence remains present in children's lives and undermines the realization of children rights thereby causing with long-term detrimental consequences on their health and self-esteem. The LCP provides a detailed and comprehensive definition of violence.[93] Children are particularly susceptible to violence due to their age and that violence against them is often exerted by adults, including persons whom children trust and depend on. In particular, young children have a lack of knowledge regarding their rights and cannot speak to protect themselves.

During this reporting period, the Ombudsperson has conducted investigation for three cases initiated *ex-officio*.[94] One of these cases concerned the allegations of t "*Express Newspaper*" in the article titled: "A *teacher from Ferizaj repeatedly slaps a pupil in the classroom"*. After the investigations were completed, the Ombudsperson was informed that school authorities, namely the Municipal Directorate of Education in Ferizaj, have taken the necessary actions to handle the case, where disciplinary measures were imposed against the concerned teacher. In another case related to the article of the newspaper "*Bota Sot"*, titled: "*One month detention for the teacher suspected to have sexually abused 27 students in Gjakova*". It is suspected that the concerned teacher has sexually harassed 27 students of a class, against whom an indictment has been filed at the Basic Court of Gjakova. After the investigations were completed, it resulted that the municipality, police and prosecutorial authorities have taken the necessary actions and that the case is being handled by the Court. The municipal authorities have informed the OIK that the teacher's employment contract has been terminated.

The LCP expressly stipulates that persons sentenced for sexual abuse and child exploitation shall not be allowed to exercise professions that include any contact with children.[95] The law also provides for the issuance of a sub-legal act on the rules and procedures for maintaining the database of the DNAs of persons convicted for criminal offences against sexual integrity. Based on this, the relevant Ministry of Education and relevant Municipal Education Directorates should make sure that persons sentenced of sexual abuse or child exploitation are not included in the educational system.

[93] See LCP, Article 3 (1.22): "Violence – all physical and/or emotional forms of maltreatment, sexual abuse, negligence or negligent treatment, commercial exploitation or any exploitation resulting in a potential or actual harm to the child's health, survival, development or dignity in terms of responsibility, trust, or power". Further "Violence includes but is not limited to intentional acts or actions of a person to another, such as: the use of physical force, the psychological pressure, any act that causes or leads to physical and psychological pain; causing a sense of fear, personal danger, violation of dignity; physical attack regardless of the consequences; offending, insulting, calling by insulting names and other ways of harsh harassment; continuous repetition of behaviours in order to humiliate another person; putting another person in a position where he/she is afraid of the physical, emotional and economic condition".
[94] Ex officio no. 715 /2019, ex officio no. 56/2019 and ex officio no. 85/2019.
[95] LCP, Article 58.

Moreover, another case involved allegations in an article of the portal "*Indeks Online*", titled: "*A police officer, awarded with a certificate of gratitude for his work, sexually abused and forced a 16-year-old girl to have an abortion…"* According to the portal, a student under the age of 16 had denounced her professor for sexual exploitation before the police, but instead of being helped she was sexually abused by the police officer, who abused his official duty and position. After the investigations, it results that police and prosecutorial authorities have taken necessary actions and that the case is being handled in the Court. Girls are particularly at risk of violence due to widespread discrimination and gender-based violence. The handling of this and similar cases requires a gender-sensitive and child rights-based approach. The OIK during the next year will continue to monitor these processes to ensure that the child's well-being and interest are given priority.

Children with disabilities

Children with disabilities are still experiencing serious difficulties and facing barriers to the full enjoyment of the rights enshrined in the Law. Children with disabilities belong to one of the most vulnerable groups of children. This vulnerability varies depending on the interaction of different factors such as gender, rural residence, ethnicity or being a child in a street situation. Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. Special attention should, therefore, be given to them in order to take the necessary measures, especially in terms of protection against gender-based violence, to ensure that they have access to all services and are fully involved in education and society.

Kosovo is also aiming to implement a social model of disability where the obstacle is not in the disability itself, but in a combination of social, cultural, and physical obstacles that children with disabilities face in their everyday lives. Such a definition is also included in the LCP, which contains some specific provisions addressing the protection of children with disabilities.[96] Notwithstanding this legal protection and numerous other provisions scattered in various laws, the drafting of legislation is not sufficient for children to enjoy these rights but their proper implementation is needed.

The lack of data remains problematic. Accurate and complete data collection that reflects the current situation of children with disabilities is essential for effective policymaking and allocation of resources needed to fund programs. The adults with and without disabilities, while setting the policies and making decision making regarding children with disabilities, should ensure that children are heard in all procedures affecting them and that their views are respected in accordance with the gradual development of their abilities. Children should be provided with whatever means of communication they need to facilitate the expression of their views.

During this year, the Ombudsperson has received three complaints regarding children with disabilities. One case was related to deprivation of the right to education for children with disabilities at the Learning and Counselling Resource Centre "Xheladin Deda" in Peja, for which the Ombudsperson has issued a recommendation letter.[97] The complainant alleged that his/her child was not attending this institution in the absence of care/assistance services during the night shift. During the meetings and

[96] LCP, Article 42 (2.9) and Article 46.
[97] A A. no. 245/2019, concerning the denial of the right to education of children with disabilities at Learning and Counselling Resource Centre "Xheladin Deda" in Peja, 7 May 2019.

correspondence with the representatives of the LCRC, the Ombudsperson was informed that the increase in the number of students during this school year for 13 children with severe and multiple impairments has also increased the need for increasing the number of staff expansion because the existing personnel was not sufficient. The representative also announced that the MEST has established a committee to review jobs and find the opportunity to meet the needs of children in the institution. However, according to him, even after some meetings, no solution has been reached. Following the investigation, the Ombudsperson has found that services are not provided in the LCRC in accordance with legal provisions and that this constitutes a violation of the rights of children with disabilities. The Ombudsperson has recommended MEST to take appropriate measures to provide 24-hour child care services for children located in the centre.

The other case related to the professional assessment of the child. Initially, the complaint was filed against the Municipality of Prishtina (MP) regarding the issue of providing a personal learning assistant and providing transportation for a child with a disability. The Ombudsperson initiated an investigation and the MP expressed readiness to provide transport. While regarding the provision of a personal assistant, the MP stated that this is not possible due to the lack of budget. Subsequently, despite the expressed readiness from both the MP and the child's parents, the complainant faced delays from the municipality regarding the professional assessment of the child. As a result, the Ombudsperson issued a Letter of Recommendation.[98] The MP responded showing readiness for the assessment process to be completed.

The latter case is still under investigation, and relates to the decision of the Kosovo Customs, which refused the complainant’s request for exemption from import duties for the vehicle of the caretaker for persons with disabilities.

Children in street situations

In May this year, the Ombudsperson published a Report with Recommendations ex-officio sent to the Ministry of Labour and Social Welfare (MLSW), the Ministry of Education, Science and Technology (MEST) and the Kosovo Police related to the issue of children in street situation.[99] Based on the investigations carried out by the Ombudsperson and the experience with children in street situation, this report analysed the phenomenon of children in street situation, identified violations of children’s rights and gave specific recommendations to the responsible institution in order to take appropriate action in this field. The report has noted that despite legal provisions scattered across various laws aimed at protecting children's rights and the direct applicability of the CRC, the situation of these children has not changed much from previous years.

Although investigations by organizations show that poverty and severe economic causes are some of the reasons why children are in street situation, lack of data remains a problem in Kosovo. There are no comprehensive data on the number of children including: age, ethnicity, gender, economic status and the causes that drive them into a street situation, in order to develop successful and effective policies to address this phenomenon. The Ombudsperson recommended MLSW to collect this data in cooperation with Kosovo Agency of Statistics (KAS). In addition, MLSW together with municipalities

[98] A. no. 888/2017 concerning the Professional Assessment of a Child with Disabilities, April 15, 2019.
[99] Ex officio 514/2016, related to the issue of children in street situation.

should strengthen and develop capacities to provide quality services to children and families of children living and/or working on the street including sustainable budget allocation. The Centres for Social Work have reported that they only partially meet minimum standards for providing services to children at work because of a lack of budget and trained staff.[100] Further on, MLSW should develop appropriate programs for providing direct services to children in street situation without limiting day care centres for their rehabilitation and reintegration. A good example in this regard is the opening of the Day Care Centre for children in street situation by Terre des Hommes and the Municipality of Prishtina. The centre provides a warm environment where children have the opportunity to integrate and benefit from various services such as meals, educational games, socialization and educational activities, as well as professional counselling. This practice should be followed by other municipalities as well.

On the other hand, existing data from the Kosovo Police show that a significant number of these children are involved in begging and are victims of human trafficking, mistreatment and abandonment.[101] Kosovo Police should take appropriate actions to identify and remove children from the street when they are part/victims of criminal networks dealing with child trafficking and exploitation. Also, when dealing with the return of children to their country of origin, it should cooperate and coordinate activities with relevant institutions to ensure their safe return in accordance with the best interests of the child.

The Ombudsperson's report has found that children in street situations are vulnerable in many aspects, and that their physical, mental, emotional, health and social well-being is threatened. Consequently, the current situation of children in street situations constitutes a violation of children's rights, and requires a comprehensive and coordinated approach by the state institutions.

The LCP has foreseen that the Government, based on the proposal of the MLSW and the Ministry of Internal Affairs, shall issue a sub-legal act regulating effective procedures for identifying, reporting, referral, exploitation, neglecting and abuse of the child as well as for protection of children in street situation.[102] This sub-legal act shall be issued up to one year after the law enters into force.

On November 17, the Ombudsperson held a meeting with representatives of the police, MLSW and CSW to inform them regarding the addressing of recommendations. Kosovo Police have informed the Ombudsperson that they are implementing the recommendations. Initially, the police have two country-wide operational plans covering the entire territory of Kosovo and identifying street children. These data are disaggregated by gender and relevant reports are filed against the parents for the offense of “Child Abuse and Abandonment’’. According to police, there have been no cases of child trafficking in street situations. They have also organized preventive activities by drafting a brochure in three languages, in cooperation with the OSCE, which also covers the issue of children in street situation. In addition, in cooperation with the National Authority, lectures were held in 10 municipalities and meetings with 1730 members of different communities as well, and this phenomenon is addressed with each of them.

[100] Ibid, paragraph 29.
[101] Ibid, paragraph 39.
[102] LCP, Article 26(6).

Whereas, the MLSW has announced that it has taken some actions by signing agreements with the mayors in order to prevent and eliminate hard-work. Agreements have also been signed with NGOs and projects of the International Labour Organizations and that standard forms of service provisions for children in street situation are being developed. The MLSW has drafted a concept document on social assistance that has not yet been adopted, but provides allowances for children without discriminatory criteria. Whereas the concept document on local government finance was adopted setting out the creation of a specific grant for social services that would enable CSWs and municipalities to prioritize the social categories in need, and create and contract services through various organizations. Regarding the lack of data, the MLSW has informed the Ombudsperson that in cooperation with KAS, they have managed to include a special form into MICS survey, which will serve to collect the most complete data on age, origin and causes that put children in a street situation. MEST was not present, but responded in writing to the Ombudsperson. From the data obtained by MEST, it is noted that continuous efforts are being made to address the recommendations that will result in increased monitoring and supervision by the inspectorate, increased quality reporting from schools and reduced drop-out, ensuring the full inclusion of children in quality education, and their full development.

Youth/children victims of narcotic drugs abuse

The CRC envisages obligations for states to protect children from the illicit use of narcotic drugs and psychotropic substances, and to prevent the use of children in the illicit production and trafficking of such substances. The LCP also addresses this issue in two Articles: Protection of children from harmful and prohibited substances and prohibited labour for children.[103] The law stipulated that adequate protective and preventive measures, including advocacy of a way of healthy living and discouraging of any kind of abuse with drugs and psychotropic substances shall be regulated by a sub-legal act.[104] Based on the obligations arising from the LCP and CRC, institutions should take all measures whether legislative, administrative, social or educational in order to protect children in this regard.

In December, the Ombudsperson published an ex officio report on the use of narcotic substances by children.[105] The report with recommendations is addressed to the Ministry of Health, Kosovo Police, MLSW, MEST, Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC). The purpose of this report was to assess the current situation in Kosovo regarding the use of narcotic substances by children and to address recommendations to relevant institutions in order to take all necessary measures to prevent and treat children who use narcotic substances.

The Ombudsperson met with representatives of NGO Labirinth, Coalition of NGOs for Child Protection in Kosovo (KOMF), representatives of MCYS, Kosovo Police, ROR, MEST and MoH. The Ombudsperson also requested information from the KPC and KJC. The report reiterates that there are no comprehensive studies on narcotic drugs use by children in Kosovo, although there are some partial studies and preventive and rehabilitation services provided by NGOs. According to existing data from NGO Labirinth, in 2018, the average age of drug use was 16 years. Mostly these young people started

[103]LCP, Article 43 and 51 (2.3).
[104]Ibid, Article 43.
[105]Ex officio no. 489/2018, concerning the use of narcotic substances by children

with cannabis. The average age of first drug use has declined sharply, while in 2007 it was 21 years old.[106] The use of drugs by young people is also confirmed by the findings of the Kosovo Police, where in the period between October 2017 and October 2018, 150 students were arrested on patrols around schools for possession of marijuana. Police also seized 62.74 grams of marijuana inside the schools, 167.15 grams of marijuana in school yards and 4kg of 0.52 grams of marijuana near the schools. The largest number of cases was initiated in the Prishtina region followed by Ferizaj, Mitrovica, Gjilan, Peja, Prizren and Gjakova. Police have informed the OIK that they have held 417 lectures with students on drugs and the risks of using them.[107] Although, the topics related to narcotic substances are covered by school curricula and awareness-raising activities with students are organized, there is still a lack of meeting with parents to inform them on preventing these substances from being consumed.

Despite existing data on the use of these substances by young people and their presence in schools, Kosovo still does not provide special physical rehabilitation services for children victims of narcotic drugs abuse. There is also a need to develop integration programs in response to the growing needs of children and their families. The Ombudsperson found that there is a lack of specialized centres for treatment of young people users of narcotic drugs, and lack of appropriate awareness and prevention programs, as well as lack of services and treatment of users both in terms of geographical scope and quality. There is also a lack of unique comprehensive database including the causes that drive children to use narcotic substances, their type and suspected cases of death from them. Also KJC and KPC have lack of data referring to special criminal offenses from Chapter XXIII of the Criminal Code (Narcotic Drug Offenses).[108] In the absence of data, it is impossible to develop quality and efficient policies. Further, CSW staff lack the expertise to deal with these cases. MoH, Kosovo Police, MLSW, MEST, KJC and KPC respectively should address the recommendations of this report in accordance with their mandate. In December, the OIK received a response from the KJC in pursuit of a recommendation to advance the database of judicial decisions relating to specific offences (not just articles) from Chapter XXIII of the Code. The KJC informed that during 2018-2019, the Case Management Information System (CMIS) was put in place, through which all cases are registered in court, including juvenile criminal cases. Furthermore, the letter received by the KJC states that KJC will further advance CMIS during 20120 to generate more advanced reports and more detailed data, including various reports that may emerge as requests from different institutions or organizations.

Children's rights in proceedings before court and administrative bodies

Even during this reporting period, the OIK received a number of complaints against the courts, relating to the delay of court proceedings to decide on compensation for damage caused to a child in a traffic accident, paternity certificate, entrustment of children for protection and education, failure to establish personal contacts of the child with the parent and non-payment of alimony, and has monitored some of them at the request of the claimants.[109] Regarding the issue of non-payment of alimony and failure to establish contacts or the impossibility of regular contact with children, the OIK has also received

[106] Ibid, paragraph 18.
[107] Ibid, paragraph 20.
[108] Ibid, paragraph 53 (e)
[109] A. no. 635/2019, A. no. 547/2019, A. no. 240/2019, A.no. 26/2019.

complaints against the Centres for Social Work (CSWs).[110] In the case of complaints against the courts, the Ombudsperson has addressed the courts seeking information on the actions taken and has in some cases found that there has been a violation of the right to fair and impartial trial. Courts should take all necessary actions to ensure that cases involving children or affecting children's rights are resolved without delay, within the prescribed legal deadlines, in order not to harm or endanger the health of the children, their welfare or even their lives. They should also take all actions to ensure that the best interests of children are paramount in their work with regard to children, including the respect for the right of children to be heard, in accordance with Articles 3 and 12 of the CRC. Whereas in the case of complaints against the CSW, the Ombudsperson, after investigating three of the five complaints received, found that the CSWs had taken appropriate actions.

Social and health protection of children

In the area of social protection and health care, during this reporting period the OIK has initiated and investigated six new cases, including ex officio cases. The cases concerned, inter alia, the exemption from customs duties for the caretaker of a child with a disability, suspicion of sexual harassment and rape, as well as the request for psychologist assistance for the complainant's child located in the Juvenile Correctional Centre.

In previous reports, the Ombudsperson notes that the implementation of Article 4 of Law No. 04/L-096 on amending and supplementing Law No. 2003/15 on Social Assistance Scheme in Kosovo has caused many families in serious material condition to remain without the social assistance they enjoyed until the child was five years old.[111] Despite the fact that changes have been made to Article 4 of Law no. 2003/15, this in fact did not improve the situation of poorer households due to the fact of limiting the age of children. Moreover, the conditions for social assistance, with the legal provisions in force, have contributed to the deteriorating economic situation of many families, causing barriers and difficulties in child welfare and the well-being of families in general. These conditions in particular make it difficult for families in difficult socio-economic circumstances, especially for marginalized communities. The Ombudsperson notes that Article 4 of the Law, beyond all doubt, violates the best interest of the child, and the lack of social assistance for children and families in need conditions and affects the physical and mental health of the child as well as his/her education and development. The Ombudsperson has found that Article 4 of the Law is in violation of the Constitution of the Republic of Kosovo and international standards, in particular the CRC, which is directly applicable in the Republic of Kosovo. This year also, the Ombudsperson recommends the Assembly of the Republic of Kosovo to amend Article 4, paragraph 5, of Law on amending and supplementing Law on Social Assistance Scheme in Kosovo, so that the age limit of five years of the child be raised to eighteen (18) years, in accordance with the notion of the term "*child*" and in order to fulfil constitutional obligations. According to the data provided at the meeting with the representative of the MLSW on November 17, the Ombudsperson was informed that the ministry has drafted a concept document on social assistance that eliminates this discriminatory criterion. However, the concept document has not yet been adopted.

[110]A. no.700/2019, A. no. 664/2019, A. no. 703/2019, A. no. 66 /2019, A. no. 818/2019.
[111]Annual report 2018, p. 82.

In December 2019, the Ombudsperson published a report with recommendations ex-officio assessing whether the provision of social services in the Republic of Kosovo is in line with human rights standards and provides specific recommendations to improve the current situation.[112] The report found that social assistance and economic aid workers are not social workers, with the exception of a few, and that a significant majority of them completed secondary education only. Also, their number is insufficient to perform the duties of the CSW provided by law. In particular with regard to children, most CSWs are unable to meet the legal obligation regarding the Custodian Body. No CSW has a licensed psychologist who can provide a professional opinion on children's beliefs about adoption issues and other areas. Also, the CSWs are not included in drafting of the municipal budget and municipalities do not provide funds to cover the needs of children, single parents, victims of trafficking, etc. Particularly problematic is the lack of contact space/room for establishing a child-parent contact in cases parents are separated or divorced, or in the process of separation or divorce, and in cases of domestic violence. Out of 38 CSWs, 22 have no contact room at all. As the court's decision obliges the contact to be carried out within the premises of the Centre, and in order to do so, it is very often the case that the worker has to stay with the parent and child during the contact, or leave the office for them to stay together. In some Centres, workers are often forced to put the child and parent in a space where there is only a chair and nothing else, or in rooms without heating and without minimum requirements for staying, whether for 1 hour or longer, or are forced to not establish full contact due to poor conditions. The report finds that CSWs have become administrative-technical institutions due to the lack of professional staff and associated facilities to provide adequate services. There is a lack of oversight, planning, financing and service advancement in accordance with the needs of municipalities. The Ombudsperson recommended the Government of Kosovo, MLSW and municipalities to address the identified problems.

Juvenile justice

Juvenile Justice in Kosovo is regulated by the Juvenile Justice Code (JJC) which was approved by the Assembly in September 2018. The JJC regulates criminal proceedings for juveniles by ensuring that their best interests are pursued based on respect for human rights and fundamental freedoms, prohibition of discrimination on any grounds and respect for the rights of children to express their views freely.[113] The Code also aims to avoid restriction of personal freedom of juveniles at the highest possible extent, and promoting of child friendly approach. The Code is directed at prioritizing the implementation of educational measures against prison sentences with a focus on prioritizing education and re-socialization, as well as training and specialization through a multidisciplinary approach and institutional cooperation.[114] Access to the education system is particularly important for the re-socialization and reintegration of juveniles into society.

In spite of the changes made by the new Code, during its analysis, the Ombudsperson has noticed contradictions in the part of the transitional and final provisions which create legal gaps and

[112]Ex officio no. 59/2019, concerning the evaluation of the social service delivery system in Kosovo, Prishtina, 17 December 2019.
[113] Republic of Kosovo, Juvenile Justice Code No. 06/L-006, 2018, Art 1.
[114] Ibid.

uncertainties. Consequently, in April 2019, the Ombudsperson addressed an opinion[115] to the members of the Assembly of the Republic of Kosovo, members of the Committee on Legislation, Mandates, Immunities, Regulation of the Assembly and oversight of the Anti-Corruption Agency to propose amendments to the transitional provisions of the JJC in accordance with the Law on Legislative Initiatives.[116] He also sent a Recommendation Letter on this issue to the President of the Assembly of the Republic of Kosovo.

Article 140 of the new Code stipulates that upon its entry into force, the old Code of 2010 shall cease to apply. Whereas, the following Article 141 creates an unusual legislative practice as it states the following: "*This Code shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo, and shall be implemented six (6) months after its entry into force."*[117] The new Code was published in the Official Gazette of the Republic of Kosovo on 18 October 2018 and then the Code came into force 15 days later, on 2 November 2018. But under the same provision, its implementation begins on 2 May 2019. As a consequence, a circumstance has arisen where for six months, namely from 2 November 2018 to 2 May 2019, none of the provisions of the codes apply and that during this period there was no legal basis for the prosecution of criminal cases, as well as the implementation of the measures of punishment of juveniles. This has been of concern to the Ombudsperson, especially given the sensitivity of the issues regulated by the Code. Finally, the OIK has recommended two legislative alternatives as a viable solution: to determine that the old Code applies until 2 May 2019 or to determine the retroactive implementation of the new Code for the period from 2 November 2018. The Ombudsperson has favoured the application of the first alternative since such a solution also respects the principle of retroactive action of criminal law considering the existence of a reasonable time from the moment of adoption of the new Code until the implementation of the law *(vocatio legis)*. Fortunately, after the Ombudsperson raised this issue, the Commission initiated the process of amending it, at a meeting held on 10.04.2019 decided to draft the Draft Law on Amending and Supplementing the Code No. 06/L-006 on Juvenile Justice and it has been forwarded to the Government for opinion in accordance with the Rules of Procedure of the Assembly.

In accordance with its mandate, the Ombudsperson has visited the Educational and Correctional Centre for Women and Juveniles in Lipjan and received complaints regarding the rights of juveniles.

During visits to the Educational and Correctional Centre for Women and Juveniles in Lipjan, the Ombudsperson monitored the implementation of the rights of juveniles and came up with appropriate recommendations regarding the improvement of their work. Concerning the Educational and Correctional Centre, the Ombudsperson recommended the MoJ to ensure that juvenile food is sufficient and adequate, operationalize cabinets that are not yet operational and hire adequate trainers to work in these cabinets.[118] Whereas for the Correctional Centre for Women and Juveniles has

[115]Opinion of the Ombudsperson ex officio no. 67/2019 concerning the entry into force and implementation of the Juvenile Justice Code on a proposal to the Committee on Legislation, Mandates, Immunities, Regulation of the Assembly and oversight of the Anti-Corruption Agency, April 2019.
[116]Republic of Kosovo, Law no. 04 / -L-025 on Legislative Initiatives, Article 5.
[117]Code Nr. 06/L-006 on Juvenile Justice, Article 141
[118]Report with Recommendations of the National Mechanism for the Prevention of Torture for a Visit to the Correctional Centre in Lipjan, Prishtina, 26 August 2019.

recommended the MoJ to improve the accommodation conditions in the detention centres where juveniles are detained and in other wards and apply the relevant provisions of the Law on Execution of Criminal Sanctions in relation to the calculation of length of service for correctional officers.[119]

In 2018, the Ombudsperson received two complaints regarding the inability of two juveniles (one girl and one boy) to pursue university studies while serving a sentence at the Lipjan Correctional Centre.[120] These complaints had highlighted the legal gap in addressing this issue and the inability of persons deprived of their liberty to exercise their right to education guaranteed by the Constitution, international acts and related laws. Therefore, the Ombudsperson addressed the MEST and the MoJ with recommendations to issue a bylaw in accordance with Law No. 04/L-032 on Pre-University Education in the Republic of Kosovo and Law No. 04/L-149 on the Execution of Criminal Sanctions.[121] This act should precisely explain how the right to pre-university education of juveniles and adults who are serving their sentence is exercised in order to enable them to exercise their right to education. The Ombudsperson has not received any response on this issue even during 2019 and such an act has not been drafted yet.

In 2019, the Ombudsperson has also received three complaints regarding juvenile justice.[122] One complaint concerned the party's dissatisfaction with the decision to sentence the child, namely the imposition of corrective action. After several months of investigations and meetings with the juvenile and relevant institutions, the party was advised of the right to appeal the Court's decision. As to the second case, the complaint concerned the non-application of the CRC and the erroneous application of the Criminal Code. Following the investigation, the Ombudsperson found that there had been no violation of children's rights since the person was 18 years old when the criminal offense was committed. The third case concerned the juvenile's rights at the Correctional Centre for access to a psychologist's health services. Upon investigation, it was established that the juvenile had in fact access to a psychologist and had received appropriate treatment for his condition.

Positive state obligations regarding the right to life

In December 2019, the Ombudsperson published the report with recommendations ex-officio aimed at drawing the attention of public institutions to the positive state obligations regarding the right to life in the case of a person whose life was taken by another person.[123] These obligations are guaranteed by the Constitution of the Republic of Kosovo and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The report also assesses the effectiveness of the actions taken by the institutions. After conducting investigations and reviewing relevant legislation, international instruments and case documentation, the Ombudsperson has found that there has been a violation of children's rights. The prosecution, police and CSWs did not meet the constitutional and legal obligations to protect the life of the victim. The responsible authorities were

[119]Report with Recommendations of the National Mechanism for the Prevention of Torture for a visit to the Lipjan Correctional Centre, Prishtina, 24 May 2019.
[120]Annual Report 2018, p. 83.
[121]Ibid, p. 84.
[122]A. No. 38/2019; A. No. 814/2019; A. No. 356/2019.
[123]Ex-officio No. 567/2019, regarding the positive obligations of the state guaranteed by the Constitution of the Republic of Kosovo, and Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the case of K.V., Prishtina, 6 December 2019.

aware of the real danger to the child who was a sexually abused victim and failed to take measures to protect his life. The Ombudsperson has found a number of violations of procedure and provisions such as the Prosecution's failure to inform the victim's defence counsel, the non-involvement of the Custodian as a professional municipal body responsible for the protection of the interests of children and adults, and delaying procedures. Whereas the father of the suspect and the mother of the victim had been interviewed by the police and testified about committing the crime, since the prosecution was notified, it has taken sixty-three (63) days to interview the suspect. Also, the case file does not reflect and prove any procedural-legal action that the suspect was detained or arrested, and none of the other legal actions available to the prosecution were used. The situation is even worse given that the suspect had pleaded guilty and that a large number of cases had been referred to the prosecution for various criminal offenses and fifteen (15) indictments had been filed against him. On the other hand, the victim and his family did not receive any psychological services except for a 25-minute session for the child after forty-three (43) days. The victim was not only a child that makes him a vulnerable victim but a child in a street situation, in an Ashkali family with a difficult economic situation with social assistance, a family that had previously had domestic violence. All of these circumstances exacerbate the situation and increase the institutions' obligations to act. The Ombudsperson has recommended to the prosecution to initiate internal investigations and that such cases must be dealt with urgency and effectiveness. While the police have recommended the building of professional capacities not only for the right to life but also for investigating cases of sexual violence against children. The MLSW, in cooperation with the municipality, should develop the capacities of the CSW in providing professional services in such cases, provide a psychologist at the centre and provide staff training on the rights-based approach to children.

IV. Equality before the law

IV. Equality before the law

The Ombudsperson is an equality mechanism to promote, monitor and support equal treatment without discrimination. In addition to receiving and investigating complaints and protecting persons in specific cases of discrimination, the Ombudsperson is also empowered to investigate and act on its own initiative *ex-officio* when there is a well-founded suspicion of discrimination.

According to the Law on Protection from Discrimination, the Ombudsperson has a broad role in promoting protection from discrimination. In this regard, the Ombudsperson has held meetings with the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions regarding the implementation of the Law on Protection from Discrimination and the Law on Gender Equality. Representatives of the Ombudsperson were also part of the *Ex post* evaluation of the Law 05/L-020 on Gender Equality, which was organized by the Agency for Gender Equality.

In accordance with the competences deriving from the Law on Protection from Discrimination, for cooperation with social partners, non-governmental organizations and other relevant mechanisms of other countries, the Ombudsperson held regular meetings. The Ombudsperson has also held meetings with NGOs that advocate for gender equality, the rights of persons with disabilities, LGBTI communities, etc.

In order to promote equality and respond to discriminatory situations, in relation to unlawful behaviour towards individuals of the LGBTI community, the Ombudsperson is in the process of drafting a handbook for protection against discrimination.

At the third regional meeting between the Ombudsperson and the Commissioners for Protection from Discrimination of Albania, Kosovo and Northern Macedonia, held in Vlora on 31 October to 1 November 2019, the cooperation was formalized through a Memorandum of Understanding, where the signatories agreed to increase and intensify cooperation, exchange of experience and mutual assistance.

During this reporting year, the Ombudsperson addressed the following issues:

- issued an Opinion to the Independent Media Commission regarding the provision of access to information for the category of persons with hearing disabilities in the context of televised debates on the national elections of 2019;
- appeared as a friend of the court in 5 cases investigated;
- addressed the responsible institutions with 28 recommendations through reports in 7 cases;
- filed 2 claims on discrimination issues;
- paid 13 visits to settlements of Roma, Egyptian and Ashkali communities;
- held 4 lectures on persons with disabilities, women in the Correctional Centre for Women and Juveniles on Lipjan, as well as women in politics.

Preparing reports, recommendations, opinions, presentation as a friend of the court (amicus curiae),[124] whether in individual complaints filed with the Ombudsperson or in cases dealt with *ex officio*, it has established an important practice in discrimination matters. This practice as such is available to all stakeholders and is published on the official website of the institution. [125]

One of the achievements of the Ombudsperson in its work to promote and protect against discrimination and against unequal treatment is the membership of the Kosovo Ombudsperson Institution in the *European Network of Equality Bodies* (EQUINET), where the Institution has become the fiftieth equal member of this body.[126]

Implementation of the Law on Protection from Discrimination

Law on Protection from Discrimination[127], is a basic anti-discrimination law, including the Law on Gender Equality [128] and the Law on the Ombudsperson[129]. Also, some of the provisions of the special laws prohibit discrimination. In this regard we can mention the following: Law on Labour,[130] Law on Civil Service of Kosovo,[131] Law on vocational training and employment of people with disabilities[132], Law on Religious Freedom in Kosovo,[133] Law on the Protection and Promotion of the Rights of Communities and their Members [134] etc. As already known, international human rights conventions are directly incorporated into the Constitution and take precedence over domestic legislation.

However, establishing a legal system for protection against discrimination does not imply the realization of the purpose itself and the completion of efforts to achieve equal rights. Despite the creation of protection mechanisms against discrimination, we cannot be satisfied with the results achieved in preventing and reporting discrimination cases, as well as the protection against discrimination itself.

It is clear that the domestic case law against discrimination is still poor. There is a lack of experience in the field of application of the Law on Protection from Discrimination. Still, citizens for a variety of reasons, rarely file cases against discrimination in court and other institutions. Victims of discrimination have been partially discouraged by the length of court proceedings, which take years.

[124]Article 9.2.13 LPD "Ombudsperson may be presented in the quality of a friend of the court (amicus curiae) in proceedings related to issues of equality and protection from discrimination;"
[125]https://www.oik-rks.org/
[126]Brussels, 23 October 2019, The Ombudsperson, Mr. Hilmi Jashari, presented to the members of the EQUINET General Assembly the request of the Ombudsperson Institution to become a full member of the European Network of Equality Bodies (EQUINET). On this occasion, Mr. Jashari emphasized that the Ombudsperson Institution complies with the EQUINET Statute and the previously set criteria and thus fulfils the necessary conditions for membership along other equality institutions that are members of this network.
[127]Law No. 05/L-021 on Protection from Discrimination
[128]Law No. 05/L-020 on Gender Equality
[129]Law No. 05/L-019 on Ombudsperson
[130]Law No. 03/L-212 on Labour
[131]Law No. 03/L-149 on Civil Service of the Republic of Kosovo
[132]Law no. 03/L-019 on Vocational Training and Employment of Persons with Disabilities, as amended by Law No. 05/L-078
[133]Law No. 02/L-31 on Religious Freedom in Kosovo
[134]Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo, as amended by Law No. 04/L-020

Also, the actions and behaviour of officials in the chain of relevant institutions, by the police through judicial authorities, do not give victims confidence in the discretion and protection of their privacy, and there is a clear need to put more effort into the professionalism and training of public servants.

Basic courts rarely use human rights laws package or make decisions based on the primary principles of international human rights acts contained in the Constitution, although they are an integral part of the Kosovo legal system. Also, courts in Kosovo, with the exception of the Constitutional Court, do not use or refer to the case law of the European Court of Human Rights, for which the Constitution obliges.[135] This problem is not specific only to cases of discrimination.

Furthermore, it appears that the judiciary lacks proper monitoring of discrimination cases, due to inadequate identification and categorization of such cases. Discrimination cases do not have a specific court mark, so it is very difficult to monitor. By looking only at the mark and/or case number it is not possible to determine whether a case was initiated because of discrimination.

As a consequence, there is an inevitable need to establish a system for monitoring the case law in discrimination cases, as well as for monitoring the resolution of problems that arise in cases. A prerequisite for such a database of the case law is for courts to record and monitor discrimination cases as a particular type of dispute. Without such a system, judges would still be unable to distinguish discrimination from other unlawful conduct. Discrimination cases should be clearly monitored because of the consistency of case law.

Office of Good Governance [136] within the Office of the Prime Minister, as an institutional body in promoting and implementing the LPD and as a body that monitors the implementation of the Ombudsperson's recommendations, has shown commitment to monitoring the implementation of the Ombudsperson's recommendations by relevant institutions, through the organization of several activities for promoting the LPD. However, the challenge remains that Kosovo's citizens are largely unaware of the notion of discrimination and mechanisms for protecting the right to equality.

The LPD also sets out institutional mechanisms for protection against discrimination in ministries and municipalities,[137] some have appointed relevant officials to co-ordinate the implementation of this law, while some have set up special task forces with the specific task of dealing with discrimination issues.

Unlike countries where there are specialized institutions for protection against discrimination, the Law has designated the Ombudsperson Institution as a competent institution for protection against discrimination. In this regard, the Ombudsperson continuously strives to fulfil its mandate in dealing with cases of discrimination and strengthening capacities in the field of promotion of this right, and throughout these years has been engaged in the development of relationships that contribute to the promotion of and strengthening cooperation with civil society organizations, as well as with regional and international bodies that protect and promote equality rights.

The Ombudsperson has regularly responded to calls from non-governmental and other human rights organizations by participating in panels and meetings that analysed the rights of vulnerable social groups. He also addressed citizens with press releases on the eve of marking the international days of

[135]See Article 53 of the Constitution of the Republic of Kosovo
[136]See Article 10, LPD
[137]See Article 11, LPD

relevant groups at risk of discrimination (days of women, people with disabilities, LGBT communities, Roma and Egyptians, etc.), calling on public authorities to respect, protect and promote the right of equality in terms of their competencies.

However, In Kosovo's anti-discrimination legislation, two central level bodies have been designated to cover all complaints of a discriminatory nature: The Ombudsperson, as a non-judicial institution, and the competent courts. It is undisputed that these bodies play a greater role in enforcing anti-discrimination legislation and in establishing good and sustainable domestic practices in discrimination matters.

Generally speaking, Kosovo's anti-discrimination legislation must meet expectations as a legal form to challenge inequality, but there is still a long way to go in its full implementation.

Discrimination at work

Employees perceive their state and society according to the state's attitude towards human labour, equal conditions for good work and compliance with relevant legal provisions,[138] among others because they spend most of their time at work.

Discrimination in the field of work is prohibited,[139] means, it is forbidden to violate equal opportunities in the Law on Labour, such as: free choice of employment, promotion in service, vocational training and vocational rehabilitation, equal remuneration for work of equal value, in fair and satisfactory working conditions, to leave, education and union membership. Distinguishing, excluding or giving priority is permitted only on the basis of knowledge and ability criteria, and in no way on any of the prohibited grounds of discrimination.

However, discrimination at work is often not clearly visible and difficult to prove, unlike discrimination in other areas, inter alia, because it is covered by a specific legal form arising from the employer's discretion, which is based on the needs of the work carried out.

From a legislative point of view, the Law on Labour is a fundamental law that regulates the legal relations between employees and employers. The provisions of this Law shall apply to employees and employers of the private and public sector in the Republic of Kosovo. In addition to the Law on Labour, employment rights for certain categories of public sector employees are governed by specific laws.[140] The Law No. 04/L-161 on Occupational Safety and Health stipulates measures to improve the safety and health of employees in the work process. Legal regulation includes other laws in the field of Law on Labour.[141]

[138]See Constitution of the Republic of Kosovo, Article 24, Equality before the law and Article 49, Right to work and practice a profession, Law No. 03/L-212 on Labour and Law No. 03/L-149 on Civil Service of the Republic of Kosovo. Law No. 2004/3 on Protection from Discrimination, Law No. 05/L-020 on Gender Equality.

[139]Law No. 2004/3 on Protection from Discrimination, Law No. 05/L-020 on Gender Equality, as well as Law No. 03/L-212 on Labour explicitly prohibits discrimination in the field of employment, i.e. violation of equal opportunities for the establishment of employment relationship and enjoyment under equal conditions of all rights in the field of employment.

[140]Law No. 03/L-149 on Civil Service of the Republic of Kosovo

[141]Law No. 03/L-017 on Labour Inspection, Law No. 04/L-011 on the Organization of Trade Unions of Kosovo, Law No. 03/L-200 on Strike, Law No. 04/L-008 on the Social Economic Council, Law No. 03/L-136 on Issuance of Work

Law on Protection from Discrimination, [142] Law on Gender Equality, as well as the Law on Labour clearly prohibit discrimination in the field of work, i.e. violation of equal opportunities for the establishment of employment and the enjoyment of equal conditions for all rights in the field of labour.

Analysing the relevant legislation, the Ombudsperson is of the opinion that it is inclusive and that its provisions provide adequate mechanisms for the equal protection of employees in the public and private sectors in the protection of labour rights.

The Ombudsperson's overall observations on the problems and discrimination at work in the Republic of Kosovo, which we are witnessing during the reporting period, are more or less the same as in the previous reporting periods and there are no more visible results and progress in this regard.

Kosovo's unemployment rate still does not tend to fall. According to statistics, Kosovo continues to have high levels of unemployment. Due to the high rate of unemployment, cases of discrimination in the workplace are still rarely reported in protection mechanisms, as employees fear retaliation from their employers.

Regarding the system of protection of health and safety at work,[143] there is no significant difference with respect to the previous reporting period. In workplace accidents, construction continues to lead the sector with the highest number of occupational injuries and deaths due to non-compliance with basic occupational safety rules. There is still no structured register regarding the accidents at work in Kosovo and there is an urgent need to develop such a legal system based on legal acts to register all accidents at work with 3 or more days' absence from work, as done in all EU countries, according to the European Methodology for Accident Statistics at Work (ESAW).

Also, the prolongation of litigation in resolving labour cases remains a challenge in law enforcement. Further protracted proceedings and the lack of a specialized court dealing with employment matters remain barriers to the implementation of labour law with regard to judicial protection of rights.

During the reporting period, the Ombudsperson monitored the implementation of Law on Labour, received information from relevant institutions, [144] collected field information on the basis of which it has also initiated *ex officio* investigations and received individual complaints of discrimination in the field of employment.

The Ombudsperson has initiated *ex officio* a case[145] regarding the lack of effective remedies for the settlement of labour disputes between civil servants and candidates for admission to the civil service. The case was initiated on the basis of an article published on 7 May 2019 in the Koha Ditore newspaper, entitled: "Independent Oversight Board for the Civil Service of Kosovo (IOBCSK) has been dysfunctional for five months, with approximately 500 non-reviewed complaints".

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and Employment Licenses of Foreign Citizens, Law No. 03/L-019 on Vocational Training and Rehabilitation of Persons with Disabilities.

[142]Law No. 05/L-021 on Protection from Discrimination, Articles 1,2,3,8

[143]It is regulated by the provisions of Law No. 03/L-212 on Labour and Law No. 04/L-161 on Occupational Safety and Health.

[144]Information collected on violations of the right to work, from meetings held during the reporting period with the Inspector General of the Kosovo Inspectorate and the President of the Union of Independent Trade Unions of Kosovo.

[145]Ex officio No. 421/2019,

Following the investigation, legal analysis and the factual situation in this case, the Ombudsperson, on 18 June 2019, published a report with recommendation, whereby recommending the Assembly of Kosovo to appoint the members of the IOBCSK and enable its functioning as soon as possible.

The Ombudsperson handled the complaint [146] of discrimination, regarding the employment circumstances at the University of Mitrovica "Isa Boletini" (UMIB). Upon completion of the vacancy and other procedures related to the vacancy, the applicant was selected as an assistant at the Faculty of Mechanical and Computer Engineering. The UMIB Senate decided to postpone the signing of the employment contract with the complainant until the Anti-Corruption Agency (ACA) was consulted on the possibility of a conflict of interest in the specific case. The Ombudsperson in this case recommended that given the constitutional right to work and to exercise the profession and the right to equality before the law, avoiding any form of discrimination, which can also be referred to in Report with Recommendation No. 853/2016 of the Ombudsperson regarding discriminatory criteria in vacancy in UP.

The Ombudsperson considers that vacancies must respect the criteria, requirements, qualifications and other job skills of the candidate applying for the job. In all cases of employment or promotion, privileged treatment should not occur because of family or similar affiliations, and should not, for the same reasons, have a negative or exclusionary treatment for other candidates.

Also, the Ombudsperson, in accordance with its legal responsibilities[147], in the capacity of a friend of the court (amicus curiae), has sent the following opinions to the courts in Kosovo:

Acting on the basis of the complainant's complaint[148] against the Government of the Republic of Kosovo and the Ministry of Infrastructure, the Ombudsperson, in the capacity of a friend of the court, sent an opinion to the Basic Court in Prishtina.

On the basis of the evidence presented and the facts gathered, as well as the relevant laws, the Ombudsperson concluded that the complainants' complaints were justified and that there had been a violation of fundamental human rights and freedoms. Therefore, the Ombudsperson ascertained that the complainants had been appointed to posts by political appointees, categories of public servants and were not part of the Kosovo Civil Service, and that their relationship had terminated in breach of applicable law.

Complying with the complaint of the Strike Council against the Government of the Republic of Kosovo [149] concerning the right to equal, dignified and non-discriminatory treatment at work, on 31 May 2019, the Ombudsperson sent an opinion (amicus curiae) to the Basic Court in Prishtina, pending legal proceedings on the complainant's case, in order to inform the latter of its findings and conclusions regarding the case under review.

[146] A. No. 30/2019,

[147] Article 16 paragraph 9 of Law No. 05/L-019 on the Ombudsperson stipulates: "The Ombudsperson may appear in the capacity of the friend of the court (amicus curiae) in judicial processes dealing with human rights, equality and protection from discrimination." It should also bear in mind that, under Article 18, paragraph 1.1 of the Law on the Ombudsperson, the Ombudsperson has the following responsibilities: "1.1. to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them;"

[148] A. No. 671/2017

[149] A. No. 620/2018

This legal opinion focuses on clarifying the legal basis and legal analysis regarding the complaint of the Strike Council, which represents the staff of civil servants employed in the Office of the Prime Minister of Kosovo, concerning their demands for the right to equal, dignified and non-discriminatory treatment at work.

According to the applicants, the Government of the Republic of Kosovo, at its meeting held on 20 December 2017, adopted Decision No. 04/20 on the increase of salaries from which, in addition to political staff, selectively benefited even some public service officials within the Office of the Prime Minister: The Office of the Secretary-General (also selectively), the Legal Office, the Coordination Secretariat and the Office of Public Communication. This Decision did not covered employees with the status of state servants, such as: Office of Good Governance, Office of Strategic Planning, Office of Central Administration, Office of Budget and Finance, Procurement Office, Office on Publication of the Official Gazette, Office of the Language Commissioner, Office of Communities, Office of Regional Cooperation, Archives Unit and Government Unit of Missing Persons. The complainants also stated that Decision No. 04/20 on salary increases, including the selective staff of the Prime Minister's civil servants, led to unequal treatment of them and at the same time caused problems in the well-functioning of the Office of the Prime Minister, providing the administrative staff within offices which are part of the aforementioned decision with higher salaries than those of the directors of expert offices operating within the Office of the Prime Minister.

In the response of the Prime Minister of the Republic of Kosovo submitted to the Ombudsperson regarding the concrete case on 23.11.2018, it is stated that Article 92, paragraph 4 of the Constitution of the Republic of Kosovo, which stipulates: *"The Government shall make decisions in accordance with this Constitution and laws*, proposes draft laws and amendments and supplements to existing laws and other acts, and may give an opinion on draft laws which are not proposed by it ", Article 93 paragraph 4 which stipulates: "*renders decisions and issues legal acts or regulations necessary for the implementation of laws;"* it also mentions Article 4 of Regulation No. 02/2011 on Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries, as amended and supplemented by Regulation No. 14/2017, Regulation No. 15/2017 and Regulation No. 16/2017, which defines, among others, the responsibilities of the Government of the Republic of Kosovo: *"The Government exercises its executive power in accordance with the Constitution and applicable legislation relating to the Government ", and "The Government for the purpose of exercising the powers set forth in the Constitution and the legislation in force; make decisions on the proposal of the high state administration authorities; issues legal acts or regulations necessary for the implementation of laws."* In this case, the Ombudsperson firstly recalls that Decision No. 04/20, dated 20 December 2017, contains no legal references to Kosovo civil services; secondly, although the above legal basis entitles the Government of the Republic of Kosovo to take decisions, they must be in accordance with the Constitution and the laws, in the sense that they are not discriminatory, as in this case against the complainants.

The Ombudsperson, referring to the case law of the European Court of Human Rights that in the decision in the case of Burden v. UK [150]: *"A difference in the treatment of persons in similar situations ... is discriminatory if there is no objective and reasonable justification; in other words, if it does not*

[150] ECHR Judgment, Burden v. UK, 29 April 2008.

pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised." considers that such finding by the Court should also apply to the present case of the Applicants. Therefore, ad-hoc Decision no. 04/20 dated 20 December 2017, which represents the willingness of the Government of the Republic of Kosovo to selectively increase salaries for civil servants, as in the present case, justifying a legitimate purpose and having a reasonable relationship of the proportionality between the means used and the intended purpose, without any prior legal basis set forth and included in the decision, creates inequality and constitutes a violation of the legal provisions set forth in the Constitution of the Republic of Kosovo, the relevant legislation on the civil service of the Republic of Kosovo.[151], and constitutes a violation of Article 3 of Law No. 05/L-021 on Protection from Discrimination.[152]

The Ombudsperson sent a legal opinion to the Court of Appeals of Kosovo, currently undergoing legal proceedings on the complainant's case with an individual complaint[153] against Public University Hasan Prishtina (UP) on discrimination based on age restrictions when applying for academic degrees in UP, or in conjunction with Article 178 paragraph 1 item 2 of the UP Statute, for the title of university assistant, which, in addition to other conditions, determines that the candidate *"shall be no older than 30 years (respectively 35 years in the Faculty of Medicine) when firstly appointed. Exceptionally, the candidate can be elected a university assistant up to the age of 40 if he/she has a doctor of science degree."*

The protection of the entirety of the right to employment implies full implementation of the principle of professional capacity and the right to open competition in the employment process of all interested candidates without violating the relevant legal procedure when hiring employees in public institutions. The obligation to respect this right therefore requires the avoidance of measures which hinder or prevent the enjoyment of the right to employment and include respect for the principle of equality in non-discriminatory employment application procedures.

Equality in employment is the basic condition of equality before the law. Therefore, a person, because of any of his/her personal characteristics, namely in the present case, because of his/her age, cannot, without an objective and reasonable justification with the existence of a legitimate purpose, without a reason be denied the right to employment which is fully available and known to others. On the basis of the complainant's complaint, it is seen that the Rectorate of the UP continues with the non-enforcement of Judgment A. Nr. 1242/2010 dated 9 December 2013.

Based on the abovementioned, the Ombudsperson considers that the age limitation in the present case, provided by the UP Statute, on the basis of which the decision of the UP Senate was issued, constitutes a discriminatory act. The Ombudsperson, in the capacity of a friend of the Court (amicus curiae), informed the Court of its position on this matter, hoping that it will thereby contribute to clarifying the concrete situation.

[151] Law on Civil Service of the Republic of Kosovo, Article 43 and Article 44.
[152] Law No. 05/L-021 on Protection from Discrimination, Article 3, paragraphs 1 and 2.
[153] A.No. 587/2018.

During the reporting period, the Ombudsperson, also based on legal powers,[154] addressed to the Constitutional Court of Kosovo two referrals for constitutional review of two laws: Law No. 06/L-114 on Public Officials and Law No. 06/L-111 on Salaries in Public Sector.

The Ombudsperson considered that the Law on Public Officials did not take into account the fact that various entities in the public sector have regulated their organizational, functional and business affairs separately, in accordance with the Constitution of the Republic of Kosovo, as well as with the relevant laws. In addition to the referral for constitutional review of the Law on Public Officials, the Ombudsperson has also requested the imposition of an interim measure for the immediate suspension of the contested provisions of this law.

The Constitutional Court has reviewed and decided on this request for interim measure, without prejudice to the admissibility and merits of the Ombudsperson's request, approving the interim measure until 28 February 2020 and immediately suspended the full implementation of the Law on Public Officials for the same duration of time.

In the Referral addressed to the Constitutional Court for the assessment of compliance of Law No. 06/L-111 on Public Sector Salaries and Annex one (1) of this law with the Constitution that have failed to convey the constitutional spirit in terms of separation of powers, equality before the law, or guarantees of property rights. Furthermore, the Ombudsperson considers that this law is incompatible with the principles of the rule of law due to deficiencies in terms of its clarity, accuracy and predictability.

The Ombudsperson has received over 40 individual complaints from various public sector entities filed against the Law on Salaries in Public Sector.

The Ombudsperson has also requested the imposition of interim measure in the implementation of the Law on Salaries in Public Sector until the final decision of the Constitutional Court, considering that interim measure is necessary to protect the public interest and to avoid the irreparable damage that could be caused by the application of this law.

The Constitutional Court has reviewed the request of the Ombudsperson and, without prejudice to the admissibility and merits of the request, approved the interim measure until 30 March 2020 and immediately suspended the full implementation of this law for the same duration.

Discrimination against pensioners

There are over 260,000 registered pensioners in Kosovo. Most of them have been living on basic pensions for years, which is often not enough to cover the basic living expenses which turns their lives into a struggle for survival.

Pension or compensation schemes are currently regulated by eight different laws that are not sufficiently harmonized and contradict each other, thus, making their implementation in practice difficult.

[154] Article 16, paragraph 10 of the Law No. 05/L -019 on Ombudsperson „The Ombudsperson may initiate matters to the Constitutional Court in accordance with the Constitution and Law on the Constitutional Court"

Although the Government has taken certain steps to reform the field of the pension and benefits system and plans to draft a single Pension Law, which in one place will include and treat all pension rights, as well as the creation of a Social Security Fund that would determine the organizational structure, form of management, contribution rate and disability pension, all with a view to harmonizing with European practice, it remains unclear when this reform will be implemented in its entirety.

During the reporting period, the Ombudsperson completed the investigation in the *ex-officio* case[155], on the unequal treatment of pensioners by commercial banks in Kosovo in the provision of bank credit services and addressed to the Central Bank of Kosovo with a report. The Ombudsperson has encountered two situations in which commercial banks in the Republic of Kosovo have created and offered numerous types of loans for the needs of citizens, among which are loans for specific categories of citizens and for specific purposes. But the bank offers no loans specifically created for pensioners and from existing loans, no loans offered to citizens are available to pensioners over 65, because of their age, until this right in a comparable situation is not denied to other categories of pensioners under the age of 65, as well as persons over the age of 65 having registered businesses, as well as employed persons.

The Ombudsperson in this situation has found that by applying this practice, banks directly discriminate citizens on the basis of the direct criterion - age as a personal characteristic, because due to the denial of the right to use banking credit services, a comparable situation places a group of citizens at a disadvantage in relation to other persons who do not have such personal characteristics. The age of the client has no impact on the creditworthiness because it is not "financially measurable", nor can it depend on the age of the client if he or she can repay the loan efficiently and on time. Age is only one of the conditions for exercising the right to certain types of pensions, and older persons are entitled to equal access to the enjoyment of all public services.

The Ombudsperson does not deny that the bank has the right to set specific conditions for certain groups of clients on the basis of which it will approve the required loans, but even in such cases the conditions must be objective, comparable and equal for all and may not be related to the personal characteristics of the clients, that is, regulations for protection against discrimination of an imperative nature and which are binding on everyone. The evaluation of banks when considering and processing credit claims should be based exclusively on quantitative and qualitative criteria which take into account all the characteristics of a particular client in each individual case, without any general exemption based on any personal characteristic. Only such an approach and course of action ensures that all clients under equal conditions can access banking services.

The Ombudsperson in the present case considers that banks must continuously improve their credit policy in order to respond to the challenges in terms of adapting to new situations created in society, which is of particular importance for all the population without discrimination of any legally protected basis.

In this report, the Ombudsperson has recommended the Central Bank of Kosovo (CBK) to take concrete actions towards the adoption of reforms and harmonization of banks' policies in Kosovo with

[155]Ex officio No. 450/2018

positive legal regulations in the field of anti-discrimination legislation, in order to prevent discrimination against senior citizens, i.e. pensioners, in the use of bank credit service, and that banks should in the future ensure that their practices, policies and decisions refrain from unjustified differences or unequal treatment (exclusion, restriction or priority) in relation to persons or groups of persons, which is based on some personal characteristics.

Health and Social Protection

The Ombudsperson, as in the preliminary annual reports, expresses its concern that so far the International Convention on Economic, Social and Cultural Rights is not part of the Constitution of the Republic of Kosovo.[156]

During the reporting year in the OIK, in the field of health and social protection, a total of 287 complaints were received, 109 of which were initiated for investigation. The Ombudsperson considers that the competent public institutions in Kosovo should increase their efforts to undertake measures to improve and develop some of the vital sectors that enable the country's social and economic development.

Based on the Ombudsperson's assessments, the main factors that are affecting the deterioration of the economic and social situation in Kosovo are unemployment, lack of health insurance legislation, and legislation regulating the issue of the social assistance scheme in Kosovo.

On 17 December 2019, the Ombudsperson, in its ex officio investigation, issued a Report with Recommendation on the evaluation of the social service delivery system in Kosovo.[157] The report provides specific and concrete recommendations on actions to be taken by the Government of the Republic of Kosovo, the Ministry of Labour and Social Welfare and the relevant municipalities to improve the current situation. The Ombudsperson finds that the social protection system in Kosovo is not at a satisfactory level, as a result of the inadequate functioning of the Centres for Social Work (CSWs) in relation to the provision of professional social services to all citizens of the country, regardless. CSWs have been transformed into administrative-technical institutions and much less into institutions providing professional social services due to the lack of professional staff and the lack of associated facilities to provide adequate services.

In this report, the Ombudsperson finds that there is a lack of oversight, planning, financing and promotion of services in line with the needs of municipalities and there is a lack of development of a social protection system in municipalities and in the Ministry of Labour and Social Welfare itself which has caused and continues to cause major problems. The Ombudsperson in this report recommends the Government of the Republic of Kosovo to restore oversight, responsibility and management competencies to CSWs under the relevant Ministry and to amend/supplement the Law on Social and Family Services, which would fully regulate the mandate, role, powers, responsibilities and structure of Centres for Social Work.

The Ombudsperson recommends the Ministry of Labour and Social Welfare to draft and approve internal regulations for the Centres for Social Work and the costing of social services for each service

[156] See https://www.oik-rks.org/2019/04/08/ , Annual Report of Ombudsperson, 2018, p.102.
[157] A. No.59/2019

individually, especially those services that require financial means, such as: sheltering victims of domestic violence, victims of trafficking, children without family and abandoned foster care, abused children, children in a homeless situation, service in the institution or home for the elderly without family care, for children with disabilities, for children and adults with mental disabilities, for social housing, family packages by number of members, reintegration, etc.

Whereas the municipalities of Junik, Partesh, Mamusha, Kllokot and Gracanica are recommended to establish and functionalize the CSWs, until the Government of the Republic of Kosovo restores oversight, responsibility, and management competencies to the CSWs under the relevant ministry.

The Ombudsperson draws attention to the concern raised even in the annual reports of previous years regarding the criteria set for social assistance or the limitation on social assistance for children under the age of 5 in the Law on Social Schemes in force; however, this issue still remains unresolved.

The Law on Health Insurance, which was adopted in April 2014 by the Assembly of the Republic of Kosovo, is not implemented in Kosovo yet.[158] However, this law has not been implemented yet and this directly affects the citizens of the Republic of Kosovo in terms of medical services. The Ombudsperson recommends the Government of Kosovo to immediately take concrete action with a view to the practical implementation of this law.

Social housing

Housing is an extremely important issue for social stability, health and quality human welfare development. All people have a right to a standard of living that is adequate for their health and well-being (Universal Declaration of Human Rights). The Law on Financing Special Housing Programs in Kosovo obliges the Government of the Republic of Kosovo and municipalities to provide and create suitable housing conditions for citizens.

Based on the OIK data, the demand of citizens in need of housing continues to be high this year, although there are some positive developments, which are not sufficient.

This year, the Ministry of Labour and Social Welfare has signed a Memorandum of Understanding with several municipalities in Kosovo regarding the construction of houses for non-majority communities, as part of the capital project “Support to non-majority communities”. The Ombudsperson is aware that housing construction in the beneficiary municipalities has begun; however, from the complainants' complaints regarding housing, the lack of private property of many families included in social construction programs has been noted. Families with severe socioeconomic conditions do not even meet basic living conditions, they do not have any property registered in their name; therefore, this fact also made it impossible for these families to be on the list of beneficiaries for the construction of houses given that one of the eligibility criteria for the housing construction was that the applicants have a land parcel registered in the name of the person applying.

In these cases municipalities have not provided any solution to provide social cases with any parcel for construction of houses with the justification of budget deficits. The municipalities have also failed to secure the construction of any adequate housing facility for these families with severe social and economic conditions, as in the case of complainant N.S. from Mitrovica, who has not resolved his

[158]Law No. 04/L-249 on Health Insurance, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9450

housing issue.[159] According to the response sent by the Municipality of Mitrovica to the Ombudsperson, this municipality has a large number of such requests and therefore, in the absence of budgetary means, cannot provide housing solutions. The same was also stated by the Municipality of Peja in the case initiated for investigation in OIK in the individual complaint.[160]

On 26 June 2019, the Ombudsperson received the complaint of another citizen from Prizren, who claims to be a blind person and lives with his wife and child on a property which is reportedly socially owned.[161] As a result of the building's aging, lack of maintenance and conservation interventions, this building during 2016 has been assessed as dangerous for housing. With the support of the Municipality of Prizren and the relevant permission from the Kosovo Institute for the Protection of Monuments, several interventions were carried out in this facility and the complainant was instructed to report to the Municipality of Prizren. Despite the Ombudsperson's interest, no sustainable housing solution has been made yet for the family in question.

On 17 July 2019, the Ombudsperson received a complaint of a citizen from the municipality of Peja regarding the lack of housing.[162] According to the complainant, due to the lack of housing, he was forced to live in a house that did not meet even the most basic living conditions while the municipality had failed to find an adequate solution. The Ombudsperson has been informed by the Municipality of Peja that the possibility of building a house for this family is expected to be considered and therefore the case remains open for investigation by the OIK.

Persons with disabilities

Although the rights of persons with disabilities are guaranteed by international and local acts, the Ombudsperson considers that their situation continues to be a concern. Since 2018, the Ministry of Labour and Social Welfare has stated that it has begun drafting a concept document for the drafting of a comprehensive law protecting people with disabilities; however, no progress has been made in this regard.

Persons with disabilities continue to face many difficulties in employment, access to public spaces and public institutions, public transport, poverty and difficulties in exercising the rights to benefits guaranteed under the applicable legislation.

Some of the barriers that blind people in Kosovo face are the lack of tangible paths, loud traffic lights, publications and announcements in the Braille alphabet in institutions.

The Ombudsperson has received a number of complaints from blind people regarding membership of the Kosovo Association of the Blind (KAB) to be provided with membership cards for the purpose of obtaining guaranteed rights and benefits. Article 21 of the Law No. 04/L-092 for Blind Persons stipulates: "*For implementation of this law and without denying the rights of individuals or other groups, shall be recognized the right of representation of blind persons and benefits of special services of Kosovo Association of Blind Persons, depending on fulfilment of the following conditions:* […]."[163]

[159] A. No. 759/2018
[160] A. No. 622/2019
[161] A. No. 540/2019
[162] A. No. 572/2019
[163] See https://www.oik-rks.org/2019/04/08/ , Annual Report of Ombudsperson, 2018, p.88.

The Ombudsperson found that the designation of the KAB as the only association with legal competence to provide blind persons with booklets of blindness and the creation of the register of evidences of the booklets issued to beneficiaries by this law vis-à-vis other associations are also registered as NGOs for the protection of the interests of the blind, constitute discrimination and are in breach of Article 17, paragraph 8, of Law No. 04/L-092 for Blind persons, as well as with Law No. 04/L-57 on Freedom of Association in Non-Governmental Organizations, which in Article 3, paragraph 1, stipulates: *"Every person in Kosovo has the full right to associate and establish an NGO"* and paragraph 2 stipulates *"No person is obliged to associate against his/her will and no person is discriminated in any way because of the decision to associate or not to associate."*

The Ombudsperson has addressed the complaint filed by the Kosovo Association of Blind Women (KABW) against the University Clinical Centre of Kosovo (UCCK) and the University Hospital and Clinical Service of Kosovo (UHCSK) regarding the non-exemption of blind persons from the exit fee at the UCCK and UHCSK facility in Prishtina.[164]

The Ombudsperson in this case found that although the Law No. 04/L-092 for Blind persons, in Article 6, which stipulates: "*Blind persons shall be exempted from any tax and direct taxes. In case of self-employment they shall be exempted from any fiscal obligation, while if they carry out an activity as legal entities, they shall enjoy tax facilitation realized by laws in force.*" This legal obligation was not being respected by UCCK and UHCSK. The tables at the entrance of this institution did not indicate that persons with disabilities are exempt from payment. The Ombudsperson recommended that the obligation of officials engaged in entry-exits of the UCCK and UHCSK facility for blind persons to pay the designated amount of money constitutes an unlawful act and this practice should be immediately banned in all public institutions. The recommendations given by the Ombudsperson have been taken into account by the responsible authorities.

The Ombudsperson estimates that among the categories that least enjoy respect for human rights in Kosovo are people with hearing impairments. This category is not included in any social scheme defined by law. On 30 September 2019, the Ombudsperson addressed an Opinion[165] regarding the access to information for the category of persons with hearing disabilities in the context of televised debates on the 2019 national elections. In the television channels in Kosovo during the election campaign in the extraordinary elections for Members of the Assembly of the Republic of Kosovo, no certified interpreter has been observed in *Sign Language,*[166] therefore it is considered that this category of persons has not been informed about the political programs in order to evaluate the best political offer for voting of the candidates for deputies in the Assembly of the Republic of Kosovo. This opinion was sent to the Independent Media Commission (IMC) and all licensed television channels.

As in previous years, this year the OIK has received complaints regarding the violation of the right and discrimination in the realization of benefits for persons with disabilities, regarding the exemption from payment of import duties for the category of persons with special needs, namely the blind and the

[164]A. No.235/2019

[165]Ex officio No. 744/2019.

[166]According to the Regulation (GRK) No. 15/2014 on Provision of Services in Sign Languages in the Republic of Kosovo, Article 3, paragraph 1.7, "Sign Language" – shall mean the Sign Language which has its own grammatical rules, sentence structure and cultural differences.

paraplegic and tetraplegic persons.[167] Persons with disabilities have the right to exemption from the payment of import duties under the provisions of Article 182 in conjunction with Article 76-81 of Annex A to the Customs and Excise Code of Kosovo No. 03/L-109; with Article 10 of the Law No. 05/L-067 on the Status and Rights of Paraplegic and Tetraplegic Persons, with Article 6 of Law No. 04/L-092 for Blind Persons; Point 1.12 of Article 30 of Law No. 05/L-037 on Value Added Tax.

Article 10 of the Law on the Status and Rights of Paraplegic and Tetraplegic Persons provides for the exemption from import duties. This right is only granted to persons who have previously been issued a driver's license and provided that the vehicle is designed or adapted for use by persons with disabilities. However, none of these acts provided for tax exemption for persons of this category who, for objective reasons, do not have a vehicle adapted to their disability and are unable to obtain a driver's license for them to drive the vehicle.

In addition, people with disabilities who use mobility aids, as reported by the Ombudsperson in its preliminary annual reports, still face the same problems with unhindered mobility including public institution facilities.

On 3 July 2019, the Ombudsperson published a Report with Recommendations in the ex officio investigated case regarding the situation of persons with disabilities in the Municipality of Gjilan.[168] This report refers to the access of persons with disabilities to public property, road infrastructure and the right to education and employment in public institutions in the Municipality of Gjilan. The Ombudsperson's finding is that the Municipality of Gjilan has failed to comply with and fulfil its obligations under Article 12 of Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities, by not meeting the requirement of the number of employees with disabilities and not providing reasonable accommodation for persons with disabilities, in accordance with their specific needs, constitutes discrimination on the basis of disability, as defined in the applicable Law on Protection from Discrimination. Some of the recommendations of this report are currently being implemented by the Municipality of Gjilan.

Gender equality

Gender equality is a fundamental prerequisite of democracy for the elimination of all forms of gender-based discrimination. It implies the principle of equality before the law for people of different genders. Achieving gender equality is one of the main objectives and is a priority for the development of any democratic society, in which all its members will be treated equally, in all situations without discrimination.

The Constitution of the Republic of Kosovo guarantees gender equality as a fundamental value in our society and implies equal opportunities for women and men to participate in economic, social, political, cultural and other areas of social life.

According to the Law, gender equality means full and equal exercise of the rights of women and men as well as protection against gender-based discrimination in opportunities, benefits, access to services and social and political life.

[167] A. No. 571/2019
[168] Ex officio No. 340/2017

Regarding the complaints received by the Ombudsperson during this period, it can be concluded that gender discrimination is present in both the public and private sectors. Gender discrimination cases are rarely reported due to lack of recognition of rights and lack of judicial practice in discrimination cases; however, during 2019, the Ombudsperson Institution received 65 gender equality cases, out of which 39 were initiated as cases for investigation.

Gender equality related to the issue of the right to work

Gender discrimination at work means when a person or group of persons is treated unequally in the context of work because of gender. The difficult socio-economic situation and high unemployment rate in Kosovo affect the woman's dependence on her husband and family. This is particularly the case in rural areas where most women are unable to access their financial resources and are unable to empower themselves in this regard.

Based on complaints submitted to the OIK during this reporting year, it was noted that women had difficulties in competing in the labour market[169] and they are very unlikely to be employed, especially for higher positions, even if they have the same qualifications.

During the reporting year, the Ombudsperson received complaints from citizens regarding discrimination in employment relations. The nature of the complaints relates to violations of the right to work in the procedures for selection and promotion, and then to sexual harassment in the workplace.

The Ombudsperson addressed the Basic Court in Prishtina in the capacity of a friend of the court (Amicus Curiae), on the need for protection against discrimination on the grounds of gender and equal treatment in employment, referring to the complaint received at the institution. [170]

This legal opinion focuses on clarifying the basis and legal analysis of the complainant's complaint about gender-based discrimination and unequal treatment in internal competition procedures for leading positions in the responsible institution. The Ombudsperson also raised concerns about the composition of the evaluation committee that was composed solely of male members and considered that there was a violation of equal representation, namely the constitutional category and the Law on Gender Equality.

During this reporting period a complaint was received against a company with public authorization in respect of the complainant's allegations of harassment by her director and subsequently the complainant was penalized for breach of contract.[171] Following the Ombudsperson response to the responsible authority, the authority in question sent a reply stating that the complainant's employment contract had expired. In the meantime the complainant has filed a claim with the Basic Court in Prishtina.

The Ombudsperson has received two more complaints about sexual harassment in the workplace. Following the actions taken by the Ombudsperson, cases have been processed by the employer and the relevant authorities.[172]

[169]A. No. 119/2019
[170]A. No. 637/2018
[171]A. No. 48/2019
[172]A. No. 577/2019

Early elections for the Assembly of the Republic of Kosovo and implementation of the Law on Gender Equality

The Ombudsperson has repeatedly raised the issue of unequal representation in the lists of candidates running in elections, because these lists are in violation of Law no. 05/L-020 on Gender Equality and Law no. 05/L-021 on Protection from Discrimination, and that these laws require equal treatment in all areas. This includes participation in public affairs, the right to elect and the right to be elected, rights that have not been applied in early elections for the Assembly of the Republic of Kosovo for 2019 from both the political entities that have proposed the lists of candidates and the Central Election Commission during the certification of political parties.

The Ombudsperson in 2018 addressed the issue of interpreting the legislation through general principles for the interpretation of normative acts and the implementation of these principles in the protection of human rights, namely compliance of gender equality.[173] These interpretative principles of the law also apply to the relationship between Law no. 05/L-020 on Gender Equality and Law no. 03/L-073 on General Elections in the Republic of Kosovo, regarding their requirements for gender representation among elected representatives.

Law on General Elections provides: *"In each Political Entity's candidate list, at least thirty (30%) per cent shall be male and at least thirty (30%) per cent shall be female, with one candidate from each gender included at least once in each group of three candidates, counting from the first candidate in the list".*

While the Law on Gender Equality presents a strict requirement: "*Legislative bodies (...) shall be obliged to adopt and implement special measures to increase representation of underrepresented gender, until equal representation of women and men according to this Law is achieved*"; by emphasizing: "*Equal gender representation in all legislative bodies is achieved when ensured a minimum representation of fifty per cent (50%) for each gender, including their governing and decision-making bodies*".

Which Law should be given priority in regulating this issue, the Law on General Elections or the Law on Gender Equality? In this case, two of the interpretative principles are relevant and both give priority the Law on Gender Equality.

Regarding *lex specialis* principle, at first, it may seem unclear as to which law should be considered special and which one general, it may seem that each law regulates a different specific area, so none of the laws prevails over the other. Therefore, on 27 September 2019, the Ombudsperson filed an indictment within the Basic Court Prishtina (BCP), namely the General Department, with a request for interim measures in conjunction with the violation by the Central Election Commission (CEC) of the right to equal treatment of women in electoral and participation rights[174].

CEC has certified the lists with the names of candidates for MPs proposed by political entities on Early Elections for the Assembly of the Republic of Kosovo for 2019, but did not take into

[173]Report with Recommendations no. 441/2018, dated 28 September 2018.
[174]C.no.743/2019

consideration constitutional and legal guarantees regarding gender equality, specifically equal treatment of women in electoral and participation rights.

The Ombudsperson, as an institution of equality under the Law on Gender Equality and as an institution with competences also defined by the Law on Protection from Discrimination, has filed an indictment with the BCP, requiring from the court to decide that the CEC's conduct violated the right to equal treatment of women in electoral and participation rights, to prohibit activities that violate or may violate the right to equal treatment, or to engage in activities that eliminate discrimination or its consequences in relation to unequal treatment of women in electoral and participation rights, and to publish in the media a decision confirming the violation of the right to equal treatment.

Furthermore, the Ombudsperson, along with the indictment in question, has also required the imposition of interim measures in the electoral process, on the basis of the arguments put forward in the indictment and requests the Court to approve this measure.

The right to property and inheritance

Laws in force give women and men equal rights to property, despite the fact that the vast majority of properties are registered in the name of men. The biggest obstacle to an independent women's life is the fact that in most cases women do not own any private property. Laws that enable the implementation of gender equality and enable equal access for women to property are: Law on Property, Law on Gender Equality, Law on Inheritance, Law on Family and Law on Protection from Discrimination.

Position of women regarding their right to inherit stands in front of a number of social, legal and institutional barriers in Kosovo. Paragraph 1 of Article 3 of the Law on Inheritance provides that, *"All physical persons under the same conditions are equal in inheritance"*, clearly defining that the division of inheritance among family members should be on equal terms, without exception of gender-based heirs. However, in practice, there were problems with the implementation of this Law in terms of gender.

Law on Gender Equality enables equal participation in all areas of life of both genders in Kosovo, as well as in property law. In rural areas continues to exist the priority of male family members to inherit family property as a consequence of customary law, which to a large extent continues to have an impact on Kosovar society. Regarding property and inheritance issues, in our society, the issue of ***renouncing*** female heirs in favour of the male heir has been discussed many times, and such a situation is present in all communities in Kosovo.

A positive step by the Government of Kosovo in strengthening affirmative action to register common property of spouses has been the adoption of Administrative Instruction no. 03/2016. In May 2019, this Administrative Instruction was amended (Administrative Instruction 02/2019), which extended the time period of its implementation for another four years. The purpose of this affirmative measure was to increase access to the property by women, and to register property on their name, as well as to accelerate the achievement of equality between men and women in terms of property rights.

Benefits deriving from this Administrative Instruction are: exemption from registration service fee, exemption from property tax for one year and exemption from notary fee.

Cases received by Ombudsperson are related to property rights violations, and are being handled in the competent courts and the Ombudsperson is monitoring court hearings. However, this does not prevent the Ombudsperson from conducting investigations regarding the complaint based on its powers deriving from the Law on Gender Equality and the Law on Protection from Discrimination.[175]

Consequently, the Ombudsperson considers that education, raising the level of information on their property rights and their benefit, as well as the drafting of the National Strategy on Property Rights, are very important and are considered as essential issues to end informal practices of property rights preventing women from being listed as legal heirs.

Domestic violence

The law defines domestic violence as a form of abuse by one person against another which results in a violation of his or her physical, moral, psychological, sexual, social or economic integrity. This type of violence knows no cultural, ethnic, educational, or economic environment.

The Ombudsperson, as in the preliminary annual reports, recommends the inclusion of the Istanbul Convention in the Constitution of the Republic of Kosovo. With the inclusion of this Convention, the State would in the future engage in taking necessary legislative and other measures to establish an effective, inclusive and coordinated system of prevention and protection from domestic violence, which means protection against gender-based discrimination.

Responsible institutions encounter difficulties in assessing the presence of domestic violence. An obstacle to report a domestic violence case is, among other things, social pressure and prejudice where domestic violence is seen as a shame and a private matter, which should not be reported outside the family circle. The very existence of the Law on Protection from Domestic Violence means that domestic violence is not only a personal matter of a family member, but is also a social and state issue that must be dealt by the institutions of the Republic of Kosovo.

During this reporting year, the Ombudsperson considers the implementation of its recommendation set out in the preliminary annual reports on the inclusion of domestic violence in the Kosovo Criminal Code, in Article 248, as a crime where the perpetrator is sentenced with a fine or imprisonment up to three years, as a positive step.

National Strategy of the Republic of Kosovo for Protection against Domestic Violence, adopted by the Government (2016-2020), aims prioritizing responsible parties in all cases of domestic violence, ensure access to quality integrated services, guarantee justice and accountability for victims, provide rehabilitation and reintegration of victims/survivors of domestic violence and raise awareness throughout our society.

The increase in the number of cases reported to the Police, apart that indicate the increase of acts of violence, is an indication that victims have, over time, been legally educated to report violence to the competent authorities. Empowering women to recognize and claim their rights is essential to combat violence, not just physical and psychological violence. In addition, additional work is needed to develop and improve services for victims of violence, including financial assistance, housing,

[175] A.no.272/2019, A.no.633/2019

education, training and employment assistance, as well as the creation of a sufficient number of safe housing for women and children who are victims of violence.

During this reporting period, the Ombudsperson has received several requests for monitoring cases in the Basic Court Prishtina[176], on the basis of which the representatives of Ombudsperson have monitored the trials[177] of victims of domestic violence[178].

During 2019, the Ombudsperson, in accordance with its constitutional and legal mandate, published the Ex officio Report No. 346/2019, which has been forwarded to responsible authorities and the same relates to positive obligations of the state with regard to protection from domestic violence for the right to life, rights deriving from the Constitution of the Republic of Kosovo, as well as Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

This report was initiated ex officio by the Ombudsperson, with the purpose to evaluate the application of main principles of positive state obligations regarding the right to life, in conjunction with the case on domestic violence dated 22 April 2019, in neighbourhood 'Dardania', Prishtina.

The report evaluates the effective realization of the rights of persons/victims of domestic violence in Kosovo in relation to the access to care and treatment of this category of persons, focusing in particular on discrimination, inequality, failure of relevant authorities to protect the rights of victims of domestic violence, as well as the obligations of the state to protect the lives of citizens. These rights guaranteed by the Constitution and international instruments are practiced through laws, policies and strategies implemented by this Report, but since the Report found that there were violations of its constitutional and legal obligation against victims of domestic violence, as well as the obligations of the state to protect the lives of citizens, the Ombudsperson has come up with concrete recommendations to the relevant authorities regarding the improvement of the situation from the human rights perspective, with the purpose of building a system for victims of domestic violence, in compliance with the principles of the rule of law.

- **Shelters**

Shelters provide services for victims of domestic violence, quality rehabilitation and reintegration services for women and children victims. These shelters have received financial support in varying amounts through application procedures in MLSW; however, they are insufficient for adequate service delivery.

Despite the fact that shelters through civil society have advocated in the Assembly of the Republic of Kosovo for a sustainable fund from the Kosovo budget, the situation remains the same nowadays. Even today, there is no emergency fund that would support a shelter to operate in situations where there is a lack of funds despite the fact that the housing requirements for victims are high, for illustration, only in 2019 the Prishtina shelter has treated 111 cases. Therefore, the Ombudsperson

[176] A.no.307/2019
[177] A.no. 521/2019
[178] A.no.187/2019

recommends that sustainable funding be provided for shelters in Kosovo so that victims of violence are treated with dignity.

- **Women survived from sexual violence during the war**

Women survived from sexual violence during the war have been treated legally since 2018, when the Commission was established and the application for recognition of victims of sexual violence during the war has begun. In its preliminary annual report, the Ombudsperson raised as a matter of concern the form of the Commission decisions, namely the part of the enacting clause does not contain the reasoning part. The Government Commission for the Recognition and Verification of the Status of Violent Persons during the War has informed the Ombudsperson that this practice has been applied for the purpose of maintaining confidentiality.

However, the Government Commission on Recognition and Verification of the Status of Sexual Violence Victims during the War has acted according to the recommendation of the Ombudsperson and made changes to the format of the Decision for recognizing the status of victims of sexual violence during the war. In pursuance of these recommendations, the Government Commission, on 31 May 2019, adopted the Guideline for the review of the requirements on the recognition and verification of the status of sexual violence victims during the war, which contains the new form of the Decision with necessary reasoning. The Guideline was prepared in accordance with the provisions of Law No. 05/L-031 on General Administrative Procedure.

Minority communities in Kosovo

During this reporting period, the Ombudsperson has received 204 individual complaints from members of all minority communities. In addition to individual complaints, the OIK monitored the overall situation of communities, but also talked with members of minority communities and their representatives in the municipalities of Gracanica, Ranillug, Prizren, Peja, Lipjan, Dragash and Rahovec, as well as with the Language Commissioner of the Republic of Kosovo.[179]

As in the previous reporting period, the Ombudsperson notes that progress has been made on individual issues, but no major progress and systematic resolution of the problems faced by minority communities in Kosovo; therefore, in this case, emphasizes the necessity of consistent application of the law and the principle of equality before the law for all citizens of the Republic of Kosovo, without exception.

Return and security

With regards to the return of displaced persons and the security of members of minority communities, there is no significant improvement compared to the previous reporting period. The declining trend of returns continues even during 2019. According to UNHCR statistics, during 2018, 284 persons

[179]Meetings were held in Ranilug (Serbian community) on 06.11.2019, in Janjeva (Croatian community) on 11.11.2019, in Prizren (Bosnian and Turkish communities) on 09.12.2019, in Gracanica with the Language Commissioner on 13.12.2019, and the meeting with the Director of NVO VoRAE on the situation in the Roma, Ashkali and Egyptian communities held in Gracanica, on 18.12.2019. Information on the situation of Gorani was received via e-mail on 23.12.2019, while information regarding the Serb community in the municipalities of Peja and Rahovec was received on 01.12.2019, respectively on 30.12.2019.

returned and by the end of December 2019, only 190 persons belonging to minority communities returned. [180]

Despite years of reporting on living conditions and housing for displaced persons living in collective centres for 20 years in Kosovo, in areas inhabited mainly by members of the Serb community, the problem has not yet been fully resolved. This issue is particularly relevant for collective centres in the municipality of Shterpca, where there are still 102 families with a total of 247 persons. Except in Shterpca, collective centres are still in operation in the northern part of Mitrovica, Leposaviq, Zubin Potok and the barracks complex in Gracanica. [181]

During the reporting period, OIK monitored the work and engagement of the MCR on the issue of housing and assistance for returnees, equipment with personal documentation, integration, and security. In fact, OIK embraces the efforts and implementation of RRK5 projects, implemented by the MCR, through which the housing issue of 410 returnees has been resolved by building and equipping 60 houses.[182] OIK also monitored the progress made in the so-called "Skopje Process", which has established various working groups dealing with property rights, personal documents, security, dialogue and integration, data management and solution planning workgroups. The work of issuing personal documents to displaced persons and returnees can also be positively assessed, where progress has been made. Positive results were also recorded during 2019 in the timely issuance of construction permits by municipal authorities where houses for returnees were built.

Although the Government of the Republic of Kosovo at the beginning of 2018 adopted the Regulation no. 01/2018[183] on the Return of Displaced Persons and Durable Solutions, which the Ombudsperson also embraced and appreciated as a positive approach for resolving the problems of returnees, the said Regulation is not fully and consistently implemented. This Regulation unifies the procedures between different institutional mechanisms, while it is foreseen that the central coordinating institution should be the MCR, which for the first time has been issued a legally binding framework for the process of return of displaced persons.

The security situation is stable, several recurring incidents continue affecting the perceptions of security of members of the Serb and Roma communities, whether living in Kosovo or displaced, so these perceptions also affect the favourable climate in the process of returning these individuals. Organization for Security and Co-operation in Kosovo (OSCE), in its report on the "Assessment of Voluntary Return in Kosovo" which was published in November 2019, states that incidents that occur in the places where displaced persons are returned are mostly theft, but also include assault, arson, firearm incidents, and damage to religious heritage sites, as well as protests, blockades of pilgrims' visits, and petitions by the receiving communities against return. [184] OIK considers, however, that besides what is said, the adverse economic situation in the country, namely the inability to work and

[180] Based on the United Nations High Commissioner for Refugees (UNHCR) official statistics from January to December 2019, 123 Kosovo Serbs, 53 Ashkali and Egyptians, and 14 Roma have returned.
[181] Based on the United Nations High Commissioner for Refugees (UNHCR) statistics released at the end of December 2019, 412 people still live in collective centres in Kosovo.
[182] Based on the data received by OIK from MCR, houses were built in the following municipalities of Kosovo: Graçanica, Lipjan, Rahovec, Partesh-Pasjan, Novo Brdo, Shterpca, Ranilug, Gjilan, Kllokot, Kamenica and Vushtrri.
[183] Regulation no. 01/2018 of the Government of Kosovo issued on 04.01.2018.
[184] https://www.osce.org/sr/mission-in-kosovo/440744

the lack of sustainable economic security, mostly affects the return, which is also reflected in the fact that only the older population decides to return, and the younger population rarely. Apart from the fact that there is no return of the younger population, a major problem is also the displacement of young people from all communities, due to inadequate education and lack of employment opportunities. There are a growing number of those who, after graduating from high school or university, go to the regional countries, but also to EU countries, because they do not see any prospects for themselves in Kosovo.

In addition to the most frequent incidents mentioned above affecting minority communities, it should also be noted that during 2019 in Lipjan the Orthodox cemeteries[185] were again damaged and the same situation was repeated in the Orthodox cemeteries in Rahovec. Even today, protests by family members of missing persons make it impossible for members of the Serb community to visit cemeteries and Orthodox Church in Gjakova.

When it comes to crimes of incitement to national, racial and religious hatred, disorder and intolerance, in accordance with Article 147 of the old Criminal Code,[186] as well as the offense of causing disunity and intolerance, in accordance with Article 141 of the New Criminal Code,[187] from 01.01.2019 to 15.12.2019, Kosovo Police registered and investigated only 10 cases.

In addition to these general security issues, OIK also addressed the issue of security of the Croatian community in the village Janjeva in the municipality of Lipjan. On 26.02.2019, the Ombudsperson initiated an *ex officio* investigation regarding the security of Croatian citizens and their property in the village of Janjeva.[188] In parallel with the initiation of the Ombudsperson's investigation, the Croatian community of Janjeva sent an open letter to the Ombudsperson in order to draw attention to the issue of security of the citizens themselves and their property due to the large number of thefts and robberies in this village. A large number of thefts have been daily activities in Janjeva in recent years, and the police have been ineffective and unable to settle the problem due to poor working conditions in the village. The letter was signed by 115 citizens of the Croatian community and on this occasion, they invite all competent institutions to react, in order to enable them a safe environment, security, and protection of their property.

The Ombudsperson, after undertaking investigation and collection of information and evidence on the field, on 30.09.2019 sent a recommendation letter to the Kosovo Police, whereby recommending the Kosovo Police to act in accordance with the powers conferred by law, i.e. enable the increase of the number of police officers in Janjeva in order to respond adequately to reporting on perpetrators and to work to prevent the execution of the same. Kosovo Police, within the legal deadline, responded that it is working to improve the security in this village and that in the coming period five more police officers will be assigned to work at the local police station in order to improve visibility and perception of the security of Janjeva residents. Also, by the end of 2019, the representative of this

[185] In July 2019, 24 tombstones were damaged, and in mid-December, 9 tombstones in the Orthodox cemetery in Lipjan were registered in the OIK as ex officio no. 952/19.
[186] Criminal Code no. 04 / L-082, Article 147.
[187] Criminal Code No. 06 / L-074, Article 141. The Code entered into force in April 2019.
[188] Ex officio no. 133/2019

village informed the Ombudsperson that patrols had been increased and that the security had improved in Janjeva, thus the number of thefts and robberies had decreased.

The Gorani community faces a similar problem because in the Municipality of Dragash, in Gorani and Bosnian villages, thefts and robberies are more and more frequent, and police managed to resolve only a small number of cases so far. Residents of these villages have repeatedly addressed the request to increase the number of police officers or substations in the villages, but their requests have not been considered. In the coming period, the Ombudsperson will monitor further developments regarding the declared situation of the citizens of the Municipality of Dragash.[189]

Civil registration and identification documents

When it comes to the issue of citizenship, civil registration and obtaining identity documents of members of minority communities, whether persons living in Kosovo or displaced persons, it is necessary to note that there has been positive progress in this regard, compared to the previous reporting period, but not in all municipalities in Kosovo. In fact, following the issuance of the Decision no. 296/2018 of the Ministry of Internal Affairs (MIA)[190], which allows all citizens of the Republic of Kosovo, who have registered their civil status with the parallel offices of the civil registers of the Republic of Serbia in the territory of Kosovo from 10.06.1999 to 14.09.2016, to submit their applications for registration in the Central Civil Status Registry of the Republic of Kosovo, register in the Central Civil Status Registry of Kosovo based on the Civil Status Certificate issued by the parallel institutions.

Following the expiry of the first MIA Decision, which was valid until the end of June 2019, the MIA, in accordance with its competences on this matter, extended the deadline for registration and civil status adjustment by Decision no. 785/19,[191] which was valid until 31.12.2019. The Ombudsman monitored the implementation of the description and recognition of the registration of facts and the status of civil status, primarily of members of the Serb and Roma communities and with information obtained from the field by citizens and civil society organizations and NGOs, it can be concluded that the MIA decision in question has been applied without any problem in all municipalities of Kosovo. The only exception to the transparency and information of citizens regarding registration in the civil registry of the Republic of Kosovo was noted in Peja and Klina, where there were complaints of citizens[192] for non-continuous implementation of this Decision by the Civil Registration Office in these municipalities.

Compared to 2018, when a large number of complaints were filed with the OIK against the civil registration offices in southern Mitrovica, while from the citizens living in northern Mitrovica, in 2019 there was only one complaint, which was resolved positively, complying with the request of the party[193] to obtain a certificate from the Central Registry of Births and Citizenship of the Republic of

[189] On 23.12.2019, OIK received information on frequent thefts and robberies in the villages of the municipality of Dragash from Gorani community representative.
[190] MBP decision no. 296/2018, adopted on 05.07.2018, the implementation of which began at the end of August 2018 (which was issued in accordance with the Brussels Agreement between Kosovo and Serbia)
[191] The MIA Decision No.785 / 2019 adopted on 15.07.2019 and in force until 31.12.2019.
[192] A. No.446/2019
[193] A. no.559/2019

Kosovo. The decisions of the MIA of the Republic of Kosovo also have contributed to the improvement of the situation regarding the issuance of birth and citizenship certificates, on the basis of which citizens have been able to regulate their civil status also in the north of Kosovo. However, the issue and problem regarding the civil registration offices, which are not located in their centres in the municipalities of Zubin Potok, Zvecan and Leposaviq, but are located in the villages of Cabra, Lipa and Banja, remain open. Although the Ombudsman in its 2018 annual report called on the competent institutions to return these displaced offices to their urban centres because the municipalities in the three cities mentioned in the north became operational, this has not happened until now.

Even in this reporting period, as in all previous periods, the Ombudsperson points to the lack of personal documents of members of the Roma, Ashkali and Egyptian communities. The situation with personal documents has improved to some extent thanks to civil society organizations and the UNHCR project, but there is still a great need to raise awareness of the need for citizens of Roma, Ashkali and Egyptian communities to register their civil status and the status of their minor children. Problems with obtaining personal documents are particularly encountered by returnees who are members of these three communities, who return to Kosovo from Northern Macedonia, Serbia and Montenegro. Due to not only lack of personal documentation, but also because they are not registered in the central civil registry, a number of citizens from the communities in question are legally invisible to the system, so they are not able to exercise their rights in any way, above all those relating to social benefits and assistance to persons in need.

Property rights

As in previous reporting periods, the Ombudsperson also addressed the issue of minority communities' property rights in this annual report. Given that there have been no concrete positive developments compared to the previous reporting period, the Ombudsperson acknowledges and reiterates its concern about the illegal occupation of private property of members of minority communities in Kosovo, mainly the Serb and Roma community, as well as members of the Albanian community in northern Kosovo. Most of the complaints of members of minority communities submitted to the Ombudsperson relate to the protection of property rights, i.e. the usurpation and/or re-usurpation of immovable property, the cases of which are pending before judicial authorities, both as criminal and civil cases. There are still a large number of cases pending in all instances of the judiciary, only the prosecution offices have continued to consistently apply the principle of precedence to cases of usurpation, which the Ombudsperson hereby commends and assesses as a positive example, with which judicial authorities should be led in all instances.

According to the established practice, besides the OIK, the OSCE mission in Kosovo monitors the situation regarding the occupied properties and reporting as well, where, in the mid-November 2019, organized a comprehensive workshop on this issue. This workshop was also attended by the OIK with its representatives.[194] In addition to the OIK, representatives of the Kosovo Police, judges of the Basic Courts from all regions of Kosovo, representatives of prosecution offices from all regions of Kosovo, as well as representatives of the Property Verification Agency (former Kosovo Property Agency, which was also the legal successor of the Housing and Property Directorate (HPD) as a quasi-*ad-hoc*

[194] Workshop organized by the OSCE Mission in Kosovo on "Illegal Re-occupation of Property" held on 14.11.2019.

judicial authority to settle claims related to occupied property and the recognition of real estate rights in Kosovo) participated as well. The OSCE Mission thus reiterated, as the Ombudsperson did in previous reporting periods, the need to prioritize both criminal and civil cases related to the usurpation of property, in particular, the property of members of minority communities in Kosovo. It was also emphasized on this occasion, which also is supported by the OIK that the usurpation cases that have already been resolved before the HPD and later before the KPA should not be reviewed in the regular court proceedings in Kosovo. This form of handling cases already resolved disregards the decisions of the HPD and the KPA, so the judicial authorities repeatedly discuss the property rights of already resolved cases and thus send a negative signal to citizens, who for years have been unable to access their property, which is their right guaranteed not only by the Constitution and by law, but by the right to enjoy their property in peace, which is also guaranteed by the European Convention on Human Rights (ECHR) [195] with its protocols.

Complaints filed with the OIK in recent years, i.e. that have been filed for the usurpation of private persons' property in Kosovo, have already been resolved, but the judicial authorities, ignoring the fact and the legal principle that the case already adjudicated should not be discussed, still continue to handle such claims, bringing the judicial authorities into the position of failing to comply with the *res judicata* principle, again preventing real estate owners from freely accessing their real estate. In this regard, the Ombudsperson takes the opportunity to recall that the Constitutional Court of the Republic of Kosovo, in its Judgment in the Case KI-104/10, delivered its opinion and that the property cases, for which a final decision has already been issued by the HPD and later by the KPA, shall not be subject to review by any other judicial or administrative authority in Kosovo, but that they are res judicata and that any interference and re-review by courts or administrative authorities may be considered a violation of the rights of citizens guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR.[196] Therefore, the Ombudsperson is of the opinion that if judicial bodies, in civil cases already resolved by the HPD and/or the KPA, were to be referred to the case law of the Constitutional Court, thereby reducing the number of cases still pending and also increasing the efficiency of their work on this issue. Furthermore, the consistency in the implementation of the 2009 agreement between the KPA and the Kosovo Cadastral Agency on the PAK's obligation to provide the Kosovo Cadastral Agency with electronic copies of the final decisions of the Housing Commission and HPD should be emphasized, for the purpose of updating cadastral records and registering property rights in real estate. As this agreement has not been fully implemented, the OIK has received complaints of denial that the usurped property, which has been returned to the owners, is still held either by public-owned enterprises or by the former Public Housing Enterprise.[197]

In addition to cases directly or indirectly related to the usurpation of property, the OIK has also registered complaints concerning the work of private enforcement agents, when it comes to evicting

[195] ECHR, Protocol 1, Article 1: Protection of property "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. […]"

[196] Judgment of the Constitutional Court of the Republic of Kosovo dated 23.04.2012, Case no. KI-104/10 Arsić Draža, item 74., 75. i 77. judgment.http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ki_104_10_srb.pdf

[197] A. no.785/2019

persons who are illegally in possession of the real property. [198] It has been noted that enforcement agents refuse to work on the eviction of persons and belongings from the usurped property, or it is more often the case that the enforcement procedure is delayed without a clear and legally justified reason for such actions. On this occasion, the Ombudsperson expresses their concern on this matter and calls on the competent authorities, which oversee the work of private enforcement agents, to carefully and seriously consider any complaint against delay in enforcement proceedings by private enforcement agents, especially when it comes to evicting persons who illegally usurp immovable property even after the final and enforceable judgments have been issued by judicial authorities.

Education

The situation with education in the two parallel tracks still continues, as the Ombudsperson reported throughout the past years, so the situation regarding minority community education has not changed since the previous reporting period.

It should be borne in mind that education in the Serbian language is organized at all levels and in all areas of the Republic of Kosovo where members of the Serb community live, as well as some Serbian-speaking communities (Croats, a number of Gorani in the municipality of Dragash, Montenegrins and Roma, as well as Bosniaks in northern Kosovo). This educational system is still completely separate from the education system of the Republic of Kosovo and operates according to the curricula of the Republic of Serbia. This situation, for political reasons, lasts for years. Other minority communities (Turks, Bosniaks, Roma living in Albanian-majority areas, as well as Ashkali and Egyptians) attend the MEST curriculum in Albanian, Turkish and/or Bosnian language.

There are still no results in solving the problem of quality textbooks in Bosnian and Turkish, so this problem is still present at all levels of education. This has to do with the poor translation of textbooks or the unavailability of textbooks for upper primary and secondary education classes. Members of the Turkish and Bosniak communities continue to complain about learning Albanian in primary and secondary education because students during the education in their mother tongue are not receiving sufficient knowledge of Albanian language.

The Bosniak community of Prizren has also highlighted the problem of organizing classes for 10 students at the "Nazim Kokolari-Budakova" primary school in the village of Jaglenica, who attend Bosnian language classes. The students in question are only allowed to attend classes in the Bosnian language in the elementary school building in Jaglenica until the 5th grade, and after the end of the 5th grade, it is foreseen that these students from the 6th grade to continue to travel to Prizren and organize personal transport, which according to the parents is unnecessary, as this school has facilities that can be used for teaching all 10 students of Bosnian language learners until the completion of their primary education. On 25 June 2019, the parents of the students addressed a request to the Department of Education in the Municipality of Prizren; however, until mid-December 2019, they did not receive a response to their request to enable their children to continue their education in the 6th grade in their

[198] A. no.908/2019

village. [199] In mid-December 2019, in relation to this issue, the OIK notified the representative of the Municipality of Prizren appointed for cooperation with the OIK. Further monitoring of the situation is underway.

Until the last academic year 2018/19, members of the Turkish and Bosnian communities have had the opportunity to enrol and study in their own language at the "Ukshin Hoti" State University in Prizren, but from the 2019/20 academic year, this is no longer the case, because the university accreditation has been revoked. Students who have been enrolled in this university during the past year and previous years were allowed to attend lectures and take exams, but this year new students were not allowed to enrol. In addition to the University of Prizren, members of the Bosniak community have had the opportunity to study in their own language at the "Haxhi Zeka" State University in Peja, whose accreditation has been terminated since the 2019/20 academic year. If within one year these universities fail to meet the standards set even after the second negative evaluation, they are threatened with complete closure.

The Turkish community, besides the inability to enrol for studies in their own language in Prizren, due to the loss of accreditation of "Ukshin Hoti" State University in Prizren, highlighted the problem of Turkish language Matura tests for students who passed these exams after finishing high school. The translation of the Matura tests into Turkish has been, according to them, very weak, illegible and incomprehensible. They emphasized that this problem has been going on for 3 years now and that they had informed the MEST about it as well, but nothing has been done regarding the translation of the tests into Turkish. When it comes to textbooks, the situation is the same as in textbooks in Bosnian. The Turkish community imports textbooks from Turkey for all levels of education, which is somewhat problematic due to the incompatibility of Kosovo's and Turkey's education systems. The problem with the professional development of Turkish language teachers is also highlighted. According to representatives of the Turkish community, seminars or any form of teacher training is not available in Turkish but only in Albanian, so these teachers are still excluded from the process of professional development in the field of education. On this occasion, both from the Roma, Ashkali and Egyptian communities, as well as from the Turkish, Bosniak and Gorani communities, the problem is that the quota of 12% of places reserved for members of minority communities in state universities in the Republic of Kosovo, has not been fulfilled. [200] An example cited by the Coordinator of the Directorate of Education for Non-Majority Communities in Dragash is the case of enrolment in the Faculty of Medicine at the University of Prishtina, where 18 places were reserved for students from minority communities, but none out of seven candidates among the minority communities who applied for enrolment has been admitted.

The situation of education of Roma, Ashkali and Egyptian community members is gradually improving from year to year, and the proportion of children attending compulsory education in both education systems has increased significantly. The situation has not changed much since the previous reporting by the Ombudsperson. We also enjoy the fact that the number of students - coming from

[199] The information was obtained at a meeting held on 09.12.2019 in Prizren with a representative of the Bosnian community, when the OIK was provided with a copy of the parents' request addressed to the Municipality of Prizren on 25.06.2019.

[200] Administrative Instruction no. 09/2016 on the application of affirmative measures and quotes for enrolment of candidates from non-majority communities in the public institutions of higher education

these three communities - enrolled in the faculties have increased, where 53 students have been enrolled in the academic year 2019/2020 53, which is for 11 more compared to the previous year. [201]

Local NGOs, coordinated and led by the NGO "VoRAE" from Gracanica and financially supported by international organizations and donors, continue to successfully lead a project for support in learning and assistance for primary and lower secondary school students among the three most vulnerable communities. Support is provided to students through 20 educational centres operating throughout Kosovo aimed at lowering dropout rates and improving the quality of education. Despite the great successes of these centres in their work with children and the adoption of the MEST's Administrative Instruction on the establishment and operation of the abovementioned educational centres, MEST has not started its implementation, and despite the fact that the budget was allocated, there was no sustainable funding of these Educational Centres. Educational centres continue to be funded through donations through NGOs.[202] The positive practice of scholarships for high school students belonging to the Roma, Ashkali and Egyptian communities by the NGO VoRAE, the Swiss government and the MEST continues. Given the poor economic and social situation of Roma, Ashkali, and Egyptian families, children from these communities often dropped out of high school. Within 2019, scholarships dedicated to these students have provided further support to 500 children and stimulated their motivation for further education.[203]

The recognition and verification of diplomas from the University of North Mitrovica (UMV), since the adoption of the Government Regulation in 2015, has continued successfully.

However, the problem has not been resolved in terms of omitting from the verification process of diplomas issued by the Serbian education system within Kosovo, but with the stamp and forms issued by the Republic of Serbia. In this regard, the OIK received a complaint from a person who after graduating from the High School of Economics in Llapnasella, Municipality of Gracanica, applied for further education to the Air Navigation Services Agency (ANVS/ANSA) in a competition for air traffic control students.[204] However, when submitting the documentation, his high school diploma was not considered valid, and the complainant was requested in advance to nostrify within the deadline his high school diploma, which he completed in Llapnasella in order for his application to be taken into consideration, which was not possible. ANVS / ANSA, in its explanation to the Ombudsperson in relation to the complainant's complaint, stated that he had also sought the opinion of the MEST in this regard, which provided guidance to the Agency, according to which the diploma from the high school in Llapnasella needs to be nostrified so that it can be taken into consideration.[205]

In addition, regarding the criteria and guidelines governing the issue of high school diplomas, the Ombudsperson also requested an explanation from the Kosovo Police, which publishes advertisements

[201]The data are taken from the report of the OSCE Mission in Kosovo "Review of the position of the Roma, Ashkali and Egyptian Communities in Kosovo", published in January 2020, accessed 10.01.2020. https://www.osce.org/mission-in-kosovo/443587

[202]The information was obtained at the meeting with the director of the NGO "VoRAE" held in Gracanica on 18.12.2019. and from https://vorae.org/programs/1

[203]Ibid

[204]A. no. 210/2019

[205]The Ombudsperson sent the letter to ANVS / ANSA on 03.09.2019, while the OIK received the explanation from ANVS / ANSA on 19.09.2019.

for police academy cadets.[206] The Kosovo Police response states that the Kosovo Police and the Ministry of Internal Affairs do not require candidates who have completed high school within the Serbian education system to nostrify their diplomas but recognize them as valid upon application for a candidate for the Police Academy.[207] The aforementioned complaint is still pending at the OIK.

Based on all of the above, it can be concluded that there are no unique MEST guidelines and instructions, but the decisions on the validity of these diplomas are made by the educational institutions themselves and other institutions at their discretion. The Ombudsperson finds that this situation is counterproductive and that it is necessary to adopt unique guidelines and that this issue be examined by the competent institutions in order to initiate certain activities and to find a sustainable solution to this problem.

Use of language

Considering that there are still challenges in using the Serbian language as one of the official languages in the Republic of Kosovo, in citizen's communication with state bodies, but also within public institutions, the Ombudsperson can conclude that there are problems with the implementation of the Law on the Use Languages.

Bilingualism guaranteed by the Constitution and the Law on the Use Languages is still not implemented,[208] and progress in this regard is slow-paced.

During the reporting period, the Ombudsperson sent a recommendation letter to the Kosovo Chamber of Private Enforcement Agents for a complaint, which the OIK registered at the end of 2018,[209] concerning the payment of a translation of the official documentation from the Albanian language into the Serbian language by the complainant. Unfortunately, the Chamber of Private Enforcement Agents of Kosovo, but also the private enforcement agent in person, whose work was the object of the complaint, did not comply with the Ombudsperson's recommendation and considered that payment for the translation had to be made.[210] In this case, the Ombudsperson finds that those persons whose profession must necessarily have knowledge of the laws in force in the Republic of Kosovo, inter alia, do not observe the Laws and Constitution in a consistent manner as they are required not only by profession but also by the Constitution. The Language Commissioner of the Republic of Kosovo was also informed about this case.

During this year, the Ombudsperson received a complaint from the "Initiative for Progress – INPO" filed against the Municipality of Kllokot, concerning the INPO's request for access to public documents. The Municipality of Kllokot requested that the request for access to public documents be submitted in the Serbian language so that the municipality could respond to their request. In this regard, the Ombudsperson addressed a letter twice to the Municipality of Kllokot, whereby informing that INPO representatives should address the responsible officials. The Ombudsperson is monitoring the outcome of this request for access to public documents.

[206]Email sent by OIK to Kosovo Police on 30.09.2019.
[207]Kosovo Police response, emailed on 10.10.2019,
[208]Constitution of the Republic of Kosovo, Articles 5 and 59 and Law no. 02 / L-037 on Use Languages,
[209]A.no. 699/2018,
[210]Recommendation Letter addressed to the Chamber of Private Enforcement Agents on 13.06.2019 and the response of the Chamber of Private Enforcement Agents, which the OIK received on 14.10.2019.

In a conversation with the Language Commissioner in the Republic of Kosovo, conducted to obtain information on learning about the use of languages, but with the aim of Ombudsperson's annual reporting on this issue, the Language Commissioner stated that his office received only 18 complaints during 2019.[211]

The meeting concluded that a systematic solution for the learning of both official languages has not been made yet, which is very bad, as it is necessary not only to integrate Serbian-speaking citizens but to find a way that initiates interaction between members of the Albanian community, which would disrupt further polarization of society in general. Even though initiated by the Government of the Republic of Kosovo with the decision issued in 2017, the Central Translation Unit has not been established during 2019. What has been done in this regard is that the working group held several meetings and drafted a concept document as a proposal for the functioning of the Central Translation Unit at the Government level. It is believed that this translation unit will be operational during 2020. There is also a need to emphasize the poor interpretation of the Law on the Use Languages, as well as the necessity for this law to be further regulated and amended by sub-legal acts, which has not been done so far. The meeting highlighted the initiative to establish a Balkan Studies (Balkanistics) Department at Prishtina State University, where future students will be able to study, among others, the Serbian language. The initiative is in its infancy and has positive signals and willingness to start work on this project by the end of 2021.[212]

The Roma language has been in official use in the Municipality of Gracanica since October 2014, but this decision has not been adequately implemented by local municipal authorities so far; therefore, the municipality has no single translator for the Roma language. In addition, the municipality, except in the municipal service sector, does not employ members of the Roma community in the Office for Communities and Returns or in any administrative services, although there are capacities and opportunities for employment in this municipality.

Representatives of these communities in the Municipality of Prizren complained about the use of Bosnian and Turkish language. Sessions of the Prizren Municipal Assembly have been lacking simultaneous translation for Bosnian and Turkish community delegates for more than a year now. According to the allegations of the representatives of the communities in question, they repeatedly raised the issue but were told that simultaneous translation equipment was not working, so due to technical problems that could be easily and quickly solved, they were not provided with translation of Municipal Assembly sessions, thus being prevented from being adequately and actively involved in discussions. Also, all official documentation submitted by the central level comes only in the Albanian language, which is generally a problem not only in the Municipality of Prizren, but also in municipalities where the numerical majority is held by members of the Serbian community. The Turkish community in Prizren also emphasized the problem with the automatic machine for issuing birth certificates from the Central Birth Registry (extracts) because the machine does not have the option of Turkish language, but only the option of Albanian and Serbian languages. For this reason, members of the Turkish community in this city cannot use this machine but must apply for the same

[211]Meeting with the Language Commissioner took place on 12.13.2019 at the OIK facilities in Gracanica.
[212]Ibid

document on the help desk of the Civil Registration Office in this municipality. [213] The OIK informed the Municipality of Prizren and the Language Commissioner of these complaints. The OIK will monitor the situation regarding this issue in the coming period.

[213]The information was received at a meeting with representatives of the Bosnian and Turkish communities in Prizren on 9 December 2019.

V. National Preventive Mechanisms againts Torture (NPMT)

V. National Preventive Mechanisms againts Torture (NPMT)

The Law on the Ombudsperson defines the Ombudsperson as the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: *NPMT*).[214]

The NPMT, within the framework of legal authorizations, undertakes regular and unannounced visits to places of deprivation of liberty, including police detention, detention on remand, stay at health institutions, customs detention, prohibition of emigration and every other place when it is suspected that there are violations of human rights and freedom.[215]

During the reporting period, the NPMT conducted 86 visits (general visits, Ad-Hoc and follow-up visits) to the following institutions: Dubrava Correctional Center (hereinafter, DCC), High Security Prison (hereafter HSP) , Correctional Centre for Women and Juveniles in Lipjan (hereinafter, CCWJ), Lipjan Correctional Training Center (hereinafter, CTC), Smrekonica Correctional Center (hereinafter SCC), Gjilan Detention Center (hereinafter, GjDC), Peja Detention Center, Prizren Detention Center, Lipjan Detention Center (hereinafter, LDC), Prishtina Detention Center, Detention Center for Foreigners (hereinafter, DCF) , Asylum Center (hereinafter AC), Border Crossing Point "Adem Jashari" International Airport in Prishtina, Prishtina Regional Detention Center, Police Stations in: Gjakova, Shtime, Rahovec, Vushtrri, Decan, Peja, Border Crossing Point "Vërmicë", Podujeva, Regional Border Directorate “North” Luzhan, Center for Integration and Rehabilitation of Chronic Psychiatric Patients in Shtime (hereinafter, CIRChPP), Institute of Forensic Psychiatry (hereinafter, IFP), Department of Psychiatric Intensive Care within the Psychiatric Clinic of the University Clinical Center of Kosovo (hereinafter, UCIP), House of Children with Mental Disabilities (hereafter, HChMD), Special Institute in Shtime (hereinafter, SISh), Housing of Elderly Persons with Disabilities and without Family Care in Prishtina (hereafter, HEWFC), Community Integration Hoousing (hereinafter, CIH), Community Housing for People with Mental Disabilities (hereinafter, CHPMD), Mental Health Centres in Ferizaj (hereinafter MHC), Prizren, Mitrovica and Prishtina.

Reports with recommendations published during 2019

NPMT published the report with recommendations on the visit conducted to DCF, HChMD, Border Crossing Point, the International Airport of Prishtina “Adem Jashari”, KCS, MDC, CCWJL, DCC, PDC, LDC, CECL, Prishtina Detention Centre, Peja Detention Centre and HSP. Also, during the reporting period, NPMT published the letter with recommendations on the visit conducted to the Peja Detention Centre, GJDC, DCC and Police Stations in Peja, Decan, Gjakova, Fushe Kosove, Rahovec, Shtime, Vushtrri, Border Crossing Point “Vermice”, Lipjan and Regional Detention Centre in Prishtina.[216] Through these reports with recommendations and recommendation letters, NPMT has provided the competent authorities with 75 recommendations.

[214]Law No. 05/L-019 on Ombudsperson, Article 17, paragraph 2.2.
[215]Ibid, Article 17, paragraph 2.
[216]All reports with recommendations and recommendation letters of NPMT submitted to competent authorities during 2019 are available in the following link: https://www.oik-rks.org/raportet/raporte-mkpt-1/

Cooperation of visited institutions with NPMT

During the NPMT visits conducted in 2019, the officers of the visited institutions have fully cooperated with the monitoring team and provided them with immediate access, and provided NPMT with the opportunity to interview persons deprived of liberty without the presence of security officers, medical staff and officers of psychiatric and social care institutions.

Kosovo Police

Procedural guarantees against the physical abuse

According to the European Committee for the Prevention of Torture ("*the CPT*"), these guarantee three fundamental rights of persons detained, such as: the right to notify the family member or the person of his/her choice of his/her detention, the right to access a defence lawyer and the right for medical services.[217] Procedural guarantees against the physical abuse of the detained persons are embodied in the Constitution of the Republic of Kosovo[218], Criminal Procedure Code[219] and Law on Police.[220]

Article 13 of the Criminal Procedure Code defines: "*Any person deprived of liberty shall be informed promptly, in a language which he or she understands, of the right to legal assistance of his or her own choice, the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest and that these rights apply throughout the time of the deprivation of liberty*." The right of arrested person to medical and dental services is provided for in Article 169 of the Criminal Procedure Code.

With regards to the notification of arrest, Article 168 of the Criminal Procedure Code further defines that the arrested person has the right to notify the family member or another person of his or her choice about the arrest and the place of detention immediately after the arrest; notification of a family member or another person in relation to the arrest may be delayed for up to 24 hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. This delay does not apply to juveniles.

According to the Law on Police, the right to inform the family or another person of the arrest also applies to persons taken into "*temporary custody*" in order to identify or for purposes of protection of them and others.[221]

Physical abuse

During the visits conducted to the abovementioned police stations, NPMT received no complaints from the arrested persons (who were on detention at the time of visit) for physical abuse or violation of fundamental rights guaranteed to persons deprived of liberty by the Constitution of the Republic of

[217] European Committee for the Prevention of Torture, 2nd General Report, published in 1992. See: https://rm.coe.int/16806cea2f
[218]Constitution of the Republic of Kosovo, Articles 29 and 30.
[219]Criminal Code of the Republic of Kosovo, Article 13.
[220]Law No. 04/L-076 on Police.
[221]Ibid, Article 20 paragraph 5.

Kosovo, Criminal Procedure Code and international standards concerning the protection of fundamental rights of persons deprived of liberty.

During the visits conducted to correctional and detention centres, interviews with prisoners, NPMT was interested in their treatment by the Kosovo Police and respect of their fundamental rights from the moment of arrest. The vast majority of the respondents stated that they have been correctly treated by the Kosovo Police and that their fundamental rights have been respected.

However, NPMT received statements of several prisoners that they have been physically abused by the Kosovo Police. Most of statements refer to the moment when they were arrested by the police and the period of interrogation by police investigators.

These statements are related to the attempts to obtain confession to committing a criminal offence or to obtain other relevant information. In such cases, NPMT analysed the relevant medical documentation compiled when prisoners are admitted to detention centres and correctional centres. In some cases, NPMT observed that bodily injuries have been recorded in their medical files.

After reviewing the collected data, including the analysis of medical files of the concerned prisoners, NPMT recommended the Kosovo Police Inspectorate (hereinafter "*the KPI*") to conduct further investigations based on the mandate of this institution.[222]

During the reporting period, the electronic media in the Republic of Kosovo published videos showing an arrested citizen being subject to physical abuse and humiliating and degrading treatment by the police officers in the Police Station in Gjakova.

In the concerned case, on 19 November 2018, the representative of the Ombudsperson visited the Peja Detention Centre and received a complaint by the citizen protagonist of the videos published. As marks of bodily injures were observed on the complainant, following the analysis of the medical documentation and statement of the complainant, NPMT, on 30 November 2018, submitted an official document to the KPI whereby recommending the KPI to investigate the case in compliance with its mandate. Following the recommendation of the NPMT, the KPI initiated the preliminary investigations against the involved officers, recommended the suspension of involved officers and on 9 September 2019, submitted the criminal report to the Basic Prosecution Office on the suspicion that the concerned officers have committed the criminal offence "*mistreatment during exercise of official duty or public authorization*", some of them as co-perpetrators, whereas one of them for the criminal offence "*abuse of official duty or public authority*".

During the reporting period, the Ombudsperson Institution (OI) initiated 2 cases ex officio[223] and 15 cases for further investigations based on complaints received from the citizens of the Republic of

[222]Cases registered in OI for further investigation, A.nr. 388/2019, A.nr. 169/2019. A.nr. 388/2019, following the investigation by the KPI, were referred to the Kosovo Police Professional Standards Directorate for further investigations for possible disciplinary violations. A. nr. 169/2019, following the investigation by the KPI, was referred to the Kosovo Police Professional Standards Directorate for further investigations.

[223]Ex officio 784/2019, OI vs. Kosovo Police. Ex officio 773/2019 IAP vs. Kosovo Police. With regards to the case Ex officio 773/2019, the KPI, on 12 December 2019, the KPI informed the Ombudsperson that following the preliminary investigations, the case was referred to the Professional Standards Directorate for further investigations for disciplinary violations. In the Case 784/2019, the KPI, following the preliminary investigations, recommended the Kosovo Police to

Kosovo against the Kosovo Police based on the suspicion that police officers exercised physical abuse, excessive use of physical force or excess of legal authority during the arrest of certain persons. Following the preliminary analysis, in 4 cases, the KPI was recommended to conduct further investigations in relation to the assumptions of citizens and to inform the OI of investigation results.

Generally, the NPMT, based on the visits conducted this year and earlier visits, review of received complaints, and ex officio investigations, considers that there is no systematic or widespread physical abuse from the Kosovo Police, and that these were just a few isolated cases.

The physical conditions of the police stations visited

Concerning the physical conditions in places where detainees are held, the NMPT has observed that most of the police stations visited, with a few exceptions, meet the required conditions to accommodate detainees, as specified by the CPT standards.[224] Thus, the NMPT has noted that renovations to police stations in Gjakova, Decan, Peja and Fushe Kosove are needed. In this regard, the NMPT, on 16 December 2019, addressed the Kosovo Police with a recommendation letter recommending that the necessary renovations be carried out at the aforementioned police stations in order for the physical conditions of accommodation for persons detained in these stations to comply with the legislation in force in the Republic of Kosovo and CPT standards.

Correctional and detention centres

During the reporting period, the NMPT has conducted general, *ad hoc* and follow-up visits to all correctional and detention centers as well as to the HSP (high security prison). The purpose of these visits was to assess the progress of the competent authorities in implementing the recommendations of the NMPT submitted through earlier reports with recommendations, as well as to respect the rights of inmates guaranteed by the Constitution of the Republic of Kosovo, Law no. 04/L-149 on the Execution of Penal Sanctions (hereinafter LEPS) and Law no. 05/L-129 on Amending and Supplementing the Law no. 04/L-149 on the Execution of Penal Sanctions, as well as international standards on the rights of inmates. During the reporting period, the NMPT submitted 55 recommendations to the Ministry of Justice regarding visits to correctional and detention centers.

So far the competent authorities have fully implemented 12 recommendations and partially implemented 4 recommendations. During the reporting period no recommendations of the NMPT were rejected by the competent authorities.

Physical abuse

During visits to correctional and detention centers in 2019, the NMPT did not receive credible complaints from inmates about physical mistreatment or excessive use of physical force. On the contrary, most of the inmates stated that they were treated very well. Furthermore, the NMPT observed a good interactive communication between inmates and correctional officers.

Incidents between inmates

suspend the involved officers. This recommendation was implemented on 9 October 2019. On 8 November 2019, the KPI submitted a criminal report against the concerned officers to the Basic Prosecution Office in Ferizaj.

[224]European Committee for the Prevention of Torture, Second General Report, paragraph 42, published in 1992. See at: https://rm.coe.int/16806cea2f

During its visits to the relevant institutions, the NMPT was informed of some incidents among inmates which were recorded in relevant forms and in the appropriate protocols of the health units.

On November 21, 2019, the Prison Health Department (PHD), informed the NMPT that at the DCC hospital, a prisoner had sought medical assistance after allegedly being beaten by some inmates several times. The medical staff during the examination of the inmate noticed bodily injuries which were recorded in the medical protocols in accordance with the Standard Operating Practice (SOP)[225] and informed the DCC directorate about this situation. On 25 November 2019, the NMPT requested from the DCC Directorate to be informed of the actions taken in this case.

The DCC Directorate on the same day informed the NMPT that the inmate was immediately taken to the Prison Hospital where medical treatment was on-going and the Kosovo Police was notified, who arrived at the scene and began the investigation. The NMPT, while highly appreciating the actions of the medical staff and the DCC directorate, even through this report, reminds the authorities of their obligation to prevent violence among the inmates for whom they are responsible. This responsibility includes the obligation to take care of and adopt preventive measures to reduce the risk of violence as well as to protect the most vulnerable inmates. Overall, the NMPT during its visits in 2019 has noted that relations between inmates are good and there is no tense climate between them and that incidents between inmates do not appear to be a major problem for correctional and detention centers.

Acommodation conditions in correctional and detention centers

The NMPT this year recommended renovations to ward 8 of the DCC, so that the accommodation conditions for inmates are in line with the LEPS[226]and the standards set by the CPT[227]. During the follow-up visit to the DCC from 28 to 30 October 2019, NMPT observed that ward 8 was completely renovated and inmates who were accommodated in this ward were engaged in the renovation of the ward. The NMPT noted that renovations to the prison hospital ward and ward 5 were needed. Through a recommendation letter, sent on 16 December 2019, NMPT recommended to the Ministry of Justice that necessary renovations be made to ward 5 and at the DCC hospital ward.

Also, during the reporting period, the NMPT recommended that the competent authorities take action to discontinue the practice of using improvised electrical equipment by inmates to heat water, as this could endanger the lives of the inmates. During the follow-up visit, the NMPT observed that the Directorate had carried out a series of searches and had seized such equipment. This was also confirmed through interviews with inmates. NMPT observed a positive practice in the DCC, where flower gardens were planted in front of all wards in this center, which positively impact the inmates in the therapeutic sense.

Concerning the NMPT's recommendation to find adequate solutions to provide access for patients with disabilities to the second floor of the hospital, the Directorate informed NMPT that such patients are sent to ward 7 where there are adequate conditions in accordance with their condition.

[225] Standard Operating Practice of PHD. For more information see on: https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf
[226]Law on Execution of Penal Sanctions, Article 111, paragraph 2.
[227]European Committee for the Prevention of Torture, Living Space for a Prisoner in Prison, published December 15, 2015. For more see at: https://rm.coe.int/16806cc449

Through its report with recommendations on the visit to the Hospital Clinical Center (HCC)[228], published on May 16, 2019, the NMPT recommended to the Ministry of Justice to renovate the roof of the ward where the inmates are accommodated. On December 4, 2019, the Director of HCC, informed the NMPT that this recommendation has not yet been implemented and that the Kosovo Correctional Service (KCS) central directorate has addressed requests to eliminate this deficiency which is expected to be eliminated next year. NMPT will monitor the implementation of these recommendation in the future through visits to this center.

During a visit to CCWJL (Correctional Center for Women and Juveniles in Lipjan) on January 23 and 24, 2019, the NMPT noted that spaces where male juveniles are accommodated required renovation. Through the report of recommendations published on 24 May 2019, it recommended to the competent authorities to improve the accommodation conditions in detention centers and other wards where this is necessary. Through Ad Hoc [229]visits conducted in 2019 to this center, the NMPT observed that renovations had begun and that most of the work was being done by inmates.

During the visit to the MDC (Mitrovica Detention Center), the NMPT observed that the accommodation conditions at this center were generally in line with the LEPS, international standards for the protection of inmates' rights and CPT standards, except in some cells where renovation was required of damaged floors. Through its recommendations report published on June 28, 2019, the NMPT recommended to the competent authorities to renovate damaged floors in some cells as needed. On 4 December 2015? the Directorate of the Mitrovica Detention Center informed the NMPT that renovation work on the floors had been completed.

Through its report with recommendations on the visit to the PDC (Prishtina Detention Center), the NMPT, with regard to the accommodation conditions, recommended to the competent authorities that the inmates be provided with hygienic means, in accordance with the LESP, to avoid technical deficiencies in the operation of showers as needed and to supply this detention center with new and quality mattresses. On September 11, 2019, the PDC Directorate informed the NMPT that inmates were being supplied with hygiene products in accordance with the LEPS. This notice further adds that regarding the supply of new and quality mattresses, the KCS Directorate has informed them that there will be supplies of new mattresses soon.

Through its report with recommendations on the visit to the LDC (Lipjan Detention Center), the NMPT, with regard to the accommodation conditions, recommended to the competent authorities to renovate the second floor of the LDC, so that the accommodation conditions for inmates are in accordance with LEPS and with the CPT standards. On 27 November 2019, the LDC directorate, NMPT, announced that renovation work on this floor was almost completed.

Concerning the conditions of accommodation in HSP, NMPT, in the report with recommendations published on November 22, 2019 has ascertained the following: *"The NMPT notes that, in general, the conditions of accommodation in the HSP are in accordance with the LEPS, with international standards for the protection of inmates' rights and with the CPT Standards. Regarding the access of*

[228] Report with recommendations on the visit to the Smrekonica Correctional Center. For more see: https://www.oik-rks.org/2019/05/21/raport-i-mkpt-per-viziten-ne-centre-corrective-ne-smrekonice/

[229]NMPT Ad Hoc Visit to Lipjan Correctional Center for Women and Juveniles on April 4, June 20, August 23 and November 4, 2019.

persons with disabilities (although there were none), all elevators were functional, which enables the access of inmates with disabilities."[230] However, NMPT observed that the floors in ward 1, 2, stationary and reception ward were damaged and continue to be damaged. Through its report with recommendations submitted to the competent authorities on 22 November 2019, the NMPT recommended the competent authorities to take action to avoid these shortcomings. On December 4, 2019, the HSP Directorate informed the NMPT that the HSP stationary was completely renovated and that they will further continue with the renovation of floors in other facilities.

In the report with recommendations on the visit to CECL (Correctional Educational Center in Lipjan)[231], The NMPT found that the rooms where the juveniles were staying, in terms of size and natural and artificial lighting, were in accordance with the standards set by the CPT and the LEPS. Also, rooms and toilets which are dedicated to persons with special needs provide very good and adequate accommodation. NMPT considers that in general the accommodation conditions in CECL go beyond the minimum standards and reach the level of desirable standards for accommodation of minors with educational measures.

NMPT, during the reporting period, visited the GJDC (Gjilan Detention Center) and observed that regarding the accommodation conditions in this center they remain at a very satisfactory level and are in accordance with the standards set by the CPT [232]and LEPS.

During the visit, it was noted that the NMPT's recommendation to asphalt the part of the road not paved yet, which may present serious difficulties during winter season and in conditions of atmospheric rainfall to perform the work in accordance with LEPS has not been implemented, despite efforts of the Directorate and KCS to interact with municipal authorities in this regard.

Regarding the accommodation conditions in the Peja Detention Center, NMPT also visited a number of cells during its last follow-up visit on 15 November 2019 and found that the living space for a prisoner, lighting and ventilation were not in accordance with the standards set by the CPT and the LEPS. On 16 December 2019, the NMPT, through a recommendation letter, recommended to the Ministry of Justice that the accommodation conditions, while this center is in use, comply with the minimum standards set by the LEPS, CPT standards and other international standards for the protection of inmates' rights.

During the reporting period, the NMPT visited Pristina Detention Center [233] . Concerning the accommodation conditions, the NMPT observed that the cells where inmates are accommodated have sufficient natural light and living space which goes beyond the standard set by the LESP and the

[230]Report with recommendations on the visit to the High Security Prison, published November 22, 2019. For more see at: https://www.oik-rks.org/2019/11/25/raport-me-rekomandime-i-mkpt-se-lidhur-me-viziten-ne-burgun-e-sigurise-se-larte/

[231]Report with recommendations on the visit to the Lipjan Education Correctional Center, published August 26, 2019. For more see at: https://www.oik-rks.org/2019/09/25/raport-me-rekomandime-i-mkpt-se-per-viziten-ne-qendren-edukativo-korrektuese-ne-lipjan/

[232] European Committee for the Prevention of Torture, Living Space for a Prisoner, see at: https://rm.coe.int/16806cc449.

[233]Report with recommendations on the visit to Pristina Detention Center on 28 October 2019, published on 22 November 2019. For more see at: https://www.oik-rks.org/2019/11/25/raport-me-rekomandimi-mkpt-se-lidhur-me-viziten-ne-qendren-e-paraburgimit-ne-prishtine/

standards set by the CPT. The NMPT also noted that two cells were adequate and available for inmates with disabilities.

Food

As far as the quality and quantity of food is concerned, the NMPT received complaints from inmates in the DCC during the reporting period. In this regard, the NMPT, on 11 November 2019, contacted the Food and Veterinary Agency and requested, through official e-mail, its latest inspection report to the DCC.

Notwithstanding the obligation to cooperate with the Ombudsperson Institution, which is provided by the Constitution of the Republic of Kosovo [234]and the Law on the Ombudsperson[235], this institution did not respond to the request submitted.

Overcrowding

During the reporting period, NMPT observed that overcrowding is not a problem for correctional and detention centers. In addition, there is plenty of empty space in the Prishtina Detention Center, Gjilan and the HSP due to a lack of inventory and correctional staff to accommodate a larger number of inmates. In rare cases, slight overcrowding was observed during periods of renovations in certain wards but was avoided without much delay.

Regime

Regarding the regime, the NMPT, through its reports with recommendations, has recommended to the competent authorities that efforts be made to include as many inmates as possible in work, education, training and other genuine activities in order to achieve the most successful resocialization of inmates. During the visits to the HCC, the NMPT noted that in general, 75 inmates were engaged in work. The inmates are engaged in cleaning, kitchen work and some maintenance of the facility. Whereas during the summer, engagement in work increases significantly, as the HCC possesses greenhouses where vegetables are grown and also within the prison perimeter there are areas with agricultural land where different crops are grown.

The NMPT, through its report with recommendations for the HCC visit, has recommended to the competent authorities to take action to make the workshops available to this center so that inmates can benefit from vocational training opportunities.

On July 24, 2019, the HCC Directorate informed the NMPT that the car and welding workshops were fully operational and professional staffs together with a group of inmates were servicing vehicles within the KCS. The Directorate also informed the NMPT that efforts are being made to hire professional officers to use the welding workshop.

On November 20, 2019, the KCS issued a statement stating that seven convicts accommodated in the HCC have commenced work outside this correctional facility following the adoption of the Administrative Instruction on the Inmates' work outside the Correctional Facility.[236]

[234]Constitution of the Republic of Kosovo, Article 132, paragraph 3.
[235]Law no. 05 / L-019 on the Ombudsperson, Article 25
[236]For more information see: https://shkk.rks-gov.net/en/lajmi_single/2757

During the visit to the DCC (from 28 to 30 October 2019), the NMPT observed that the NMPT recommendation to operationalize the sports hall, which was submitted to the competent authorities through a report with recommendations dated 28 June 2019, was implemented. During the visit, the NMPT observed that the operationalization of the sports hall now enables numerous sports activities for inmates. Inmates can also carry out sports activities in the outdoor sports field in the DCC yard.

During the last visit, the NMPT was informed by the Directorate that about 344 inmates in the DCC are engaged in paid work. The Directorate has begun to engage inmates in the renovation of wards and other work. Also, within the DCC there are three workshops, which are in fact professional training centers, where are organized training on welding, construction, machinery, woodworking, technical maintenance, water installation and electricity installation. Courses are organized in these workshops with duration of three months.

Based on the assistance provided by the NGO HELP, 10 inmates were provided with professional welding training, and they were awarded certificates. Within the DCC, there is a high school with 44 convicts attending classes. The NMPT has noted that efforts have been made to operationalize the economic entity foreseen by the LEPS, but that an administrative instruction that would specify the work of this entity is expected to be adopted.

Whereas, in the semi-open pavilion of DCC, all prisoners convicted are engaged in agriculture and animal husbandry. In the yard of the ward, during the visit, NMPT observed the garden and greenhouse in which fruits and vegetables are grown and used for food in the DCC.

During the reporting period, the NMPT, through its report with recommendations on the visit to the (CECL) Correctional Education Center in Lipjan, recommended to the competent authorities to operationalize the cabinets that exist within the center but which are not yet used due to the lack of professional trainers. On 19 September 2019, CECL's Directorate informed the NMPT of the efforts it is making to train adequate staff to provide vocational training courses for juveniles using these cabinets.

However, through the visits made during this year, NMPT noticed that trainings for water supply, electrician, masonry, computer training, haircutter, English language course were organized in CECL. From the documentation received from CECL, it can be seen that an NGO has organized 12 sessions with juveniles, which have dealt with various topics from daily life. CARITAS KOSOVO has organized art therapy and theater therapy for minors, organized a music concert and the EQUIP program dedicated to managing stress and anger is ongoing.

The CCWJL (Correctional Center for Women and Juveniles in Lipjan) has a lower secondary school and a upper secondary school within the public education system. Through visits during the reporting period, the NMPT observed that juveniles had various psychosocial programs organized by local and international non-governmental organizations. Among them are art therapy and theater therapy, and an exhibition was organized in which were presented the works of minors in the field of figurative art. For juvenile and female inmates there are facilities for sports activities, the EQUIP program and work engagement, opportunities are greater during the summer season as the CCWJL also has a greenhouse where inmates can be engaged. According to the Directorate, professional trainings for water installers, electrical installers and construction are currently being provided.

During a visit to the MDC, where inmates are also accommodated, the NMPT observed that about 13 convicts were engaged in work. There are five workshops within the MDC in which inmates can be engaged at work and training. The library, the walkway and the fitness room are also available for inmates. In addition to engagements in workshops, cleaning and kitchen work, during this period, the MDC also organized aggression control training, which involved 19 inmates. This training was supported by the non-governmental organization HELP. NMPT noted that the MDC was well equipped with spaces for organizing courses.

During its visit to HSP, the NMPT observed that about 70 inmates were engaged in work. Within the HSP there is a carpentry workshop, in which are engaged four inmates and where they currently produce beds for CECL.

Other workshops cannot be activated at this time, due to the lack of competent equipment and trainers. NMPT noted that the convicts also had access to various games, such as table tennis and football tables. Convicts can spend part of their time in certain wards (depending on the regime) by being free to move within the ward.

The NMPT received complaints from inmates in ward 1 and detainees in the HSP regarding the regime. According to their claims, they spend most of their time indoors (about 22 hours) and only have access to fresh air walks (two hours a day). From interviews with these convicts and detainees, it can be concluded that they understand the regime as a punitive regime.

NMPT, during the reporting period, observed that in HSP, the sports fields are covered with white concrete, which impedes the normal performance of sports activities, as frequent injuries are caused. The walkways are also surrounded by high walls of the same material and color, which have dazzling reflection.

Through its report of recommendations published on 22 November 2019, NMPT recommended to the competent authorities to avoid the deficiency regarding the white reflective color, which is an obstacle to activities outside cells. On 5 December 2019, the HSP Directorate informed NMPT that, in connection with this recommendation, KCS concluded a contract with a company that has repaired damaged walkways and painted walls with anti-reflective paint.

However, for NMPT, the regime offered to detainees in all detention centers remains a concern. In this regard, the NMPT, after visits to all detention centers, through reports with recommendations[237], has recommended to the Ministry of Justice to step up efforts to provide detainees with a regime that would allow them to have other day-to-day activities, in addition to walking in the fresh air twice a day for one hour. NMPT has noted that they are seldom engaged in work and this is because their engagement is subject to permission from the competent court.

[237]Report with recommendations on the visit to Prishtina Detention Center, published November 22, 2019, paragraphs 15-21. See: https://www.oik-rks.org/2019/11/25/raport-me-rekomandimi-mkpt-se-lidhur-me-viziten-ne-qendren-e-paraburgimit-ne-prishtine/ . Report with Recommendations for Visit to the High Security Prison, published November 22, 2019, paragraphs 12-23. For more see at: https://www.oik-rks.org/2019/11/25/raport-me-rekomandime-i-mkpt-se-lidhur-me-viziten-ne-burgun-e-sigurise-se-larte/. Report with recommendations on the visit to the Lipjan Detention Center, published on 16 August 2019. For more see: https://www.oik-rks.org/2019/08/19/raport-me-rekomandime-i-mkpt-se-lidhur-me-viziten-ne-qendren-e-paraburgimit-ne-lipjan/ . Report with recommendations on the visit to the Prizren Detention Center, published on August 5, 2019. For more see: https://www.oik-rks.org/2019/08/06/raport-me-rekomandime-i-mkpt-se-ne-lidhje-me-viziten-ne-qendren-e-paraburgimit-ne-prizren/

In this regard, however, the NMPT observes that Article 199 paragraph 2 of the Criminal Procedure Code provides: *"Detainees on remand may perform work that is necessary to maintain order and cleanliness in their area. To the extent that the institution has the facilities and on condition that it is not harmful to the conduct of criminal proceedings, detainees on remand shall be allowed to work in activities which suit their mental and physical abilities. The pre-trial judge, single trial judge or presiding trial judge shall decide on this in agreement with the management of the detention facility"*.

Whereas, Article 200 paragraph 1 of the LEPS, regarding the engagement of the detainees on remand, provides as follows: "A detainee may work in the workshop, workshops of the economic units within the respective correctional institution only with the approval of the competent court". In the CPT report on the visit to the Republic of Kosovo in 2015, which was published in 2016, the CPT, regarding the regime for detainees, expressed concern that, despite the efforts of the authorities, detainees spend most of their time in their cells, except for two hours of walking a day, watching TV and playing cards. [238] The NMPT considers that based on the legislation in force and the recommendations of the CPT, the competent authorities should endeavor to increase out-of-cell engagements for pre-detainees in other detention centers as far as possible.

Contacts with the outside world

Law on Execution of Penal Sanctions,[239]in the case of convicted persons, establishes that convicted inmates are entitled to unlimited correspondence (subject to certain exemptions), are entitled to one visit per month, lasting at least one hour, as well as visits by children and their spouses at least once every 3 months, with a minimum duration of three hours. In addition, they have the right to make phone calls.

Regarding phone calls, the Administrative Instruction on Hose Rules in Correctional Institutions [240] defines that convicted persons may place phone calls to close family members and other persons. During visits to the correctional and detention centers, the NMPT did not receive any complaints from detainees and inmates regarding this right.

In the case of detainee on remand, Article 200 of the Criminal Procedure Code of Kosovo stipulates that "*within the limits of detention center rules*", with the permission of the pre-trial judge, single trial judge or presiding trial judge and under his or her supervision or the supervision of someone appointed by such judge, the detainee on remand may receive visits from close relatives.

The Ombudsperson or his representatives may visit and correspond with detainees without prior notice and without the supervision of a pre-trial judge, single trial judge or presiding judge or other persons appointed by such a judge. The letters of detainees sent to the Ombudsperson Institution cannot be checked. The Ombudsperson and his representatives may communicate orally or in writing in confidence with detainees.

In the case of foreign nationals, they shall be given the opportunity to contact, in writing or orally, with the diplomatic mission or with the appropriate office of the State, whose citizenship he is

[238] CPT Report on Visit to Kosovo, published in September 2016, paragraph 46. For more see: https://rm.coe.int/16806a1efc.
[239]Law on Execution of Penal Sanctions, articles 62-65.
[240]Administrative Instruction on House Rules in Correctional Institutions, Article54.

holding.[241] The NMPT, during the reporting period, did not receive complaints about the right of access to the outside world from inmates and detainees. In addition, the NMPT noted that the SKYPE communication program through which inmates can communicate with their families has begun to be implemented at the HCC and CECL.

The issue of translation into official languages at the Mitrovica Detention Center

During the visit to the MDC, the NMPT acknowledged the concerns of social workers regarding official documentation, which should be submitted to persons deprived of their liberty, who belong to two ethnic backgrounds, and which was accepted only in one language and was not translated into official languages due to lack of professional translator.

In its report with recommendations on the visit to the Mitrovica Detention Center, the NMPT stated the following: "*The NMPT considers that the competent authorities should bear in mind the legal obligation for these services to be provided in the official languages of the country, as provided by the Constitution and the relevant legislation governing this matter*". Through this report, the NMPT recommended to the competent authorities to ensure professional translation into the official languages of the Republic of Kosovo.

On 4 December 2019, the MDC informed the NMPT that the issue of translation into the official languages of the Republic of Kosovo was regulated using the services of the official translator of the HCC.

Secondary legislation on combating corruption envisaged by the LEPS

With regard to the NMPT's recommendation regarding the adoption of secondary legislation on the elimination of corruption, as provided for in Article 5, paragraph 3, of the LEPS, the NMPT finds that the situation remains the same and that the competent authorities have not implemented this recommendation.[242] However, during the reporting period, the KCS, with the aim of combating corruption in correctional and detention centers, transferred correctional officers to jobs in other correctional and detention centers.

Complaints of discriminatory treatment

During the reporting period, the NMPT received complaints by persons convicted of terrorism offenses who claimed to be discriminated against by the authorities in terms of benefits, despite meeting legal criteria. NMPT has observed that in certain cases convicts of this category have received these benefits, albeit in very small numbers. In this regard, the NMPT observes that Article 92 of the LEPS foresees certain benefits for a convicted person who is behaving well and is engaged in work, which the director approves after the recommendation of the detention planning team. This issue is further regulated by the Administrative Instruction on House Rules at Correctional Centers (Articles 60-63), which sets out the criteria and conditions to be considered by the department when approving the application. The NMPT notes that this House Rule stipulates that the decision of the director is final, so the matter is at the discretion of the director.

Health care in correctional and detention centers

[241]Law on Execution of Penal Sanctions, Article 33 paragraph 1.
[242]Report with recommendations on the visit to Dubrava Correctional Center, paragraph 9, published on 28 June 2019.

The health services in the correctional and detention centers are managed by the Ministry of Health, respectively the PHD since 2013, as until then this service was managed by the Ministry of Justice. Prisoner health services are provided at the PHD health units in all correctional and detention centers and in public health institutions as needed. The prison hospital also operates within the DCC.

Personnel, treatment and infrastructure

During the reporting period, the NMPT observed that in all correctional and detention centers, the number of medical staff (general practitioners and specialists) is adequate. Regarding the nursing staff, NMPT, through the report with recommendations on the visit to the LDC[243], has recommended to the Ministry of Health to increase the number of middle staff at the health unit in the LDC, as needed. On 2 July 2019, the PHD, through an official letter, agreed with the recommendation and informed NMPT that efforts would be made to increase the number of staff based on this recommendation.

During the visit to the MDC on 12 March 2019, the NMPT was informed that there was no psychologist engaged at this center. In this regard, the NMPT, after the visit, contacted the Director of the PHD, who informed him that the recruitment procedures for a regular psychologist had been completed and that the selected candidate would start work on 01 July 2019.

With regard to drug addiction, methadone treatment is offered at all correctional and detention centers. Psychiatric treatment of inmates is provided at the DCC hospital and other public health institutions. However, NPMT during the visits noted that the psychiatric treatment at the DCC hospital is mainly based on therapy and regular consultation with the psychiatrist, but not on genuine psychosocial activities and occupational therapy. The NMPT also considers that based on the large number of inmates, one psychologist is not sufficient to provide psychological services at the DCC. Psychiatric services are also provided at (FPIK) Forensic Psychiatry Institute in Kosovo. However, NMPT notes with concern that this institute has only 12 beds available for the KCS.

During the visit to CCWJL (Correctional Center for Women and Juveniles in Lipjan), NMPT interviewed juvenile L.L. and analyzed his medical file. In this regard, the NMPT, on January 15, 2019, recommended the PHD to immediately place the minor under permanent supervision, until another decision is issued by the health authorities. The response of the PHD and the CCWJL Directorate has been immediate to implement this recommendation and in the meantime, the juvenile concerned has been referred for further treatment to the FPIK (Forensic Psychiatry Institute in Kosovo).

The NMPT considers that the competent authorities should step up their efforts to provide adequate psychiatric services to inmates with serious mental disorders, including psychosocial activities and occupational therapy, in addition to therapy and regular consultation with a psychiatrist. In addition, the competent authorities should enhance their efforts to increase the capacity of institutions in which are treated inmates with such disorders.

Material conditions at DCC hospital

[243] Report with recommendations on the visit to Lipjan Detention Center, published on 16 August 2019. For more see: https://www.oik-rks.org/2019/08/19/raport-me-rekomandime-i-mkpt-se-lidhur-me-viziten-ne-qendren-e-paraburgimit-ne-lipjan/

The second floor was renovated at the DCC hospital. However, the NMPT has noted that there are insufficient sheets for hospitalized patients and that hygiene is not adequate. Regarding this situation, the PHD, on 16 July 2019, informed the NMPT that there was a lack of adequate space for the treatment of inmates, lack of furniture for placing patient clothes, and that the renovation of the first floor of the hospital is expected to take place soon. Among other things, the PHD informed the NMPT that the lack of a special institution for the treatment of inmates with special needs is posing difficulties in managing the patients.

Infrastructure

During the visit to the DCC, NMPT noted that the space used for health care is insufficient and does not even meet the minimum needs. In use is a room that is used for all primary care needs by the prison doctor, nurses, psychologist when there are cases to treat, and which also serves as a permanent space for health care staff. Despite the NMPT's recommendation to create adequate working conditions for medical staff, the situation remains the same even during the reporting period.[244] The same situation was observed at the Peja Detention Center. Through its report with recommendations, the NMPT recommended the competent authorities to create adequate working conditions for medical staff.[245] As the same situation was established during the reporting period, the NPMT, through a letter of recommendation sent on 16 December 2019[246], reiterated this recommendation. Such deficiencies were also noted in the NPMT report on the visit to the MDC.[247] This situation also conflicts with the principle of confidentiality of medical services.

During the visit to the HSP, NMPT noticed that physical conditions in part of the health unit were not good due to floor damage. There are very difficult working conditions in the floor where the dentist is located, as there is construction material and dust all around the place. The living rooms are not functional and are on the same floor as the dental clinic. Through its report with recommendations published on 22 November 2019, the NMPT recommended to the competent authorities that these shortcomings be eliminated. On 4 December 2019, HSP informed NMPT that these deficiencies were remedied in accordance with the recommendation submitted.

Medical checks of newly-arrived

The European Committee for the Prevention of Torture in its report on the visit to Kosovo in 2015 has emphasized the essential importance of medical examinations, especially in the case of newly-arrived inmates or detainees, not only for identifying infectious diseases and preventing suicides, but also

[244]Report with recommendations on the visit to Prizren Detention Center, published on 5 August 2019, paragraph 31. For more see: https://www.oik-rks.org/2019/08/06/raport-me-rekomandime-i-mkpt-se-ne-lidhje-me-viziten-ne-qendren-e-paraburgimit-ne-prizren/

[245]Report with recommendations on the visit to the Peja Detention Center, published on 22 November 2018, paragraph 30. For more see: https://www.oik-rks.org/2018/11/22/raport-me-rekomandime-i-mekanizmit-kombetar-per-parandalimin-e-tortures-per-viziten-ne-qendren-e-paraburgimit-ne-peje/

[246]NMPT's Recommendation Letter on the visit to Peja Detention Center, published on 16 December 2019. For more see : https://www.oik-rks.org/2019/12/17/leter-rekomandim-perkitazi-me-viziten-ne-qendren-e-paraburgimit-peje/

[247] Report with recommendations on the visit to the Mitrovica Detention Center, published on 28 June 2019, paragraph 18.For more see: https://www.oik-rks.org/2019/07/04/raport-me-rekomandime-i-mekanizmit-kombetar-per-parandalimin-e-tortures-lidhur-me-viziten-ne-qendren-e-paraburgimit-ne-mitrovice/

through the contribution that is made to the prevention of torture through the proper identification of injuries.[248]

The Law on the Execution of Penal Sanctions[249] and the SOP [250] of the PHD set out the obligation for the newly-arrived prisoner to undergo a medical examination within 24 hours of being admitted. Such obligations are also set out in international acts on the protection of prisoners' rights, such as: Mandela Rules[251], European Prison Rules[252]. During the reporting period, the NMPT observed that all newly-arrived inmates were undergoing medical examinations within 24 hours of admission.

Confidentiality of medical services

The confidentiality of medical services is foreseen in the SOP,[253] approved by the Ministry of Health, with the LEPS[254] and the Administrative Instruction on House Rules in Correctional Centers[255], as well as with relevant international acts on the rights of inmates.[256]

During the visit to the PDC, the NMPT observed a worrisome practice involving the taking of blood samples, which were placed in test tubes and then sent to the laboratory of the Family Medicine Center by the nurse or the correctional officer. In relation to this practice, the NMPT recommended termination of such practice, which is inconsistent with medical rules and violates the confidentiality of medical services. Through its report with recommendations, the NMPT[257] informed the PHD of this and recommended the cessation of such practice. The PHD, on 12 March 2019, informed the NPMT that this recommendation was implemented by introducing the laboratory manual, and in cases where samples should be transferred outside the PDC, this will not be done by the correctional officer but by the nurses.

The NMPT, based on interviews with inmates and health personnel, finds that in general, these health services are provided under conditions that respect confidentiality, respectively are provided without the presence of correctional officers, unless their presence is required by the physician. Only the medical personnel have access to the prisoner's medical file.

Staff of correctional and detention centers

[248] CPT, Report on Visit to Kosovo in 2015, published in 2016, paragraph 62. See at: https://rm.coe.int/16806a1efc
[249] Law no. 04 / L-149 on the Execution of Penal Sanctions, Article 31.
[250] Standard Action Practice, point 1. See at: https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf.
[251] Mandela Rules, Rule 34. See at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.
[252] Council of Europe, Recommendation (2006) 2 of the Council of Ministers to Member States on European Prison Rules, point 42.1. See at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c221d.
[253] Standard Action Practice, point 11. See at: https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standarde-te-Veprimit-n%C3%AB-DShB.pdf/
[254] Law on Execution of Penal Sanctions, Article 49.
[255] Administrative Instruction on House Rules in Correctional Institutions, Article 25, paragraph 3.
[256]Mandela Rules, European Prison Rules, CPT Standards, and United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
[257]Report with recommendations on the visit to Prizren Detention Center, published on 5 August 2019, paragraph 30. For more see: https://www.oik-rks.org/2019/08/06/raport-me-rekomandime-i-mkpt-se-ne-lidhje-me-viziten-ne-qendren-e-paraburgimit-ne-prizren/

The NMPT, through reports with recommendations on the visits to correctional and detention centers, recommended to the competent authorities that, according to their estimations and depending on the needs, to engage correctional staff and additional social workers.[258] Correctional personnel were recruited at the Gjilan Detention Center where the number of correctional staff increased by 51 officials. In DCC, there was no increase in correctional staff and social workers, although this was deemed necessary and recommended by the NMPT.

Procedure for lodging complaints in correctional and detention centers

An effective complaint system is a fundamental guarantee against ill-treatment in prisons and detention centers. Persons accommodated in these centers should have the opportunity to lodge a complaint within the prison or detention center where they are accommodated and to be given confidential access to the appropriate authority.

Article 91 of the LEPS sets out in detail the procedure under which pre-trial detainees and convicted persons may file a complaint or request to the director of a particular KCS institution. During the reporting period, the NMPT did not receive complaints from inmates on non-response by KCS competent bodies to their complaints and requests. In addition to the NMPT, inmates may also file complaints with non-governmental organizations that visit places of detention under their agreement with the relevant ministry.

Safety related issues

Considering that the equipping with security cameras of designated spaces in places where persons deprived of their liberty are held constitute additional guarantees against physical mistreatment and protection for security officials from false allegations of physical mistreatment, the NMPT, through the report with recommendations on the visit to DCC [259], the GjCC and other correctional and detention centers recommended to the competent authorities to install security cameras in places where they are lacking.

During the follow-up visit to DCC, the NMPT observed that some rotating security cameras were installed in the control room which receive HD images, while the contracted company was fixing those which were not operational and was adding security cameras where they were missing. In addition, the GJDC implemented the NMPT's recommendation regarding the provision of security cameras.

Expired Pepper spray

During the reporting period, the NMPT observed that correctional officers possessed *pepper spray* equipment with an expired deadline.[260] Through its reports with recommendations, the NMPT

[258]Report with recommendations on the visit to Dubrava Correctional Center, published on June 28, 2019. For more see: https://www.oik-rks.org/2019/07/04/raport-me-rekomandime-i-mkpt-se-lidhur-me-viziten-ne-qendren-korrektuese-ne-dubrave/

[259] Report with recommendations on the visit to the Correctional Center. See at: https://www.oik-rks.org/2019/07/04/raport-me-rekomandime-i-mkpt-se-lidhur-me-viziten-ne-qendren-korrektuese-ne-dubrave/.
Report with recommendations on the visit to the Gjilan Detention Center. For more see at: https://www.oik-rks.org/2019/12/12/raport-me-rekomandime-per-viziten-ne-qendren-e-paraburgimit-ne-gjilan/

[260]In this regard, see reports of visits to the Dubrava Correctional Center, Prizren Detention Center and Lipjan Detention Center at: https://www.oik-rks.org/raportet/raporte-mkpt-1/

recommended to the competent authorities that expired *pepper spray* be removed as it can have a very detrimental effect if used indoors such as in prisons. Through various visits, the NMPT was notified by the competent officials that the correctional officers were supplied with new *pepper spray*.

However, the NMPT, as recommended in other recommendations reports, stresses again that *pepper spray* should not constitute standard equipment for all correctional officers.

Disciplinary measures

During its visits to the correctional and detention centers, the NMPT focused on assessing the respect for the rights of inmates who were subject to solitary confinement as a disciplinary measure. In general, the NMPT observed that the authorities respected the fundamental rights of inmates to whom this measure was imposed, such as: the conditions of accommodation to be in accordance with LEPS standards and international standards on the rights of prisoners, such as: the right to regular medical care, access to clean air, keeping in touch with family, showering, etc. The NMPT also noted that all inmates who received the measure were served with a copy of the decision of the director of the correctional facility imposing such a measure through which they were advised of the remedy against it.

Foreigners in correctional and detention centers

During visits to correctional and detention centers, the NPMT has interviewed a number of foreign nationals. The NMPT has received no complaints of non-compliance with the rights guaranteed by the LEPS and international standards on prisoner' rights. The NMPT observed very good interactive communication between this category of inmates with correctional officers and other inmates.

Asylum Seekers Centre

During the reporting period, NMPT has visited the Center for Asylum Seekers three times. On 16 December 2019, the Ombudsperson held a direct meeting with asylum seekers at the center, whom he informed about the OIK mandate and heard their requests and complaints. These complaints refer to the quality of the food served for dinner. The NMPT, in its report with recommendations on the visit to this center, published on 14 June 2018, stated that it has received complaints from asylum seekers at the center regarding the quality of food served at dinner. The Directorate of the Center, on 24 July 2019, informed the NMPT that it has engaged a cook in the center to meet the needs of asylum seekers for better quality food and to increase the amount of food served. During the visit, the Directorate informed the Ombudsperson that it is facing problems with contractors who are not fulfilling their obligations. In order to facilitate communication and inform the asylum seekers of the role and mandate of the Ombudsperson, asylum seekers were distributed leaflets in various languages during the visit.

Treatment

The NMPT has received no complaints of physical mistreatment or conduct of center officials, including security officials that would be contrary to respect for the dignity of asylum seekers and for failure to respect their fundamental rights guaranteed by the Law on Asylum.[261] The law in question

[261] Law no. 06 / L-026 on Asylum, article 26.

guarantees asylum seekers the following fundamental rights: to reside in the Republic of Kosovo, to have basic living conditions, to have health care, to have basic social assistance, to have free legal aid, to have the right to education for applicant children, the right to freedom of thought and religion, to employment and the right to vocational training.

During the reporting period, there was an increase in the number of asylum seekers seeking asylum in the Republic of Kosovo. According to the directorate of the Center for Asylum Seekers, so far, 1642 asylum seekers have been registered, while in 2018 there are 594 registered.

Accommodation conditions at the Asylum Seekers Center in Magura continue to be of a very good standard. There is also a child-friendly play area, indoor playground and playground in the yard.

Free legal aid

Free legal aid, as a fundamental right, continues to be provided by the NGO CRPK (Civil Rights Program Kosovo). While, besides the Ombudsperson access is also guaranteed to international organizations such as the UNHCR, the CPT, the International Red Cross and local NGOs under the agreement.

Detention center for foreigners

During the reporting period, NMPT has made 3 visits to DCF, published a report with recommendations on the visit to this center and sent 6 recommendations to the competent authorities.[262] In view of international human rights standards, detention (sending a foreigner into custody) should be the last measure taken by the authorities of a State to expel from the territory a foreigner subject to forced return.

During 2019, 11 foreigners were placed in DCF and stayed only a short time until deportation from the territory of the Republic of Kosovo after the Ministry of Internal Affairs and the International Organization for Migration (IOM) signed a Memorandum of Understanding on Assisted Voluntary Return and Reintegration.[263] In general, the NMPT notes that the competent authorities are more frequently applying alternative measures in relation to detention.

The NMPT also notes that Law 04/L-219 on Foreigners of the Republic of Kosovo [264] provides that other alternative measures shall take precedence over the sending of a foreigner into custody. Even the CPT, in the standards set in 2017[265], stipulates that detention of a foreigner under the Foreigners Act should be a last resort and that other alternative measures should be given priority.

Treatment

[262]Report with recommendations on the visit to the Detention Center for Foreigners, published on 23 April 2019. For more see at: https://www.oik-rks.org/2019/03/27/raport-me-rekomandime-te-mkpt-se-lidhur-me-viziten-ne-qendren-per-te-huaj-ne-vranidoll/

[263]For more see at: https://kosovo.iom.int/news/iom-kosovo-and-ministry-internal-affairs-sign-mou-avrr

[264]Law no. 04 / L-219 on Foreigners, Article 97, paragraph 2.

[265] CPT, Standards Released in March 2017 on the Detention centers for foreiners. For more see at: https://rm.coe.int/16806fbf12.

The NMPT has not received any complaints from foreigners who were held in custody, for physical mistreatment or conduct of the officials of the center which runs counter to their respect for human dignity.

Conditions of accommodation in DCF

NMPT noted that all rooms where foreigners are accommodated in the DCF provide decent accommodation, heating, sufficient natural and artificial lighting, as well as showers which were in very good condition. NMPT considers that the accommodation conditions of DCF are at a very good level.

Notification of rights and obligations

Foreigners in DCF are informed about their rights and obligations through brochures written in the most popular languages such as Arabic, English, French, Italian, Turkish and so on. The NMPT has noted that in these brochures, foreigners in the DCF are provided with information on agencies, NGOs and institutions which they may contact regarding their rights, but that they do not contain data on the Ombudsperson Institution and the NMPT.

Regime

Article 24, paragraph 1, of Regulation (MIA) no. 04/2018 on Operation of the Detention Center for Foreigners (Regulation) stipulates that any foreigner detained in the Center has the right to air at least two hours a day in the Center's outdoor premises. For health reasons, the Head of the Center may extend the aeration time for prisoners.

CPT, in the standards established in March 2017[266] on the detention of foreigners because of immigration, stresses the importance of a regime that contains as many activities as possible. According to the CPT, the longer the period of detention of foreigners, the more activities should be offered to them. DCF now has a small sports field, which is equipped with accompanying elements, where foreigners can play football and basketball, which was also a recommendation of the NMPT.

Contact with the outside world

According to CPT standards[267], foreign detainees should have every opportunity to be in genuine contact with the outside world (including opportunities to make calls and receive visits) and their freedom of movement within the detention center should be restricted as little as possible. Pursuant to article 25 of the Regulation, the detained foreigner has the right to keep correspondence, receive packages and other items. Foreigners in detention are also allowed to receive visits.

The regulation stipulates that the foreigner has the right to make calls as needed for duration of 5 minutes, starting from 9:00 am to 4:00 pm, every working day. According to the Regulation, calls from abroad shall also be made available to foreigners. During the visits, the NMPT did not receive complaints from foreigners accommodated in the DCF regarding the right to contact with the outside world.

[266]CPT Standards, published in 2017, at: https://rm.coe.int/16806fbf12
[267]For more see at: https://rm.coe.int/16806fbf12

The NMPT recommendations and the authorities' progress in their implementation

During the reporting period, the NMPT sent the following recommendations to the competent authorities:

• *The DCF should have at least one nurse who will perform medical examinations on the newly-arrived, provide the therapy and take care of the medical files of foreigners in the DCF*. The newly-arrived receive medical check-ups from the emergency crew. However, there has been no progress on the NMPT's recommendation to hire at least one nurse who would perform medical examinations on the newly-arrived, provide the therapy, and take care of the medical files of foreigners in the DCF.

• *The DCF should maintain the following protocols: Protocols on solitary confinement, bodily injury, self-injury, attempted suicide, sexual abuse and death.* NMPT has noticed that in the dossier of foreigners accommodated in DCF, relevant data on all events related to these foreigners in DCF are stored using the MIA electronic register.

• *Security personnel must undergo adequate training to work with this category.* There was no training for security personnel to work with this category, despite efforts by the competent authorities to find a solution to this issue.

• *Foreigners should be informed of all their rights and obligations through a separate document, in a language they understand and in which they certify that they have understood their rights and obligations.* NMPT has noticed that foreigners are informed about their rights and obligations through brochures in different languages. However, the document has not been drafted as per the recommendation of the NMPT.

• *Foreigners who are subject to the disciplinary measure of isolation shall be allowed to enjoy their rights in accordance with the standards set by the CPT.* According to the Director of DFC, the revision of the current Regulation is in process. The NMPT has requested that the draft Regulation in question be sent for eventual comments on its compliance with international human rights standards.

• *Adopt a formal Disciplinary Regulation, which shall specify the disciplinary procedures and rights of the foreigner to whom such a measure is imposed.* NMPT regretfully observes that there has been no progress in implementing this recommendation. The adoption of a formal Disciplinary Regulation would be an additional guarantee for the protection of the fundamental rights of foreigners in the DCF.

Visit to Adem Jashari International Airport in Prishtina

During the reporting period, NPMT, under the observation of Council of Europe experts, on May 7, 2019, visited Adem Jashari International Airport in Pristina. The purpose of this visit was the overall assessment of the respect of the rights of foreigners who, based on the Law on Foreigners and other relevant laws, cannot enter the territory of the Republic of Kosovo, are subject to return to their countries of origin or are being held temporarily at the holding facilities at the Prishtina International Airport (PIA) entry point.

Holding facilities/spaces at PIA entry point

Foreigners who want to cross the border of the Republic of Kosovo and who do not meet the legal criteria, and if the air carrier is not able to make their immediate return, are kept in separate premises

at the PIA, up to 72 hours. These spaces are also known as holding facilities at airport entry points. During NMPT's visit to PIA, there were no foreigners accommodated in these areas.

Regarding the conditions of accommodation in these areas, NMPT has noticed that they provide good accommodation conditions, with sufficient inventory for personal belongings, cleanliness is at the right level, toilets supplied with hygiene items, showers in a very good condition and with sufficient artificial light. Regarding the contacts with the outside world, foreigners have access to the outside world through wi-fi access. With regard to medical services, the NMPT has observed that the medical service within the PIA provides medical services 24 hours a day to staff, detainees and other passengers.

Information on legal status and their rights

During the visit, the NMPT observed that in the rooms where foreigners are accommodated, who cannot cross the border of the Republic of Kosovo, there is no information posted on who they can turn to, or on how this should be done, in case they have any complaints regarding treatment by police officials or if they want to know about their legal status and their rights. Based on this, the NMPT, through its post-visit recommendations report, recommends to the competent authorities:

- Holding facilities at PIA entry points should be provided with relevant information in different languages, through which foreigners are informed about their rights, their legal status, as well as rights to contact human rights protection mechanisms.
- Inform NMPT whenever there are cases when foreigners are accommodated at the holding facilities at PIA entry points and and cases of their expulsion from the territory of the Republic of Kosovo.

Monitoring of forced return operations by air

During the reporting period, the NMPT monitored at the PIA two operations of forced return of citizens of the Republic of Kosovo by the Swiss authorities. This monitoring is based on the Memorandum of Understanding signed between the Ombudsperson Institution and the Swiss National Commission for the Prevention of Torture.[268] During the monitoring of these operations, the NMPT observed that the returnees were treated in a humane manner by the police authorities of the Republic of Kosovo.

Mental health institutions

During the reporting period, the NMPT visited the FPIK, the Psychiatric Clinic Emergency and Intensive Care Unit. The purpose of the visits was to assess the progress of the competent authorities in implementing the recommendations of the NMPT submitted through earlier reports with recommendations.[269]

[268]Memorandum of Understanding between the Ombudsperson Institution and the Swiss National Commission for the Prevention of Torture for the Monitoring of Forced Return Operations signed April 24, 2019. For more see at: https://www.oik-rks.org/2019/04/25/nenshkruhet-memorandumi-i-mirekuptimit-ne-mes-te-zvicres-dhe-kosoves-per-parandalim-te-tortures-dhe-monitorim-te-perbashket-te-operacioneve-te-kthimit-me-force/

[269]Report with recommendations on the visit to Forensic Psychiatric Institute of Kosovo, published on 28 August 2018. For more see: https://www.oik-rks.org/2018/08/28/raporti-nga-vizita-ne-institutin-e-psikiatrise-forenzike/ Report with

NMPT noted that there was no significant progress in implementing these recommendations in these institutions. NMPT, during the reporting period, did not receive complaints from those accommodated in these institutions regarding human treatment and failure to respect other fundamental rights.

Community Integration Homes

During the reporting period, the NMPT has visited the Community Integration Homes in Bresje, Drenas, Ferizaj, Peja, Gjilan, Mitrovica, Gjakova and Prizren. These institutions are managed by Hospital and University Clinic Services of Kosovo (HUCSK).

Relevant legislation

The relevant legislation is contained in Law no. 05/L-025 on Mental Health and Administrative Instruction no. 07/2009 On Professional Mental Health Service in the Republic of Kosovo. Based on the provisions of the aforementioned legal acts, the Community Integration Homes (CIH), provide long-term health care for the purpose of rehabilitation and social reintegration of clients with chronic mental illness and disorders.[270] The placement of residents is based on the criteria set out in the administrative instruction and the decision of the relevant evaluation commission. Paragraph 7 of the Administrative Instruction No. 07/2009, states that only clients with chronic psychotic conditions and disorders with remission symptoms are admitted at CIHs. Cases of mental retardation, dementia of all kinds, dependency diseases and social cases are not admitted at CIHs.

Treatment and conditions of accommodation

Each Community Integration Home has a capacity of 10 persons, with the exception of Mitrovica which has two Community Integration Homes with 10 beds, a total capacity of 20 persons. In all Community Integration Homes, the accommodation conditions are generally good, with adequate lighting, heating and ventilation. Sanitary facilities allow privacy for residents and staff of the institution. Also, each resident in these houses has their own closet to store personal belongings. During the visits, the NMPT observed that there was no overcrowding in any of the Homess. NPMT, during the reporting period, was informed by the Ministry of Labor and Social Welfare (MLSW) that a Community Integration Home with a capacity of 10 persons was built for the Peja region in Deçan.

Food

The food of patients is another important aspect of living conditions. The CPT stresses the particular importance of food for this category. According to the CPT, food must not only be adequate in terms of quantity and quality but should also be provided in satisfactory conditions.[271] NPMT has observed that in each CIH, food is prepared by staff together with residents. NPMT during visits to these institutions did not receive any food complaints, except at the Community Integration Home in Mitrovica, where there were shortages of supplies.

Treatment and activities

recommendations on the visit to the UCCK Psychiatric Clinic. See at: https://www.oik-rks.org/2018/10/29/raport-me-rekomandime-lidhur-me-viziten-ne-kliniken-pskiatrike-ne-qkuk/

[270] Administrative Instruction (Health) No. 07/2009 On Professional Mental Health Service in the Republic of Kosovo, Article 9, paragraph 1.

[271] CPT, Excerpts from the 8th General Report, published in 1998. See at: https://rm.coe.int/16806cd43e

During the visit, the NPMT observed a kind and friendly approach by staf to residents and generally observed a positive climate within the homes visited. Residents look good in terms of clothing and hygiene. NPMT did not observe any signs of bodily injury to residents. NPMT has interviewed residents and has received no complaints of any form of maltreatment or behaviour of staff that would violate the dignity of residents.

NPMT, during the visits to the Community Integration Houses, has noticed that the activities vary from institution to institution. In general activities such as walks in nature twice a year, chess, table tennis, handicrafts etc. While at the Community Integration House in Gjilan, residents work in the greenhouse.

The CPT standards emphasize that psychiatric treatment must be based on an individualized approach, which means developing a treatment plan for each patient. It should include a wide range of rehabilitation and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, art, theatre, music and sports. Residents must have regular access to suitably equipped entertainment rooms and be able to access the open air outdoors daily, it is also desirable to provide them with adequate education and work.[272]

NPMT expresses its concern over the fact that the Community Integration Homes visited do not have an individualized treatment plan with resident involvement. TTherefore, NPMT encourages their staff to work in this direction and this will also facilitate the work of personnel.

Medical care

NPMT has noticed that in the Community Integration House regular psychiatric services are provided by the psychiatrist of the Mental Health Centers of those regions, while in case of need, other health and specialist services are provided by Family Medicine Centers. NPMT has noted in their health files that residents in these homes are mostly diagnosed with psychotic disorders but are in the remission phase and treated with pharmacotherapy. Based on the files analysed by the NPMT, it is found that patients get regular laboratory tests.

Personnel

Integration Homes are headed by the Director of Mental Health Centers of the respective regions. Mental Health Centers are open day centres that have professional staff such as: psychiatrist, psychologist and nurse who also help at Community Integration Homes.

NPMT has noticed that the number of staff varies across regions and that some homes lack the necessary staff, which makes the work more difficult and as a consequence, usually there is only one nurse on on-call duty at night. NPMT encourages HUCSK to increase the number of staff as deemed necessary.

Means of restraint

With regard to means of restraint, Article 27 of Law no. 05/L-025 on Mental Health, states that: Means of restraint of persons with mental disorders is applied at specialised mental health institutions

[272] European Committee for the Prevention of Torture Standards, Excepts from the 8th General Report [CPT / Inf (98) 12].

with beds and includes, according to respective protocol, the following elements: keeping the person with force, forceful use of medicines, immobilization, isolation.

Based on the assertions of staff, residents and their files, in these homes no mechanical means of physical restraint are used, but only chemicals, psycho-therapy, pharmacotherapeutic interventions and no isolation measures are used.

Regarding visits and findings at these institutions, NPMT, will publish special report with recommendations, outlining the findings and concrete recommendations on specific issues, which will be submitted to the bodies managing these institutions.

Community-based homes

Community- based homes continue to be regulated by two Administrative Instructions: no.11/ 2014 on the work and placement of residents, persons with mental disabilities-mental retardation at Special Institute in Shtime and in community based home and AI no. 13/2010 for the provision of community-home services for people with mental disabilities-mental retardation.

Visits carried out by the NPMT in 2019

Community-based home, as of January 2016, are managed by the Municipal Directorates of Health and Social Welfare. NPMT during 2019 visited 7 community-based homeS: Community- based home in Shtime, Ferizaj, Vushtrri, Decan, Kamenica, Gracanica and Lipjan.

Material conditions in the homes visited

During the reporting period, NPMT was informed by MLSW that two more community based homes were built, in Prizren and Novoberdo, which will be operational from 2020. Also during the NPMT visit, the Community based home in Shtime was being renovated. Their official capacity is 10 residents. However, the NPMT, during the visit to the Community based home in Vushtrri observed that there were 13 residents accommodated, while in the Community based home in Kamenica there were 12 residents.

During its visits, the NPMT has observed that community-based homes, in terms of accommodation, except for those in Ferizaj and Vushtrri, are generally at a satisfactory level. Rooms and spaces where residents are accommodated and carry out their activities have adequate lighting, heating and ventilation. Rooms and sanitary facilities also provide residents with appropriate privacy.

Nevertheless, the NPMT noted that the Community-based home in Ferizaj did not have good accommodation conditions, some kitchen appliances were not working such as the dishwasher, showers were damaged, a large laundry machine was missing, as this category of residents depends entirely on staff. In addition, staff do not have a living room and do not have adequate space for therapy or injections. Often they are faced with problems with the supply of medications, clothing and blankets. In certain cases clothing has been supplied by various Non-Governmental Organizations. Community-based home in Vushtrri had average conditions, with a lack of adequate backyard and resident space.

NPMT observed that in the Community based home in Lipjan, attention was also given to the decoration of the living quarters with work done by the residents themselves, to give visual stimulation.

Patients' food is another aspect of their living conditions that is of particular importance to the CPT. Food must not only be adequate in terms of quantity and quality, but should also be provided in satisfactory condition[273]. NPMT observed that at each community based home, food is prepared by the personnel. NPMT has not received any complaints regarding the quality and quantity of food.

Physical ill-treatment and incidents between residents

NPMT did not observe any indication that physical or psychological ill-treatment is exercised by personel at any of the homes visited. On the contrary, in all the homes visited there was a commitment of staff to treat residents humanely. Furthermore, good communication between residents and staff was noted.

By analysing medical and administrative documentation in community-based homes in Ferizaj and Vushtrri, NPMT observed that there were cases of incidents between residents and cases of self-injury. NPMT considers that the authorities' obligation to care for residents also includes their responsibility to protect those from other residents who may physically attack them**.**[274]

Treatment and activities

Regarding activities in general, in most homes visited, NPMT was informed that residents usually listen to music, watch TV, do drawings, take trips to the city, while in some Community-based homes they take trips to places further-off twice a year, taking nature walks or walks in other cities. NPMT encourages the heads of these institutions to attach importance to the development of educational and training work therapy, psychosocial and recreational activities and to have an individualized treatment plan according to the needs and abilities of the residents.

Medical care

NPMT was informed that at Community Based Homes, health services are provided by Family Medicine Centres. At the Community based home in Ferizaj, there is a resident with severe disorders. Based on his health record, the resident has been using the same psychiatric therapy for years, has not been visited by a psychiatrist for several years, and his mental state has not been reassessed. Psychiatric services in this institution have not been available for almost 5 years, which poses obstacles to the work of nurses.

According to staff, regular psychiatric services cannot be obtained from the Mental Health Center in Ferizaj. In relation to this situation, NPMT talked with the Director of the Municipal Directorate of Health and Social Welfare who informed that they are waiting for the engagement of a psychiatrist. In this House there were also problems with the supply of medications.

[273] Ibid, paragraph 35.
[274]For more see the CPT Report on Visit to Bulgaria, published on 6 October 2017, page 75, paragraph 153, at: https://rm.coe.int/16807c4b74

NPMT noted that Article 18, paragraph 1 of the Law no. 05/L-025 On Mental Health stipulates that: "*Persons who are in residential social care institutions are offered counseling, treatment, rehabilitation and mental health care equally and according to health standards, approved by the Ministry of Health*". Whereas, paragraph 2 of this article states: "*The way of organization and provision of services, as provided in paragraph 1 of this Article shall be determined by special sub-legal act proposed by the Ministry of Health in cooperation with the Ministry of Labour and Social Welfare, adopted by the Government*". Notwithstanding the NPMT's recommendation that by-laws be adopted in accordance with the Law on Mental Health, and which was sent to the competent authorities through a report with recommendations on the visit to the Special Institute in Shtime[275], which was published on February 22, 2017, NPMT, noted that there has been no progress in implementing this recommendation.

During the reporting period, NPMT conducted a visit to the Special Institute in Shtime and the Home for Children with Mental Disability (SHFAKM) in Shtime, which are managed by MLSW. At the Home for Children in Shtime, NPMT conducted a follow-up visit, and it was found that all NPMT recommendations sent to the competent authorities through the recommendations report on 23 April 2019, have been implemented.[276] However, during the follow-up visit on 5 November 2019, the NPMT noted that this institution lacks adequate space for physiotherapy.

During the reporting period, NPMT visited the Home for the Elderly without Family Care in Gracanica, which has been operating since 2014. This institution since 2016 is managed by the Municipal Directorate of Health and Social Welfare. This house has a capacity of 10 residents, during the visit it was found that there are 8 residents present. Accommodation conditions are very good. In terms of staff this house has 17 employees (one nurse, four medical assistants, six caregivers and 5 persons in the facility security). Based on the health records, there were no cases of dementia. NPMT has not received any complaints from residents regarding the treatment or disrespect of their other rights.

Home for Elderly People without Family Care

Home for Elderly People without Family Care (HEPWFC) is an institution of social character and operates within the MLSW. The official capacity of this institution is 110. During the last follow-up visit on August 29, 2019, the NPMT was informed that there were 74 residents present.

NPMT recommendations sent through report published on January 25, 2018[277]:

1. Urgently make investments as needed, in the old building and in the areas where the medical and dental services operate.

   During the follow-up visit, the NPMT found that there was progress in this regard, internal spaces were lime plastered, as well the where the residents live and the areas where the health services

[275]For more see on: https://www.oik-rks.org/2018/01/31/raport-i-mkpt-instituti-special-ne-shtime/
[276]Report with Recommendations on the visit to Home for Children with Mental Disabily, published in 23 April 2019. For more see on: https://www.oik-rks.org/2019/05/03/raport-i-mkpt-lidhur-me-viziten-ne-shtepine-e-femijeve-me-aftesi-te-kufizuara-ne-shtime/
[277]Report with recommendations on the visit to Home for Elderly People without Family Care, published on : January 25, 2018. For more see on: https://www.oik-rks.org/2019/12/23/raport-me-rekomandime-vizite-ne-shtepine-per-te-moshuar-dhe-pa-perkujdesje-familjare/

are located. NPMT from officials from the concerned institution have been informed that the Dentistry and Physiotherapy Service will be relocated from the ground floor and will move to the first floor. NPMT encourages MLSW to continue efforts to fully implement the aforementioned NPMT recommendation.

2. Residents should be provided with adequate inventory in their rooms.

   During the visit NPMT noted that there was progress in this regard, new closets and mattresses were brought in the residents' rooms.

3. To supply the institution with an ambulance.

   In the response sent by MLSW, it is stated that the recommendation will be implemented through budget planning during 2018, or by requesting it to be provided by donors. During the last follow-up visit on 28 August 2019, NPMT found that this recommendation was not yet implemented.

4. Medical service to apply protocols for self-injury, bodily injury, hunger strike, sexual abuse, suicide, and deaths at the institution.

   During the visit, the NPMT noted that this institution now has all the records of self-injury, bodily injury, hunger strike, sexual abuse, suicide, and deaths in the institution.

5. Organize specific training for staff in accordance with treatment needs of residents.

   NPMT received a written response from MLSW stating that the trainings organized by the Special Institute in Shtime are also attended by the staff of the HEPWFC. They have also applied to the MEST accreditation agency with adequate training programs for this staff which provides services to clients and will soon begin these trainings. During its last visit, the NPMT found that the staff of the HEPWFC participated in several trainings organized by the Special Institute in Shtime.

6. To Increase the number of personnel according to health service needs assessment.

   During the visit, NPMT noted that there was progress in this regard, now the number of middle staff increased to 3 persons.

VI. Summary of reports with recommendations, Recommendation Letters, opinions, *amicus curiae* and requests for interim measures

VI. Summary of reports with recommendations, Recommendation Letters, opinions, *amicus curiae* and requests for interim measures

The following will be a brief summary of all the reports and letters of recommendation in which the Ombudsperson found human rights violations. This will also include presentations of the Ombudsperson's appearances before the court in the capacity of amicus curiae, his opinions regarding various issues related to human rights and requests for interim measures.

Ex officio Reports

Ex officio Report no. 479/2017 regarding inappropriate management of the sanitary landfill in Velekince, Gjilan

The Ombudsperson published the Ex officio Report No. 47/2017 regarding inadequate management of the sanitary landfill in Velekince, municipality of Gjilan. The report is the result of investigations initiated by the Ombudsperson based on a writing of the "Rajonipress" portal, dated 6 July 2017, titled: "*A citizen from Gjilan looses his life from injuries caused by an excavator*". The purpose of this report is to draw the attention of the Ministry of Environment and Spatial Planning (MESP) and Municipality of Gjilan regarding failure to manage and maintain the sanitary landfill in Velekince of Gjilan and failure to take action by the responsible authorities. The report aims to highlight the bad impact of landfill management on the right to life and the right to a safe and healthy environment for citizens.

Ex officio Report No. 305/2019 on the treatment of persons with HIV and AIDS

Protecting human rights and fundamental freedoms is essential and very important for an effective response to HIV prevention and treatment in Kosovo. Despite the fact that Kosovo has made a lot of progress in responding to HIV and AIDS, there are still aspects that require the attention of the responsible authorities regarding the rights of people affected by HIV and AIDS. They continue to face challenges, particularly in testing and access to prevention, treatment, health care and other HIV and AIDS related services. These challenges are also related to economic barriers, prejudices and stereotypes, gender inequality and the presence of stigma and discrimination in health institutions.

The report aims to assess the application of HIV testing and counseling standards at the national level, more specifically, the assessment of the application of key principles during HIV testing, which are: consent, confidentiality, counseling, accuracy of test results and links to HIV prevention, care and treatment services, and to assess the effective realization of the rights of persons living with HIV in Kosovo in relation to access to care and treatment, focusing in particular on discrimination, inequality, failure to protect rights, and the treatment of children who live with HIV.

Ex officio Report No. 514/2016 on the issue of children in street situation

Even in Kosovo, as in many countries around the world, a part of the population is made up of street children. We see these children on the street alone or in groups, among other things, cleaning car windows, selling small things, begging or around containers. Their involvement in these activities harms their health, impairs their development and well-being, puts them at risk of exposure to violence, sexual abuse, exploitation and trafficking.

Their exact number is unknown. At national level there is no comprehensive official data on children in street situation, which would provide a clear and full picture of their number and condition. Their identification by state institutions is not easy; many of them are on the move, some of them cannot be identified due to the lack of personal documents and the fact that they are not registered in the birth registers. Failure to identify them, lack of data about them, on the one hand, makes them "invisible" before the law, depriving them of the opportunity to enjoy the rights guaranteed by the legislation in force, including health protection, education and social services. On the other hand, this makes it difficult and impossible for state institutions to develop adequate and effective policies for the protection and realization of their rights.

The report aims to analyse the phenomenon of street children; to identify violations of children's rights; and to draw the attention of the institutions responsible for taking appropriate action to protect children in street situations.

Ex officio Report No.450/2018 regarding the unequal treatment of pensioners by commercial banks in Kosovo

The report aims to draw the attention of the Central Bank of Kosovo (hereinafter: the CBK) on the unequal treatment of pensioners as clients in the provision of bank credit services by commercial banks in Kosovo.

Based on information received by the Ombudsperson from Kosovo citizens who are old age pension beneficiaries, commercial banks in the Republic of Kosovo deny persons older than 65 years of age the right to use bank credit services, on the grounds that pensioners are pension beneficiaries and therefore cannot be granted a loan. In order to determine the facts and the relevant legal circumstances regarding this matter, the Ombudsperson representatives have held direct meetings with authorized persons in the branches of several banks in Kosovo, which provide credit services to private individuals. They have talked to them about the current situation of pensioners over 65 years of age, as persons interested in banking credit services and have been asked for clarification regarding the treatment in question, in terms of the provisions of the Law on Protection from Discrimination, which, inter alia, defines age and social status as grounds legally protected from discrimination.

By applying this practice, banks directly discriminate against citizens on the basis of direct criteria – age, as a personal characteristic, because due to the deprivation of the right to use the banking credit service, in a comparable situation puts a group of citizens in a more unfavourable position than other persons who do not have that personal characteristic.

Ex officio Report No. 421/2019 on the lack of effective remedies for the settlement of labour disputes

The report aims to draw the attention regarding the lack of effective remedies on the settlement of the civil servants' employment disputes and candidates for acceptance into the civil service, as a result of the non-appointment of members of the Independent Oversight Board for Civil Service in Kosovo (IOBCSK) by the Assembly of the Republic of Kosovo, and to provide complainants with a guaranteed constitutional and legal right to effective remedies for the settlement of employment disputes.

Ex officio Report no. 340/2017 on the situation of persons with disabilities in the Municipality of Gjilan

The report highlights the issue and access of persons with disabilities to public property, road infrastructure and the right to education and employment in public institutions in the Municipality of Gjilan and aims to attract the attention of the competent authorities, namely the Municipality of Gjilan, on the necessary steps to be taken to fully respect human rights.

In this report, the Ombudsperson finds that failure to provide reasonable adjustment/ accommodation to persons with disabilities, in accordance with their specific needs, constitutes discrimination on the basis of disability, as defined by Article 1 of the Law on Protection from Discrimination. Non-inclusion of children with disabilities in the education system is contrary to the legal provisions. The Ombudsperson also finds that the Municipality of Gjilan has failed to comply with and fulfil its obligations under Article 12 of Law no. 03/L-019 on training, vocational rehabilitation and employment of persons with disabilities, not fulfilling the required number of employees from the ranks of persons with disabilities.

The report considers that public institutions should proceed with concrete actions to ensure access to educational facilities, as well as the employment of support staff, especially personal assistants, in order to ensure equal education opportunities for each person, according to their special abilities and needs.

Ex officio Report No. 346/2019 on the positive obligations of the state regarding protection from domestic violence

The protection of human rights and fundamental freedoms is essential and very important for an effective response in prevention and treatment of domestic violence cases in the Republic of Kosovo. Despite the fact that much progress has been made in establishing mechanisms for responding to cases of domestic violence, there are still aspects that require the attention of the responsible authorities regarding the positive obligations of the state on the right to life. Victims of domestic violence continue to face various challenges, notably the failure of authorities established specifically to prevent this phenomenon of concern, which in many cases is resulting in fatalities. These challenges are also linked to different barriers, neglect of authorities, prejudices and stereotypes, gender inequality, and the presence of stigma and discrimination in different institutions.

The report aims to assess the application of key principles of positive state obligations regarding the right to life, in relation to the triple homicide which occurred on 22 April 2019, in the Dardania neighborhood of Prishtina and also to assess the effective realization of the rights of persons/victims of domestic violence in Kosovo in relation to access to care and treatment, focusing in particular on discrimination, inequality, the failure of the authorities to protect the rights of victims of domestic violence, and on the state's obligations to protect the lives of citizens.

Ex officio Report No. 567/2019 on positive state obligations in the case of K.V.

The purpose of this report is to draw the attention of public institutions regarding the positive state obligations regarding the right to life in the case of K.V., who on July 11, 2019, was killed by another person. This report also assesses how prompt and effective were the actions taken by the competent

state institutions in term of respect for human rights, in this case in protecting the rights of K.V., as well as the obligations of the state to protect the lives of citizens, in accordance with the Constitution of the Republic of Kosovo, laws as well as other international instruments.

The Ombudsperson, after reviewing relevant legislation, international instruments, case documentation, information and data available to him, concludes that in the present case there *have been violations of human rights and fundamental freedoms*, respectively violation of the positive state obligations for the protection of the right to life, and children's rights to protection from violence and ill-treatment, as the relevant authorities have failed to meet constitutional and legal obligations and international standards for the protection of the life of the victim applicable in the Republic of Kosovo.

Ex officio Report No. 468/2019 on the positive obligations of the State in the case of Ms. Z. S.

The purpose of this report is to draw attention related to the positive obligations of the state with regard to guaranteeing the safety and the life of citizens as in the case of Ms. Z.S, who was physically attacked on 29 May 2019 in Lipjan and on 31 May 2019 in Ferizaj by some citizens, all of this as a result of inciting hatred on social media and various media portals. The report also warns on the limits of freedom of expression in relation to other rights and the risk of violation of privacy, human dignity, incitement to violence, hatred, intolerance or disturbance of public order.

The Ombudsperson, on the basis of all the evidence presented and the facts gathered, as well as relevant laws, finds that in the present case there have been violations of human rights and fundamental freedoms, as the relevant authorities have not fulfilled their constitutional and legal obligations nor the international standards applicable in the Republic of Kosovo, in terms of taking concrete action to protect the life of the victim Z. S., namely preventing the attack against her in Lipjan and in Ferizaj. Therefore, the Ombudsperson considers that the competent state authorities did not provide sufficient protection for the victim Z, S., who was exposed to danger and consequently was attacked twice in a row.

Ex officio Report No. 489/2018 on the use of narcotic substances by children

The purpose of this report is to assess the current state of use of narcotic substances by children and to address recommendations to relevant institutions in order to take all necessary measures to prevent and treat children who use narcotic substances.

The Ombudsperson finds that: there is a lack of specialized centres for the treatment of young narcotic substance users and a lack of appropriate awareness and prevention programs, as well as a lack of services and treatment of narcotic substance users, both in terms of geographical scope and quality; there is a lack of a single (comprehensive) national database of statistical data, including a lack of complete data on the causes and type of narcotic substances and on suspected cases of narcotic deaths; there is a lack of expertise among the staff of social work centres (within their legal mandate) to deal with cases of children using narcotic substances; the presence of narcotic substances and other seizures by the Kosovo Police in the vicinity of educational institutions and the fact that many young people are involved in drug-related activities is a clear indication that state institutions should do more in preventing the use of narcotic substances and improving the living conditions and long-term perspective of children/youth in Kosovo. In the KJC and KPC database there is a lack of data referring to specific offenses under Chapter XXIII of the Code.

Ex officio Report No. 59/2019 on the Evaluation of the System of Social Service Provision

Through this Report with recommendations, the Ombudsperson assesses whether the provision of social services in the Republic of Kosovo is in line with human rights standards. The report provides specific and concrete recommendations on actions to be taken by the Government of the Republic of Kosovo, the Ministry of Labour and Social Welfare and the relevant municipalities to improve the current situation.

The Ombudsperson finds that the Centres for Social Work have been transformed into administrative-technical institutions and much less into institutions providing professional social services, all because of the lack of professional staff and the lack of facilities to provide adequate services; There is a lack of oversight, planning, financing and enhancement of services in accordance with the needs of municipalities; lack of development of a social protection system in municipalities and in the Ministry itself has caused and continues to cause major problems. If there was an adequate and functioning social protection system established, municipal elections would have had less impact on the provision of professional social services, as the system would have been functional, in both education and health.

Report with recommendations

Report A. No. 683/2018 in relation to the Law no. 06/L-012 on Capital City

The Law no. 06/L-012 on Capital City of the Republic of Kosovo, Prishtina, Article 7, paragraph 1, sub-paragraph 1.1, among other things, provides that the public safety issues shall fall within the competence of the capital city. The report has three main purposes: to assess whether this competence of the Capital City complies with the Law no. 04 / L-076 on Police; to assess which law is considered a special law in the specific situation, and to send to the competent institutions specific and concrete recommendations for amending and supplementing of the Law no. 06/L-012 on the Capital City of the Republic of Kosovo, respectively Article 7, paragraph 1, subparagraph 1.1, which regulates public safety as a competence of the Capital City.

According to this report, the principle *lex specialis derogat legi generali* (hereinafter referred to as "*lex specialis*") stipulates that, when a given factual situation falls within the scope of two normative acts, priority is given to the ***special act*** over ***general act.*** The report specifies that *lex specialis* is considered to be the normative act that addresses the factual circumstances more specifically, and is given priority over an act of a more general nature.

Report A. No. 119/2018 for non-renewal of the working licenses of the second category surveyors and for non-alignment of secondary legislation provisions

The report is based on the complaint received from M.S.and 37 other surveyors, on behalf of the second category surveyors (secondary school surveyors), regarding the non-renewal of work licenses by the Kosovo Cadastral Agency as a result of non-alignment of the provisions of Administrative Instruction 01/2013 on Licensing of Surveying Companies and Surveyors, issued by the Ministry of Environment and Spatial Planning (MESP) in 2013. The report draws the attention of MESP on the need to take urgent action to align Article 4, Article 7 and Article 11 of AI 01/2013 on Licensing of Surveying Companies and Surveyors, issued by MESP in 2013, which regulates the terms of licensing

and practising the surveyors' profession. The misalignment between the aforementioned provisions has resulted in the non-renewal of the work licenses for the second category surveyors.

Report A. no. 674/2018 regarding the freedom of association

The Report with Recommendations aims at analyzing the exercise of the freedom of association in non-governmental organizations and the practice so far as regards the suspension of the activities of non-governmental organizations in the Republic of Kosovo, upon the request of the competent security body. The report is based on two complaints regarding the suspension of the activity of non-governmental organizations, based on a request from the competent security body. In this report, the Ombudsperson considered that the suspension of the activities of NGOs solely on the basis of suspicions that their activity does not comply with the legal and constitutional order of the Republic of Kosovo and with international law, without any proper investigation by the prosecuting authorities, represents a direct interference with the freedom of association and poses a risk that the state may, at any time, interfere on the activities of any other NGO.

Report A. no. 288/2018 concerning the non-approval of the request for return to the priority lists and the legal effect of the annulment of decision of the UP Senate

The report addresses some students' allegations of violation of their right to education in the case of non-approval of their application for return to priority lists after the Decision No. 2/988 dated November 26, 2013, issued by the Senate of the University of Prishtina, was annulled. This report explains the legal effect of the annulment of this decision and addresses relevant recommendations to the competent institutions.

Report A. No. 18/2018, 56/2018 and 57/2018 on attaching the condition of membership in the Kosovo Association of the Blind to obtaining the booklet for blindness

The report is intended to draw the attention of the Ministry of Labor and Social Welfare (MLSW) on the need to take actions to amend the Law No. 04/L-092 on the Blind Persons, in Chapter III, defining Groups, Benefits and the Status of the Blind, Evidence and Medical –Social Commissions, according to which, the competence for issuing a special booklet for blindness, as document, proof of the benefit from this law, in Article 17, paragraph 8, stipulates: "*Association based on the decision of the Medical-Social Commission shall issue a special booklet of blindness, as proof document for benefit from this law*"; Article 18, paragraph 2, stipulates: "*At the end of calendar year, but also according to the request of relevant ministry, Kosovo Association of Blind Persons shall be obliged to submit the register of evidences of the booklets issued for beneficiaries from this law."*

According to the complainants, blind persons are not able to obtain a blindness booklet, due to the condition attached of paying the membership fee to the KAB. The complainants allege that this condition attached is unfair because the inability to obtain the blindness booklet as an identification tool precludes them from obtaining the rights and benefits guaranteed under the Law no. 04/L-092 on the Blind Persons.

The Ombudsperson finds that attaching the condition of KAB membership, against the complainants' will, to obtaining the booklet, places blind persons without membership in an unequal position in

relation to blind persons, and deprives them of their right to enjoy the benefits deriving from the Law on the Blind Persons.

Report A. No. 869/2018 concerning the restriction of the right to access public documents

This report aims to draw attention of the complaint of the FOL (FOL) Movement on access to public documents, filed against the Ministry of Finance (MF), as well as the analysis of the Law No. 03/L-215 on Access to Public Documents (LAPD) regarding the complaint in question, duties and responsibilities of respective public institutions/authorities in relation to the implementation of this law in cases of receipt of requests for access to public documents.

NGO FOL has addressed by e-mail the Ministry of Finance with a request for access to the public document, namely access to the List of Parcel Identification Numbers with the estimated amount of each privately owned parcel assessed by the Ministry of Finance in the process of expropriation within the project "*Construction of the Motorway A7.1 – Cross-level Intersection A6/A7.1 (Banullë) – Dheu i Bardhë: Cross-level Intersection A6/A7.1 (Banullë) – Crossroad Bresalc - L=22.31km.* (procurement no. 205-17-2586-5-1-1), contracted by the Ministry of Infrastructure. While it was notified from MoF that access to the document requested was rejected with the justification that disclosure of the requested data would be in breach of the LAPD, respectively in violation of the Article 12, paragraphs 1.2 and 1.6.

In the report, the Ombudsperson considered that the public interest as regards the use of public money and accountability is essential in promoting and strengthening democracy and good governance. Civil society and the media play an important role in this regard.

Report A. No. 542/2018 concerning the restriction of the right to access public documents

The report aims to identify violations of the rights and fundamental freedoms by the responsible authorities in relation to the complaint by the Non-Governmental Organization "Iniciativa për Progres (Initiative for Progress) - INPO" (hereinafter: INPO) regarding access to public documents, filed against the Ministry of Education, Science and Technology (MEST); analysis of the Law no. 03/L-215 on Access to Public Documents (LAPD) respectively the complaint concerned; as well as the identification of duties and responsibilities of respective public institutions/authorities in relation to the implementation of this law in cases of receipt of requests for access to public documents.

NGO INPO has submitted an email to the head of the Public Communication Division of MEST requesting access to assessments of the legality of normative acts in the field of education, science and technology, which MEST has worked on during 2017, as well as for the period January - June 2018, but received no response regarding this request.

In the report, the Ombudsperson considered that MEST, in addition to failing to respond to INPO's request for access to public documents, reminds the MEST about the legal obligation arising from Article 25 of the Law no. 05/L-019 on Ombudsperson.

Report A. No. 108/2019 concerning the restriction of the right to access public documents

This report aims to draw the attention of the Police of Kosovo regarding the complaint of A. N. (complainant) regarding access to public documents; analysis of the Law No. 03/L-215 on Access to

Public Documents (LAPD); duties and responsibilities of respective institutions in relation to the implementation of this law in cases of receipt of requests for access to public documents.

The complainant had applied for Police Officer in the job vacancy announced by the Kosovo Police, (Application No. 05/01254), in which he was ranked 73rd, according to the points earned (87.80). He had undergone a psychological and medical exam at the clinic authorized for this purpose. Following the publication of the list by the Selection Committee for the Management of the Recruitment Process (the Commission), it resulted that the complainant had failed in the medical examination. Thereafter the complainant filed a complaint with the Commission. The Commission rejected the appeal. The complainant, via email, addressed the KP with a request for access to medical examination documents, respectively access to the specialist's report on his health. The complainant received a reply, whereby the request for access was rejected, with the justification that: "[...]*all results and evaluations of the psychological-medical examination are classified data and therefore must be kept confidential [...].*"

In the report, the Ombudsperson found that the refusal of the complainant's request for access to the medical report in his file, as a candidate in the recruitment procedure for police oficer, denied the complainant's right of access to public documents, a right guaranteed by the Constitution and by law.

Report A. no. 131/2018 concerning the conditioning with disconnection from the district heating

The purpose of this report is to draw the attention of the District Heating Termokos (hereinafter: Termokos) concerning the consequences of non-compliance with the Internal Regulation on Procedure for Review of Complaints and Claims of "DH TERMOKOS" clients (hereinafter: Internal Regulation of Termokos) with Regulation no. 9/2017 of ERO: Rule on Disconnection and Reconnection of Customers in the Energy Sector (hereinafter: Rule/ERO/no. 9/2017), as well as clarifying ERO's position and role with regard to other energy enterprises.

In the report, the Ombudsperson considers that there is a discrepancy between the Rule ERO/no. 9/2017 and the Internal Regulations of Termokos, because the Termokos Regulation conditions customers to have zero debt to be allowed disconnection from the district heating network, while the ERO regulation does not specify such thing. The Ombudsperson considers that Termokos should harmonize all internal regulations with ERO regulations, in order for ERO's role and duties to be implemented in accordance with legal provisions.

Report A. no. 327/2018 related to the length of judicial proceedings in the Basic Court of Prishtina

This Report with recommendations aims to draw the attention of the Basic Court in Prishtina (BCP) on the need to take action to review and decide on case C. no. 926/15, which relates to the confirmation of the rights of ownership and possession, with no further delays. In this case, the Ombudsperson recalls that according to the ECtHR case law, the length of proceedings is calculated from the time the proceedings were initiated, which in the present case is from 2003, and finds that such delay, without a final decision, violates the right to a fair trial, due process, within a reasonable time set out and protected by Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the ECHR, the right to effective remedies protected by Article 32 of the Constitution of the Republic of Kosovo and Article 13 of the ECHR, and the right to judicial protection of the rights set forth in the Article 54 of the Constitution of the Republic of Kosovo.

Report A. no. 558/2019 related to the length of judicial proceedings in the Basic Court of Prishtina

The purpose of this report is to draw the attention of the BCP on the need to take appropriate action to review and decide on case C. No. 1134/2012 without further delay.

The Ombudsperson recalls that the ECtHR case law has ascertained that the length of proceedings is calculated from the time the proceedings were initiated (see, inter alia, *the Moldovan Judgment and others vs. Romania* of 12 July 2005 and the Judgment *Sienkiewicz vs. Poland* of 30 September 2003) until the case was closed and/or the judgment was enforced (see the Judgment *Poitier vs. France* of 8 November 2005).

There is no legal mechanism in our internal system through which the complainant could have complained about the procedure delay to obtain any relief in the form of prevention or compensation.

Report A. no. 209/2018 related to the length of judicial proceedings in the Basic Court of Prishtina

The purpose of this report is to draw the attention of the Basic Court in Prishtina on the need to take appropriate action for review and adjudication on case C. no.2694/13 without further delays.

The Ombudsperson stated in the report that the "justification" of the length of proceedings under ECtHR case law should be assessed by reference to the following criteria: the complexity of the case, the conduct of the Applicant and the competent authorities, and with what the complainant was endangered in the mentioned case "(ECtHR [Grand Chamber], *Frydlender vs. France*, submission no. 30 979/6 (2000), paragraph 43, referring to ECtHR [Grand Chamber], *Comingersoll S.A. vs. Portugal*, submission no. 35382/97, paragraph 19 (2000), paragraph 19).

Report A. no. 842/2017 on failure of the Municipality of Fushe Kosova to take adequate actions towards vacating public spaces

The purpose of this report is to draw the attention of the Mayor of Fushe Kosova Municipality on the need to take adequate actions for implementation, without further delays, of Decision with protocol no. 325 of 18 April 2017 for vacating public spaces, issued by him.

The Ombudsperson found in this report that the municipal authorities of Fushe Kosova have not responded adequately to the legitimate demands of citizens and the unwillingness to vacate public spaces can be understood as a failure to comply with the legal obligations arising from the Law on Self-Government. Municipality of Fushe Kosova has not exercised its competencies in the service of the public interest and in protecting the rights and interests of its citizens.

Report A. no. 925/2017 related to the length of judicial proceedings in the Basic Court of Prishtina

This Report with Recommendations is to draw the attention of the Basic Court in Prishtina on the need to take actions for review and adjudication on the case C.no.3303/12, which relates to debt repayment and damage compensation, without further delay.

In the report, the Ombudsperson highlights that, according to the ECtHR, the right of a party to have a decision on his/her case within a reasonable time is an essential element of the right to a fair and impartial trial, as guaranteed by Article 6 of the European Convention on Human Rights.

Report A. no. 352/2019 regarding non-implementation of BCP's decision by KEDS

The purpose of this report is to draw the attention of the Kosovo Electricity Distribution and Supply Company JSC (hereinafter: KEDS) on the need to take adequate actions for the implementation, without further delays, of the final Decision rendered by the Basic Court in Prishtina.

In the report, the Ombudsperson stated that the execution of a final and enforceable administrative decision must be considered as an integral part of a '*judgment*' for the purposes of the right to a fair trial and must be implemented within a reasonable period of time. This obligation lies with the State and the excessive delay in the enforcement of the final and enforceable decision, or the failure to take measures to enforce it, constitutes a violation of the right to a fair trial and the right to an effective remedy.

Report A. no. 826/2018 regarding the restriction of the right of access to public documents

The purpose of this report is to draw attention regarding an individual complaint related to access to public documents filed against the Kosovo Police, analysis of Law No. 03/L-215 on Access to Public Documents in conjunction with the complaint in question, and the duties and responsibilities of public institutions/authorities in relation to the implementation of this law in cases of receipt of requests for access to public documents.

Referring to the ECtHR's decisions, the Ombudsperson states that delays in the provision of information can consistently remove all the value of information and interest in it, because news is a service one may miss quickly and delaying the publication of information, even for a short period of time, can deny its entire value and interest (case *The SundayTimes vs. The United Kingdom).*

Report A. no. 849/2016 regarding the claims of "protected witness" status

In implementing the constitutional and legal powers, the Ombudsperson, through this report, aims to provide assistance in the protection of the rights of "witness X2" in relation to criminal proceedings, namely his legal status during the execution of a prison sentence against him. The report deals with the legal basis regarding the status of the protected witness, namely the extension or termination of the witness X2 protection program.

In this report, the Ombudsperson found that taking "witness X2" to the protected witnesses ward in the High Security Prison with no contacts puts him in an unequal position with the others, especially when his *de-jure* and *de-facto* status has not been established to be a "protected witness".

Report A. no. 662/2019 regarding the restriction of the right of access to public documents

The purpose of this report is to identify violations of the rights and fundamental freedoms by the Ministry of Education, Science and Technology regarding the request filed by the complainant for access to public documents, analysis of Law No. 06/L-081 on Access to Public Documents in conjunction with the complaint in question, and the identification of the duties and responsibilities of public institutions/authorities in relation to the implementation of this law in cases of receipt of

requests for access to public documents, and the constitutional obligation to cooperate with the Ombudsperson.

The Ombudsperson finds that the MEST has not responded at all to the request received for access to public documents, which contradicts Article 12, paragraph 1, of the LAPD, according to which the public institution is obliged, within 7 days of the registration of the claim (confirmation of receipt of the claim was sent to the complainant on 13 June 2019), to issue a decision granting access to the requested document or a reasoned decision for total or partial refusal and to notify the applicant of the document of the rights he/she enjoys in such cases. Whereas in cases where it is determined that the required documents contain any of the limitations provided for in Article 17 of the LAPD, public institutions are obliged to conduct a damage and public interest test (Article 18, paragraphs 1 and 2).

Report A. no. 831/2018 on the issues of residents of "Ndre Mjeda" neighborhood in Ferizaj, for access to the sewage system

The report is based on a complaint of the residents who complain that approximately 15 houses are disconnected from the sewage system in "Ndre Mjeda" neighborhood in Ferizaj as a result of actions taken by a natural person, I.M., where the sewage caused pollution and stinking throughout the neighborhood. The purpose of this report is to draw the attention of the Municipality of Ferizaj in order to enforce the right to the environment and to take appropriate action to resolve this issue regarding access to the sewage network of the residents of "Ndre Mjeda" neighborhood in Ferizaj.

The Ombudsperson, on the basis of all the evidence and facts as well as the relevant laws, which determine the right to private and family life, finds that there has been a violation of the fundamental human rights and freedoms set forth in the relevant laws applicable as well as with the ECHR, since the competent municipal authorities, which are competent under the legislation in force and are obliged to undertake positive obligations in the case, have not complied with these obligations.

Report A. no. 742/2019 regarding the restriction of the right of access to public documents

The purpose of this report is to draw the attention of the Kosovo Intelligence Agency on the need to take appropriate actions to enforce the right of access to public documents, based on the request of the Youth Initiative for Human Rights for access to data on the number of cases that KIA has tapped during 2018 and how many people have been tapped during 2018.

The Ombudsperson, in the present case, finds that KIA has failed to meet its positive obligations as regards enabling, namely allowing access to public documents as requested by YIHRKS, which right is guaranteed by the domestic acts as well as international instruments. Furthermore, the Ombudsperson considers that, in the present case, KIA should have acted in accordance with Article 13, paragraph 2, of Law No. 03/L-215 on Access to Public Documents, which stipulates that the applicant shall be entitled, following the submission of an application, to receive a justified decision in writing for this refusal by the public institution concerned regarding the refusal and to issue a decision stating the reasons of the refusal for access to public documents.

Reports of the National Mechanism for the Prevention of Torture

NMPT's report regarding the visit to the Detention Centre for Foreigners in Vranidoll

Pursuant to Article 17 of Law No. 05/L-019 on Ombudsperson, NMPT may visit, at any time and without a notice, all detention centres where persons deprived of their liberty are held, including centres where foreigners deprived of their liberty are held, whose stay in the Republic of Kosovo violates the laws in force and who are subject to forced return from the Republic of Kosovo.

Based on this mandate, NMPT, on 13 February 2019, visited the Detention Centre for Foreigners. This Centre functions under the Department of Citizenship, Asylum and Migration (DCAM) of the Ministry of Internal Affairs (MIA). According to Article 2 of Regulation (MIA) No. 04/2018 on Operation of the Detention Centre For Foreigners (hereinafter Regulation"), the foreigners who are subject to forced removal and those found in violation of public security are held at this centre, in order to verify their identity or for other reasons.

The purpose of this visit was to monitor the observance of the rights of foreigners held in the DCF, which are provided for by the Law on Foreigners, the Law on Asylum, and Regulation No. 04/2018 on the Operation of the Detention Center for Foreigners, International Human Rights Standards and the implementation of the NMPT's recommendations sent to the competent authorities through the report with recommendations, published on 2 May 2018.

Other issues addressed at the meeting included admission procedures, information of foreigners about their rights, treatment and accommodation, health care provided, contacts with the outside world, DCF and security staff, training and their adequate preparation to work with this category, the disciplinary measures that may be imposed on foreigners in the DCF and the manner of their enforcement, the right to appeal such measures and other aspects.

NMPT's report regarding the visit to the Home for Children with Disabilities in Shtime

In accordance with Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05/L-019 on Ombudsperson, the Ombudsperson's National Mechanism for Prevention of Torture (NMPT) visited the Home of Children with Special Needs in Shtime (hereinafter "Home of Children in Shtime"). The visit on 9 August 2018 was conducted by the NMPT team and two Council of Europe experts (hereinafter: "EC") as observers. The visit on 31 January 2019 was a follow up visit carried out by the NMPT monitoring team.

The Home of Children in Shtime is managed by the Ministry of Labor and Social Welfare (MLSW) and is led by the Home Manager. This institution is the only one of its kind in Kosovo, which opened in 2002, with a capacity of up to ten beds. It provides 24 hours services, such as food, clothing, health care, and social treatment. The institution does not have a budget set, allocated, planned and managed by the manager of this Home, but is based on the approval of requests from the MLSW budget.

The Home of Children in Shtime is an open institution whose residents are diagnosed with *learning disabilities (mental retardation).* During the visit, NMPT found that 10 persons of different ages are placed in the Home (as far as its capacity is concerned): four under the age of 18, two have just turned 18, two are in their twenties and two are in their thirties. Seven of the residents have families. The staff

of the Home of Children in Shtime consists of ten persons, of whom the Home manager, four nurses and five medical assistants.

NMPT's report regarding the visit to the Border Crossing Point at the airport "Adem Jashari"

Pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05/L-019 on Ombudsperson, the Ombudsperson's National Mechanism for Prevention of Torture (NMPT) paid a visit to the border crossing point at 'Adem Jashari' International Airport in Prishtina.

The purpose of this visit was the overall assessment of the observance of the rights of foreigners who, based on the Law on Foreigners in the Republic of Kosovo and other relevant laws, cannot enter the territory of the Republic of Kosovo, and who are subject to return to the countries of origin or temporarily held in the detention centres at the Airport entry points.

The monitoring group was composed of the head of NMPT, the legal adviser on prevention of torture, a doctor, a psychologist, a social worker and two Council of Europe experts in the capacity of observers.

NMPT's report regarding the visit to the Correctional Centre in Smrekonica

On 6 February 2019, NMPT visited the Smrekonica Correctional Center (hereinafter: SCC). The SCC is an open correctional facility where persons sentenced with imprisonment of up to two years are sent and subjected to an open regime. The official capacity of the SCC is 200 persons, while at the time of the visit, 135 prisoners were accommodated. The purpose of this visit was the overall assessment of the observance of the prisoners' rights, health services provided to the prisoners, and the accommodation conditions in accordance with national and international standards for the protection of persons deprived of their liberty.

NMPT's report regarding the visit to the Correctional Centre for Women and Juveniles in Lipjan

Based on its mandate, on 23 and 24 January 2019, NMPT paid a visit to the Educational Correctional Centre for Women and Juveniles in Lipjan (hereinafter: 'CCWJ'). In addition, throughout the year, the NMPT has conducted *ad-hoc* visits to the CCWJ.

CCWJ in Lipjan is a semi-open institution, the only one in the Republic of Kosovo, where several categories of prisoners are accommodated, such as: juveniles with educational measures, convicted juveniles, detained juveniles, convicted females, detained females and juvenile females. During the visit, NMPT was informed by the Directorate of the Correctional Centre in Lipjan that the CCWJ capacity is for 138 persons, while during the visit by NMPT, there was a total of 77 prisoners of all categories.

The purpose of this visit was to monitor the implementation of previous NMPT recommendations, which were sent to the competent authorities through the report with recommendations. Other issues addressed at the meeting included admission procedures for adult females and juveniles, information about their rights, treatment, accommodation conditions, regime, health care, incidents among prisoners, available activities, contacts with the outside world, appeals procedures and disciplinary

measures that may be imposed under the Law on Execution of Criminal Sanctions and Code No. 03/L-193 on Juvenile Justice.

NPMT's Report concerning the visit to the Correctional Centre in Dubrava

Based its mandate, from 27 February 2019 to 1 March 2019, the NPMT visited the Correctional Centre in Dubrava (hereinafter: CCD).

The purpose of this visit was to evaluate the implementation of the NPMT recommendations, which were sent to the competent authorities through the Report with Recommendations on the visit at CCD from 20 to 22 March 2018 and to monitor compliance with the rights of convicted persons, guaranteed by the Constitution of the Republic of Kosovo, the laws applicable in the Republic of Kosovo, as well as international standards for the protection of the rights of persons deprived of their liberty.

The visit also addressed the issue of admission procedures, acquaintance of prisoners with their rights, treatment, conditions of accommodation, regime, health care, prisoner relations, contacts with the outside world, complaints procedures and disciplinary measures that may be imposed under the Law on Execution of Criminal Sanctions and the manner in which they are enforced.

NPMT's Report concerning the visit to the Detention Centre in Mitrovica

On 12 March 2019, the NPMT visited the Detention Centre in Mitrovica (hereinafter: DCM). The purpose of this visit was to assess observance of human rights of the prisoners accommodated in the DCM, which are guaranteed by the Constitution of the Republic of Kosovo, applicable laws in the Republic of Kosovo, as well as international standards for the protection of the rights of persons deprived of their liberty.

Detainees and prisoners sentenced less than 20 years are admitted to the DCM. The prisoners are of different nationalities and are accommodated on two floors. According to the Directorate of DCM, the capacity of this centre is 77 persons. At the time when NPM visited DCM, 10 detainees and 37 prisoners were accommodated. The visit also addressed the issue of admission procedures, acquaintance of prisoners with their rights, treatment, conditions of accommodation, regime, health care, prisoner relations, contacts with the outside world, complaints procedures and disciplinary measures that may be imposed under the Law on Execution of Criminal Sanctions and the manner in which they are enforce.

NPMT's Report concerning the visit to the Detention Centre in Prizren

Pursuant to Article 135, paragraph 3, of the Constitution of the Republic of Kosovo and Article 17 of Law No. 05/L-019 on Ombudsperson, the National Mechanism for Prevention of Torture visited on 20 May 2019 the Detention Centre in Prizren (hereinafter: DCP). The NPMT may visit, at any time and without notice, all places where persons deprived of their liberty are held, including police stations, detention centres, prisons, places where persons deprived of their liberty are held, as well as psychiatric institutions and those of social care.

The purpose of this visit was the overall assessment of observance of the rights of prisoners, which are guaranteed by the Constitution of the Republic of Kosovo, the laws applicable in the Republic of Kosovo and international standards on the rights of prisoners; and the implementation of the NPMT

recommendations sent to the competent authorities through a report with recommendations for an earlier visit.

NPMT's Report concerning the visit to the Detention Centre in Lipjan

The National Mechanism for Prevention of Torture (NPMT) of the Ombudsperson visited on 29 May 2019 the Detention Centre in Lipjan (hereinafter: DCL). In addition to the detainees, a small number of prisoners are also accommodated at the DCL. During the visit of the NPMT to the DCL, 89 detainees (68 detainees and 21 prisoners) were accommodated. The purpose of this visit was the overall assessment of compliance with the rights of prisoners, which are guaranteed by the Constitution of the Republic of Kosovo, the laws applicable in the Republic of Kosovo and international standards on the rights of prisoners. During its visit to the DCL, the NPMT interviewed a significant number of prisoners and received no complaints of physical mistreatment or excessive use of physical force exercised by correctional officers or conduct of prison authorities, which would constitute violations of the dignity of prisoners. In addition, the NPMT noted that there is a positive climate of relations and good interactive communication between prisoners and correctional officers. Regarding other issues like accommodation, food, health care, etc., you can find more in the summary of all reports of the Ombudsperson.

NPMT's Report concerning the visit to the Educational – Correctional Centre in Lipjan

On 2 July 2019, the NPMT visited the Educational – Correctional Centre in Lipjan (hereinafter: ECCL). NPMT noticed that the United Nations Rules for Protection of Juveniles deprived of their liberty, determine that open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. ECCL applies medium and low security and control measures, necessary to protect the juveniles from causing self-harm or harming staff or others. The capacity of the ECCL is 40 beds, while during the visit conducted by the NPM there were 15 male juveniles with educational measure. The aim of the educational measure is to contribute to rehabilitation and adequate development of the juvenile perpetrators, by providing protection, assistance and supervision, by providing vocational education and training, by developing their personal responsibility and thus prohibiting recidivist behaviour.

According to the ECCL house rules, the ECCL's internal structural and programmatic organisation aims to fulfil the juveniles' rehabilitation objective, given the right of the juveniles to privacy, stimulation of senses, possibility for socializing with other juveniles, general and vocational education, proper health care, food according to the age needs, participation in sports, fun and cultural activities.

The visit was aimed at evaluating the observance of the rights of juveniles living in this centre, set forth by the Juvenile Justice Code of Kosovo, applicable laws in the Republic of Kosovo and international standards for the protection of persons deprived of liberty, as well as monitoring the implementation of NPMT recommendations, sent by this mechanism to the competent authorities through the previous Report with recommendation.

NPMT's Report concerning the visit to the Detention Centre in Prishtina

On 11 September 2019, the Ombudsperson's National Prevention Mechanism against Torture (NPMT) visited the Detention Centre in Prishtina (hereinafter: DCP). In addition to the detainees, there are also a small number of convicts at the DCP. The capacity of the centre is 300 persons. During the visit conducted by the NPMT in the DCP, there were 103 detainees and 25 convicts. The visit was aimed at performing a general evaluation regarding the observance of the prisoners' rights, guaranteed by the Constitution of the Republic of Kosovo, applicable rules in the Republic of Kosovo and international standards for the rights of the prisoners.

During the visit conducted by the NPMT in the DCP, the staff of the Correctional Centre of Kosovo and the staff of the Prison Health Department provided full cooperation to the monitoring team. The team, without delay, provided unimpeded access to all sites visited and was provided with all the information needed to perform the task. They were also allowed to interview convicts and detainees without the presence of correctional officers and without the presence of health staff.

NPMT's Report concerning the visit to the High Security Prison

On 10 and 16 July 2019, the NPM visited the High Security Prison (hereinafter: HSP). The aim of this visit was to review the progress of competent authorities in the implementation of NPMT recommendations addressed through the Report with recommendation, following the previous visits to the HSP, as well as observance of prisoners' rights, guaranteed by the Constitution of the Republic of Kosovo, the Law on Execution of Penal Sanctions (hereinafter: LEPS), applicable laws in the Republic of Kosovo, and international standards for the protection of the rights of persons deprived of liberty.

The HSP accommodates high and very high security prisoners. The official capacity of the HSP is 390 prisoners. During the visit by the NPMT, there were 153 inmates accommodated, 24 of them detainees. HSP accommodates prisoners of different ethnicities.

During the visit, the staff of correctional service and Prison Health Department provided the full cooperation to the monitoring team. The team provided access to all sites visited without delay. The team was provided with all the information needed to perform the task, and was able to interview prisoners without the presence of correctional officers.

Recommendation Letters

Recommendation Letter - Ex officio no. 67/2019

Pursuant to Article 16, paragraph 4, of Law No. 05/L-019 on Ombudsperson, the Ombudsperson carried out *ex officio* investigations in relation to the lack of alignment of transitional provisions, respectively Article 140 with Article 141 of the Juvenile Justice Code No. 06/L-006 (Official Gazette of the Republic of Kosovo No. 17/18 October 2018, Prishtina), concluding that it is necessary to take respective actions for the amendment and supplementation of transitional and final provisions of the Code.

According to Article 141 of the Code, the Code enters into force fifteen (15) days following its publication in the OGRK, while the implementation shall commence six (6) months from the day of

entry into force. While according to Article 140 of the Code, with the entry into force of the Code, the Code 03/L-193 ceases to apply. Consequently, the provisions of the Code No. 03/L-193 cease to apply fifteen (15) days following the publication in the OGRK, with the exception of the cases set forth with the provisions of Articles 135, 136, 137 and 138. This situation is a concern for the Ombudsperson, which needs to be adequately addressed.

For these reasons, the Ombudsperson, in accordance with the foregoing, finds that the transitional and final provisions of the Code do not meet the standards of drafting normative acts, which is contrary to human rights, legal certainty and the rule of law, namely Articles 136 and 141, create a situation of inability to apply the criminal provisions of juvenile justice.

Recommendation Letter - Ex officio no. 133/2019

On the occasion of a visit to the Croatian community in the village of Janjeva, the Ombudsperson received complaints about the safety of citizens and their properties, due to frequent burglaries and robberies occurring in recent years in Janjeva. According to the citizens, this was a result of the lack of a concrete commitment by the responsible authorities to combat this phenomenon. Accordingly, pursuant to Article 4 and 7 of Law No. 05/L-019 on Ombudsperson, the Ombudsperson initiated *ex officio* investigations related to the safety of Croatian citizens and their properties in the village Janjeva, Municipality of Lipjan.

The Ombudsperson reminds the Kosovo Police of the constitutional obligations and legal obligations related to the work of the Police and the provision of a sufficient number of its officers in stations and substations in which it is necessary to increase staff, due to deterioration of security, safety of citizens and their property from the increase in the number of crimes committed and the Police is recommended to act in accordance with the powers provided by law, aiming to increase the number of police officers in the village of Janjeva, in order to manage to respond adequately to reports of perpetrators or work to prevent them.

Recommendation Letter on the case A. no. 839/2018

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and pursuant to Article 10 of Law No. 03/L-125 on Access to public documents, on 15 November 2018, the Ombudsperson received the complaint of B.B. submitted against the Kosovo Judicial Council (KJC) for failure to respond to the request for access to public documents, respectively to access his file, as a candidate in the recruitment procedure for a judge.

The Ombudsperson thereby concluded that the rejection of the complainant's request for access to his file as a candidate in the recruitment procedure for a judge denies him the right to access public documents as guaranteed by Constitution and Law.

Recommendation Letter on the case A. no. 818/2018

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson, the Ombudsperson received a complaint against the Kosovo Doctors Chamber, which through Decision No. 270/2018 on setting the administrative fee system had decided that the "Administrative fee for the initiation of disciplinary procedure against physicians shall be in the amount of € 30 (thirty euros)". Furthermore, the complainant alleges that such decision violates human rights, as the obligation to pay the fee

becomes an obstacle for patients to file a complaint when they consider that their rights have been violated by medical personnel.

The Ombudsperson claims that the initiation of disciplinary proceedings against a health institution is an administrative procedure, which may be regulated by internal rules; however, those rules must be in full compliance with the general legal provisions

Recommendation Letter on the case A. no. 706/2018

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of the Law on Access to Public Documents, the Ombudsperson handled the complaint filed against the Municipality of Gracanica, for failure to file the requested document in accordance with the Law on Access to Public Documents.

In this case, the Ombudsperson stated that failure to review the complainant's request from the Municipality of Gracanica is contrary to the Law on Access to Public Documents and violates the principle of open administration as set out in Article 9, paragraph 1, of the Law on General Administrative Procedure: "*Public bodies shall act with transparency."* In addition, the Municipality of Gracanica failed to meet the obligations deriving from the Constitution of the Republic of Kosovo and Law on the Ombudsperson, according to which all public authorities are obliged to respond to the requests of the Ombudsperson for carrying out an investigation and provide adequate assistance as per his request.

Recommendation Letter on the case A. no. 522/2018

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of the Law on Access to Public Documents, the Ombudsperson handled the complaint filed against the Kosovo Accreditation Agency (KAA). The complainant claims that he addressed the KAA with two requests. The first request relates to the removal of public notice of decisions made at the 58th Meeting of the State Council of Quality (SCQ); and the second request relates to the request for access to public documents, namely the minutes of the 58th SCQ Meeting, to which he did not receive a response.

Regarding the first request of the complainant, the Ombudsperson considers that the KAA should have complied with the legal provisions of the LGAP and responded to the complainant without prejudice to its content. Whereas, with regard to the second request of the complainant, the Ombudsperson considers that access to the requested document can be dealt with in accordance with Article 11, paragraph 2, of the LAPD and Article 5, paragraph 1, sub-paragraph 1.6, of the LPPD.

Recommendation Letter on the case A. no. 562/2017

The Ombudsperson handled the complaint filed against the Ministry of Environment and Spatial Planning (MESP) due to failure to respond within the legal deadline to the complaint filed against the decision of the Municipal Commission of Prishtina to rent unprofitable rent to social category families of residential units owned by the municipality.

The Ombudsperson concludes that the failure of the MESP to carry out administrative proceedings within the legal deadline and in the spirit of respecting the principle of procedural efficiency reflected

directly the violation of the right of the party to the effective use of legal remedies guaranteed by law and international standards.

Recommendation Letter on the case A. no. 888/2017

The Ombudsperson handled the complaint of a citizen filed against the Municipality of Prishtina in connection to the failure to perform a professional evaluation of a child with disabilities, the failure to provide a personal learning assistant and provision of transport.

The Ombudsperson concludes that the Municipality of Prishtina failed to take the respective actions for the professional evaluation of the child with disabilities, which constitutes violation of human rights, respectively the rights of a child, namely violation of the Constitution of the Republic of Kosovo, international standards and abovementioned legislation.

Recommendation Letter on the case A. no. 30/2019

The Ombudsperson handled the complaint filed against the University of Mitrovica "Isa Boletini", which after the termination of the job vacancy and other procedures related to the job vacancy by which the applicant was selected as an assistant engaged in the Faculty of Mechanical and Computer Engineering, University Senate, by Decision no. Prot. 1564, dated 5 November 2018, decided that the signing of the contract with the complainant should be postponed until the receipt of the opinion of the Anti-Corruption Agency regarding the possibility of conflict of interest in the present case.

The Ombudsperson concludes that the ACA's finding, whereby it is stated that the amendment of the engagement list was made deliberately and only to avoid the prohibition in the regulation, is in violation with Article 5, paragraph 8, and Article 19, paragraph 1, subparagraph 1.2, of Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of a Public Function, regulating the actions that officials should take in order to avoid and prevent the conflict of interest.

The Ombudsperson draws attention to the fact that employment and promotion in public universities in the Republic of Kosovo should be done for all on equal terms, while fully respecting the constitutional principle of equality and equal access to public services. Vacancies must respect the established criteria, the required qualifications, the job skills of the candidate applying for the job. In all cases of employment or promotion, preferential treatment should not take place due to family or similar relationships, just as there should be no more unfavourable or exclusionary treatment for the same reasons

Recommendation Letter on the case A. no. 245/2019

The Ombudsperson handled the complaint in relation to the lack of conditions for education, respectively failure to provide 24/7 care/assistance in the Resource Centre for Education and Counselling (RCEC) "Xheladin Deda" in Peja for children with multiple disabilities.

The Ombudsperson finds that the services are not provided in accordance with the relevant legal provisions, which constitutes a violation of human rights, respectively of the rights of children with disabilities located in this centre, namely a violation of the Constitution of the Republic of Kosovo, of international standards and of the aforementioned legislation and recommends that 24-hour service be

provided to children placed in Resource Centre for Education and Counselling "Xheladin Deda" in Peja.

Recommendation Letter on the case A. no. 591/2018

The Ombudsperson handled the complaint against the Directorate for Education and Culture of the Municipality of Kacanik due to failure to implement Decision No. 794/09 of the Independent Oversight Board for the Civil Service of Kosovo dated 21 April 2009, and Ruling E. nr. 65/19 of the Basic Court in Ferizaj dated 26 February 2019.

The Independent Oversight Board for the Civil Service of Kosovo (IOBCSK), through Decision No. 794/09 of 21 April 2009, had obliged the Director of the Directorate of Education and Culture and the Head of Administration and Personnel in the Municipality of Kacanik to return the complainant to her workplace and compensate her retroactively.

The Ombudsperson notes that the issue of the right to employment, given its importance to all decision-making bodies, should be treated as a matter of priority. This should also apply to the Municipality of Kacanik - Directorate of Education and Culture, which has continuously postponed the implementation of IOBCSK Enforcement Order No. 794/09 of 21 April 2009, announcing, cancelling and re-announcing the job vacancy eleven times in a row.

Recommendation Letter on the case A. no. 699/2018

The Ombudsperson handled the complaint against the work of the Private Enforcement Agents in Kosovo. The submitted complaint deals with the obligation to pay translation services of official documents from Albanian to Serbian, which was charged to the complainant and her father during enforcement procedure of the Court judgment by the enforcement agent in Prizren.

The Ombudsperson concludes that the Chamber of Private Enforcement Agents of Kosovo, as well as the Enforcement agent in charge of this case, have failed to enforce positive legislation, as the complainant has been charged with paying for the translation of official documents when enforcement the court judgment, notwithstanding the legal obligation on the enforcement agent, upon enforcement, to handover to the complainant all relevant documentation in an official language which he understands, in the present case in the Serbian language, without charging for the translation service.

Recommendation Letter on the case A. no. 235/2019

The Ombudsperson handled the complaint filed against the University Clinical Centre of Kosova (UCCK) and against the Kosovo Hospital and University Clinical Service (KHUCS) in connection to the non-exemption from payment of blind persons at the exit of the UCCK and KHUCS in Prishtina. The complainant alleges that at the exit of the UCCK and KHUCS, the official person was presented the booklet of the blind issued by the Ministry of Labour and Social Welfare (MLSW), however he was asking for the proof that the person had undergone medical checks, while rejecting to accept any other document, saying that: "*Even if you grew wings, you would not be able to get out of the UCCK without paying.*"

The Ombudsperson concludes that the forcing by officials of blind persons to pay the specified amount of money at entrances and exits of the UCCK and KHUCS facility constitutes an illegal act and this practice should stop immediately at the UCCK and KHUCS, as well as in all other public institutions.

Similarly, the Ombudsperson concludes that the criteria set forth in the Regulation No. 116 on the Use of Parking in the UCCK and KHUCS Spaces, which obliges persons with disabilities, including the blind, inter alia, to present *medical report protocolled on the day of issue*, in order to be exempted from payment, constitutes violation of Law No. 04/L-092 on blind persons.

Recommendation Letter on the case A. no. 29/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and pursuant to Article 10 of Law No. 03/L-215 on Access to Public Documents, on 8 January 2019, the Ombudsperson received the complaint filed against the Telecom of Kosovo (TK) for failure to respond to a request for access to public documents.

The Ombudsperson emphasizes that given the role of the media and the public in a democratic society and bearing in mind that the constitutionally guaranteed fundamental rights and freedoms can only be limited to the extent necessary in an open and democratic society, to fulfil the purpose for which the restriction is allowed, the Ombudsperson considers that the complainant's request for access to public documents, as such, is based on Law No. 03/L-215 on Access to Public Documents and recommends that the complainant be granted access to the requested documents, in accordance with the legislation in force.

Recommendation Letter on the case A. no. 9/2019

The Ombudsperson handled the complaint filed against the Ministry of Local Government Administration (MLGA) in relation to the Administrative Instruction (MLGA) No. 2014/01 on the Procedure of Appointment of Deputy Mayors in Municipalities (hereinafter: *AI no. 2014/01*). According to the complainant's allegations, the provisions of AI No. 2014/01 are not aligned with the provisions of the constitution, namely Article 62 of the Constitution of the Republic of Kosovo and, as a result, they are being denied the representation right, guaranteed with the Constitution.

The Ombudsperson noted discrepancies between the Albanian language and the Serbian language versions of the Administrative Instruction (MLGA) No. 2014/01 on the Procedure of Appointment of Deputy Mayors in Municipalities, namely Article 4, paragraphs 1 and 3. On this occasion, he draws attention to the necessity of taking concrete actions regarding the linguistic alignment of Law No. 03/L-040 on Local Self-Government and Administrative Instruction (MLGA) No. 2014/01 on the Procedure of Appointment of Deputy Mayors in Municipalities, so that the above definitions have the same meaning in both language versions.

Recommendation Letter on the case A. no. 60/2019

The Ombudsperson handled the complaint filed against the border police of the Republic of Kosovo in the border crossing point of Merdare for not allowing transportation of passengers on behalf of the company ShPK “Adio”, which has a regular route.

The Ombudsperson reminds the Kosovo Police, especially the Border Police, that they are obliged to respect the official notice sent by the Ministry of Infrastructure via e-mail to the Border Police regarding all routes that had valid permit until the end of 2017, one of them being the company for which the complainant transports passengers, to continue to have the approval for passenger transport until a more permanent solution is found.

Recommendation Letter on the case A. no. 260/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of Law No. 03/L-215 on Access to Public Documents (LAPD), the Ombudsperson handled the complaint filed against the Ministry of Labour and Social Welfare (MLSW) for failure to respond to the request for access to public documents. She submitted the following request for access to official documents, through electronic mail, respectively for access to the following data: *Does the Ministry of Labour and Social Welfare have a budget for online media and social media marketing, which are the media and social networks where the budget is spent, and for what period have the contracts been concluded*. The data were requested for 2017 and 2018.

The Ombudsperson finds that the MLSW's failure to comply with the complainant's request, in addition to being in contradiction with the LAPD, also conflicts with Law No. 05/L-031 on General Administrative Procedure, namely the principle of open administration, as set out in Article 9, paragraph 1: "*Public bodies shall act with transparency.*" Moreover, the lack of a decision in the form prescribed by law also draws on the failure to notify the party on the right of appeal, which also constitutes a violation of the right to use legal remedies.

Recommendation Letter on the case A. no. 265/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of Law No. 03/L-215 on Access to PUBLIC DOCUMENTS (LAPD), on 20 March 2019, the Ombudsperson handled the complaint filed against the Ministry of Foreign Affairs (MFA) for failure to respond to the request for access to public documents. The complainant submitted the request for access to official documents, through electronic mail, respectively for access to the following data: *Does the Ministry of Foreign Affairs have a budget for online media and social media marketing, which are the media and social networks where the budget is spent, and for what period have the contracts been concluded*. The data were requested for 2017 and 2018.

The Ombudsperson finds that the MFA's failure to handle the complainant's request, in addition to being in contradiction with the LAPD, also conflicts with Law No. 05/L-031 on General Administrative Procedure, namely the principle of open administration, as set out in Article 9, paragraph 1: "*Public bodies shall act with transparency.*" Moreover, the lack of a decision in the form prescribed by law also draws on the lack of notification of the party to the right of appeal, which also constitutes a violation of the right to use legal remedies.

Recommendation Letter on the case A. no. 412/2019

The Ombudsperson handled the complainant filed against the Kosovo Police (KP), regarding the involvement of his personal data in the Kosovo Police Information System (KPIS) in 2005 and failure to delete his personal data from the KPIS until 2018. The complainant alleged that he had been

wrongly included in this register and that he had never been informed of this case, for which a criminal report had been filed by the Police Station in Gjilan and the former Municipal Public Prosecutor in Gjilan.

Based on the facts of the case in question and presented documents, given that the complainant has been listed as a suspect in the KPIS from 2005 until 2018, even though the Police's criminal charge, dated 20 July 2005, based on which the complainant's personal data were entered in the KPIS as a suspect, was dismissed by the Prosecution with the Ruling PPP. No. 118/2005 dated 10 February 2009, the Ombudsperson finds that there have been violations of legal provisions in terms of storing and deleting data from the KP, as well as violation to the principle of legal security, which is the basis of the rule of law and ensures the credibility of citizens to the state and the immutability of the law through the actions of administrative bodies, a principle which inter alia consists in the accuracy, clarity and consistency of the whole legal order of a state.

Recommendation Letter on the case A. no. 203/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of Law No. 03/L-215 on Access to Public Documents (LAPD), the Ombudsperson handled the complaint filed against the Municipality of Fushe Kosova, due to the inability to access public documents. The complainant addressed the Urban Planning Directorate (UPD) in the Municipality of Fushe Kosova, with a request for access to the record on the technical control of the investment facility on the basis of which Ruling 06. No. 300 dated 23.10.2014 was issued; as well as in the main and base project (basement) under the Urban Permit 06. No. 233 dated 19.7.2012, and construction permit No. 06/235 dated 25.7.2012.

The Ombudsperson considers that the exceptions regarding the right of access to documents are stipulated by the LAPD. Whereas the information may be restricted solely for the purpose of protecting legitimate public, life or other legitimate private interests as defined by the legislation in force, and finds that the Municipality of Fushe Kosova has failed to comply with the enabling obligations, namely granting access to public documents in accordance with the complainant's request, which right is sanctioned by domestic and international instruments.

Recommendation Letter on the case A. no. 164/2015

The Ombudsperson handled the complaint filed against the Basic Court in Mitrovica, Department of Serious Crimes, due to delay of criminal proceeding in the case P. No. 10/2013.

The complainant complained about the failure of the judiciary to guarantee a regular fair process within the reasonable legal deadline and violation of the right to effective legal remedies, set forth in Articles 31 and 32 of the Constitution of the Republic of Kosovo, in Articles 6 and 13 of the ECHR, and Article 5, paragraph 2, of the Criminal Procedure Code of the Republic of Kosovo. The Ombudsperson finds that the rights of the complainant to a regular proceeding and within the reasonable deadline were violated, considering that the proceedings lasted more than 6 years.

Recommendation Letter on the case A. no. 290/2019

Pursuant to Article 16, paragraph 1 of Law No. 05/L-019 on Ombudsperson and Article 10 of Law No. 03/L-215 on Access to Public Documents (LAPD), the Ombudsperson handled the complaint filed

against the Ministry of Infrastructure and Transport due to partial response to the request for access to public documents/information.

The Ombudsperson finds that, in the complainant's case, the Ministry of Infrastructure has failed to meet its obligations to enable, that is, to grant access to public documents in accordance with the request submitted by the complainant, which is sanctioned by local acts as well as with international instruments. The Ombudsperson also finds that the Ministry of Infrastructure and Transport has failed to meet the obligations deriving from the Constitution of the Republic of Kosovo (Article 41 and Article 132, paragraph 3), and also obligations deriving from the Law on the Ombudsperson (Article 25), under which all authorities are obliged to respond to the Ombudsperson's requests for the conduct of investigations and to provide adequate assistance upon his request.

Recommendation Letter on the case A. no. 448/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of Law No. 03/L-215 on Access to Public Documents (LAPD), the Ombudsperson handled the complaint of the NGO "ADMOVERE" against the Kosovo Prosecutorial Council.

The said NGO addressed the KPC through electronic mail with a request for access to public documents/statistical data for each year following the war, for UP academic staff. Nevertheless, the NGO "ADMOVERE" did not receive a response to the request for access to public documents until the day the complaint was filed with the OIK.

The Ombudsperson concludes that the interest of informing the public on how cases are handled by the justice system, with the suspected, accused or convicted being University of Prishtina professors, is essential in promoting and strengthening democracy and the proper functioning of the justice system. Civil society and the media play an important role in this regard.

Recommendation Letter on the case A. no. 256/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of the Law no. 03/L-215 on Access to Public Documents (LAPD), the Ombudsperson handled the complaint of the Balkan Investigative Reporting Network (BIRN) against the Municipality of Podujeva failure to respond to the request for access to public documents. The request involved access to the invoices of the Municipality of Podujeva for official lunches and dinners, for the period December 2017- August 2018.

The Ombudsperson finds that in the case in question, the Municipality of Podujeva failed to meet its positive obligations enabling access to public documents in accordance with the submitted request, a right guaranteed by international instruments and domestic acts.

Recommendation Letter on the case A. no. 363/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of Law No. 03/L-215 on Access to Public Documents (LAPD), the Ombudsperson handled the complaint against the Ministry of Foreign Affairs for failure to respond to the request for access to public documents. The complainant filed a request for access to public documents, respectively access to: *Names of persons declared Honorary Consuls outside the Republic of Kosovo; Names of persons*

declared Honorary Consuls in the Republic of Kosovo; Copies of the files with the CVs of Honorary Consuls exercising their activity on behalf of the Republic of Kosovo; What were the criteria that the MFA has set in declaring Honorary Consuls? Who were the persons or countries that have submitted the proposal for proclamation by the MFA of the Republic of Kosovo for Honorary Consuls?

The Ombudsperson finds that, in the case of the complainant, the Ministry of Foreign Affairs failed to meet positive obligations for enabling, respectively permitting access to public documents according to the complainant's request, a right guaranteed by international instruments and domestic acts.

Recommendation Letter on the case A. no. 275/2019

Pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and Article 10 of Law No. 03/L-215 on Access to Public Documents, the Ombudsperson handled the complaint against the Municipality of Skenderaj for failure to respond to the request for access to public documents. The complainant filed a request for access to invoices of official lunches and dinners of the Municipality of Skenderaj for the period December 2017-August 2018 via e-mail.

The Ombudsperson finds in the present case that the Municipality of Skenderaj has failed to meet its positive obligations as regards enabling, namely allowing access to public documents as requested by the complainant, which right is sanctioned by the domestic acts as well as international instruments. The purpose of good administration of public administration bodies should, inter alia, be the creation of good practices, promoting harmonious and citizen-centred administrative culture learning from interaction with citizens and civil society.

Recommendation Letter on the case A. no. 496/2019

The Ombudsperson, pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and based on Article 10 of Law No. 03/L-215 on Access to Public Documents, has handled the complaint filed against the Ministry of Foreign Affairs (MFA) for failure to respond to a request for access to public documents. On 24 April and 5 June 2019, the complainant, via email, addressed the Ministry with a request for access to the latest document declassified at the Ministry of Foreign Affairs. The complainant also asked the following questions: *Has an information classification committee ever been established within the MFA? How many documents have been classified during 2018? Has the MFA approved lists of classified documents and lists of their distribution? Can you confirm that the MFA receives classified documents from its embassies? What are the levels of classification of MFA documents?*

The Ombudsperson considers that the exceptions to the right of access to documents are set out in Article 17 of the LAPD. Whereas the information may be restricted only for the purpose of protecting legitimate public, life or other legitimate private interests as defined by the legislation in force. Moreover, the lack of a decision in the form prescribed by law also draws with it the lack of notification of the party to the right of appeal, which also infringes the right to use legal remedies.

The Ombudsperson finds that, in the complainant's case, the MFA has failed to comply with its positive obligations as regards enabling, namely allowing the access to public documents, in accordance with the request submitted by the complainant, and which is sanctioned by domestic acts, as well as, international instruments.

Recommendation Letter on the case A. no. 337/2019

The Ombudsperson, pursuant to Article 16, paragraph 1, of Law No. 05/L-019 on Ombudsperson and based on Article 10 of Law No. 03/L-215 on Access to Public Documents has handled the complaint filed against the Kosovo Prosecutorial Council (KPC) for limited access to public documents.

On the basis of the information available to the Ombudsperson, on 25 January 2019 the complainant applied for a job vacancy announced by the KPC for the position: Victim Protection Officer, Victim Protection and Assistance to Victims in Mitrovica. Following the announcement of the final selection of the successful candidate, on 14 March 2019 the complainant filed a request for access to official documents, namely *access to the test in writing, the verbal interview record and the scores of the successful candidates*. The complainant was invited to the KPC offices and allowed access to his test in writing, but was not given a copy of the test, and was denied access to the minutes of his interview, as well as the total points of the candidates shortlisted in the job vacancy in question.

The Ombudsperson finds that as the complainant's claim relates to his records, the KPC should have taken into account Law No. 06/L-082 on the Protection of Personal Data, namely Article 11, which establishes transparent information, communication and modalities for the exercise of the rights of the data subject, and Article 14, establishing the right of access by data subject.

Recommendation Letter on the case A. no. 877/2019

The Ombudsperson has handled the complaint filed against Higher Secondary School (HSS) of Agro-business and Technology "Zenel Hajdini" in Ferizaj, namely imposing of disciplinary measure of suspension from school in a period of one month.

The complainant is of Xth grade and he stated that the Director of School "Zenel Hajdini", with a decision of 29 October 2019, imposed him the disciplinary measure '*suspension from school for a period of 1 month'*, obliging him to transfer to another school, but he is not accepted in any of the schools as a pupil for one month.

The Ombudsperson finds that Decision No. 905:/03 on the disciplinary measure of suspension from school for one month, dated 29.10.2019, violates human rights and freedoms because it is contrary to fundamental principles of the functioning of a democratic state, such as the principle of legality, the constitutional principle of the rule of law and the principle of legal certainty, because such a decision has no legal basis. Law No. 2002/2 on Primary and Secondary Education in Kosovo and Administrative Instruction No. 6/2010on Code of Conduct and Disciplinary Measures for Higher Secondary School students are repealed and as such cannot produce legal effects.

Recommendation Letter on the NPMT visit to police stations

The National Mechanism for the Prevention of Torture of the Ombudsperson reiterated the recommendation to carry out the necessary renovations at the Detention Centre in Decan as soon as possible, carry out the necessary renovations at the Detention Centre of Peja Police Station; install, where lacking, call systems in all cells of police stations where there are detention rooms; supply the detainees with hygienic stuff and renovate or find any other solution about the police station in Fushe Kosova.

Recommendation Letter on the NPMT visit to the Correctional Centre in Dubrava

In order to assess the progress of the competent authorities in implementing the recommendations of the NPMT sent through the Report with Recommendations dated 28 June 2018, the NPMT paid a visit to the Correctional Centre in Dubrava.

The National Mechanism for the Prevention of Torture of the Ombudsperson reiterated the recommendation to: approve secondary legislation on combating corruption, as provided by the Law on Execution of Criminal Sanctions; supply the kitchen with adequate according to the specific assessment; supply the kitchen staff with working uniforms; supply the prisoners with lockers to put their belongings; increase out-of-cell engagements for detainees, within the reach of CCD and in accordance with the relevant legislation in force; operationalize the economic unit; engage the necessary correctional staff, according to the needs assessment; increase the number of social workers, based on the number of prisoners in CCD; make the necessary renovations at number 5 Ward and hospital Ward inside the CCD.

Recommendation Letter on the NPMT visit to the Detention Centre in Gjilan

In order to assess the progress of the competent authorities in implementing the NPMT's recommendations sent through the Report with Recommendations dated 27 March 2018, the NPMT visited the Detention Centre in Gjilan.

The National Mechanism for the Prevention of Torture of the Ombudsperson reiterated the recommendation to: provide more cultural, sports activities and rehabilitation and re-socialization programs for prisoners; asphalt the part of road which is not paved, which, during winter and precipitations may pose serious difficulties in carrying out the work in detention centre in Gjilan, in accordance with the LECS; increase the number of social workers based on the number of prisoners; avoid technical deficiencies in the operation of security cameras; operationalize the elevator in the area of where medical services are provided.

Recommendation Letter on the NPMT visit to the Detention Centre in Peja

In order to assess the progress of the competent authorities in implementing the NPM's recommendations sent through the Report with Recommendations dated 22 November 2018, the NPM visited the Detention Centre in Peja.

The National Mechanism for the Prevention of Torture of the Ombudsperson reiterated the recommendation to: create adequate working conditions and spaces for medical staff; accommodation conditions, while this centre is in use, to comply with the minimum standards set by the Law on Execution of Criminal Sanctions, the CPT and other international standards on protection of the rights of prisoners; and to make efforts to increase out-of-cell engagements for the detainees.

Ombudsperson's opinions

Opinion no. 67/2019 regarding the Juvenile Justice Code

When analysing the Juvenile Justice Code, it was noted that the section of "Transitional and Final Provisions" (part six) contradicts the provisions that provide for the repeal of the old Code 2010 in relation to the entry into force and application of the new Code. Thus, Article 140 "Invalidity of the Existing Code" of JJC 2018 determines: "Upon the entry into force of this Code, the Code No. 03/L-193 on the Juvenile Justice ("Official Gazette of the Republic of Kosovo No. 78/ 20.08.2010) shall become invalid"; while Article 141 (Entry into force and beginning of application of the Code) determines: "This Code shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo and it shall be applied after six (6) months from the day of entering into force."

It is precisely the provision of Article 141 that has established an unusual legislative practice, setting different deadlines for the entry into force of the JJC 2018 and the beginning of its implementation, whereby a circumstance has been created where, within a period of 6 months, the provisions of either code is not enforced effectively! Such a factual situation creates the consequence of having legal gaps for a particular important area, such as the treatment of juveniles as perpetrators of criminal offences, respectively in relation to the scope regulated by the old Code 2010 and by JJC 2018.

Opinion no.744/2019 on the provision of access to information for the category of persons with hearing disabilities

During the extraordinary elections for Members of the Assembly of the Republic of Kosovo, it has been observed that certified interpreters have been engaged in the *Language of Signs*[278], as mother tongue of deaf persons, in various programs on various TV channels in Kosovo for the purpose that this category would be informed about the political programs using this language, in order to evaluate the best political offer for voting candidates for Assembly Members of the Republic of Kosovo.

The Ombudsperson finds that failure to provide this language for this category of persons with disabilities is considered discrimination on the basis of disability. This finding of the Ombudsperson finds the basis also in Law No. 05/L-021 on Protection from Discrimination which is in force.

Legal opinions as Amicus Curiae

Legal opinions as Amicus Curiae in relation to the claim of the complainants E. Sh. and B. E.

This legal opinion of the Ombudsperson in the capacity of a friend of the court is intended to argue the legal basis and to provide a legal analysis of the case based on the individual complaint of the complainants regarding the actions of the Government of the Republic of Kosovo, the Ministry of Infrastructure and the Air Navigation Services Agency for failing to provide guaranteed legal and constitutional opportunities for effective legal remedies within a reasonable time as regards the case of dismissal of complainants from work from the Air Navigation Services Agency.

[278] According to Regulation (GRK) no. 15/2014 on provision of Services in Sign Languages in the Republic of Kosovo, Article 3, par. 1.7, "Language of signs" – shall mean the sign language which has its own grammar rules, sentence structure and cultural differences.

The Ombudsperson, on the basis of the evidence presented and the facts collected, as well as the relevant laws, finds that the complainants' complaints are reasonable and that there has been a violation of fundamental human rights and freedoms.

Legal opinions as Amicus Curiae in relation to the case of S. S. and N. D. and the others

The Ombudsperson, in exercising his constitutional and legal powers, through this Legal Opinion aims to provide legal assistance in the function of protecting the rights of the complainants in criminal proceedings. Specifically, this Legal Opinion concerns the applicants' right to have their case for retrial to the Basic Court in Mitrovica, as decided in the case of Mr. S. by the Supreme Court of Kosovo with Judgment PLM. KZZ. No. 223/2017 dated 11 June 2018.

The Ombudsperson finds that the Supreme Court of Kosovo should take into account the findings of the Constitutional Court, as well as consider its own case law as regards the case PML. KZZ No. 223/2017 dated 11 June 2018, by which he had decided on the composition of the trial panel and the retrial of the case before the Basic Court in Mitrovica.

Legal opinions as Amicus Curiae in relation to the claim C. no. 3381/2018

This Legal Opinion, in the capacity of a friend of the court, focuses on clarifying the legal basis, namely the complaint of V.K.A regarding gender-based discrimination and the unequal treatment in internal competition procedures for leadership positions in Kosovo Customs. This legal opinion of the Ombudsperson is offered to the Basic Court in Prishtina.

The Ombudsperson concludes that Decision (No.05.6.1) of the Kosovo Customs, protocolled with no. 392, dated 2 August 2018, which established the Commission for Interviewing and Evaluating Candidates submitted on the Basis of the Internal Competition, is inconsistent with Law No. 05/L-021 on Protection from Discrimination and with Article 6, paragraph 8, of Law No. 05/L-020 on Gender Equality.

The Ombudsperson also concludes that the Kosovo Customs during the recruitment and evaluation process of the candidates, as well as the Ministry of Finance, during the review of the complainant's complaint, have not considered the primacy of the Law on Gender Equality as *lex specialis*, over customs legislation as *lex generalis*, therefore in this case, the principle *Lex specialis derogat legi generali*, has not been adhered to.

Legal opinions as Amicus Curiae in relation to the allegations on the right to equal treatment

This Legal Opinion, in the capacity of a friend of the court, focuses on clarifying the basis and legal analysis, namely the complaint of the Striking Council, who represent the Civil Service Staff employed with the Office of the Prime Minister of Kosovo, respectively their allegations on the right to equal, dignified treatment and non-discrimination at work.

The Government of the Republic of Kosovo, at its meeting held on 20 December 2017, issued Decision No. 04/20 on the increase of salaries which, in addition to the political staff, also benefited selectively some of the civil service staff under the Office of the Prime Minister. The complainants allege that this decision of the Government of the Republic of Kosovo did not take into consideration the legal basis in force, which regulates the work and functioning of the state administration, namely

the civil service, in violation of the applicable Law on Civil Service, the Law on Salaries of Civil Servants, the Regulation on the Internal Organization of the Office of the Prime Minister, the Law on Protection from Discrimination, etc.

The Ombudsperson considers that Decision No. 04/20 dated 20 December 2017, issued by the Government of the Republic of Kosovo, is a selective decision, which creates inequality and represents a violation of Article 24, paragraphs 1 and 2, of the Constitution of the Republic of Kosovo.

Legal opinions as Amicus Curiae in relation to the complaint of E. B.

This Legal Opinion, in the capacity of a friend of the court, focuses on clarifying the legal procedures in terms of age limit as a criterion of employment of the complainant in the position of assistant for a set of subjects at the Faculty of Maths and Natural Sciences - FMNS, through the vacancy announcement by the University "Hasan Prishtina" in Prishtina, when according to Decision No. 3/434 dated 16 December 2013, of the Senate of the University of Prishtina, upon the recommendation of the reviewing committee, the claimant has not been selected for assistant with the justification that he did not meet the legal requirement – age. The Opinion focuses solely on the issue of the complainant's allegations related to discrimination, respectively that the impugned provision of the UP Statute, namely Article 178, paragraph 1.2, violates its constitutional right and is in breach of applicable law and is essentially discriminatory.

The Ombudsperson, under no circumstances, comments or intends to interfere on the issue of decisions at court by fully respecting the Court's discretion for interpretation and decision-making. The Ombudsperson only intends to inform the Court of its position on the matter being dealt with, already articulated in the letter of recommendation dated 30 August 2010, and Judgment No. 1242/2010 dated 9 December 2013 of the Basic Court in Prishtina.

The Ombudsperson, considers that age limitation as foreseen by the UP Statute –Decision of UP Senate, constitutes a discriminatory act. This UP practice is contrary to the principle of legality as well as the principle of legal certainty.

Based on the above said, the Ombudsperson, in the capacity as a friend of the Courte informs the court of its position as regards this matter, hoping to contribute in this way the clarification of this situation.

Requests for interim measures

Ombudsperson's request addressed to the BCP-Administrative Matters Department to postpone the forcible execution of Decision No. 01/10-01/2019A

The Ombudsperson filed a claim with the Administrative Matters Department of the Basic Court in Prishtina against Decision No. 01/10-01/2019A of the Labour Inspectorate and the Ombudsperson's Opinion No. 1810/2018 dated 23 August 2018, addressed to the Rector of the University of Prishtina "Hasan Prishtina" and the Minister of the Ministry of Education, Science and Technology (MEST) regarding the job vacancy No.1/173, dated April 27, 2018, for the position of *assistant in a number of subjects in the Criminal Department of the Law Faculty of the University of Prishtina "Hasan Prishtina", with respect to point II (f), which stipulates that "candidates who have studied abroad must also provide the decision for the nostrification (equivalence) of relevant diploma (bachelor, master's, magistrate's, PHD). The proof of application for nostrification will not be considered".*

The claim is filed because the Labour Inspectorate by Decision No. 01/10-01/2019A dated 23 January 2019, without properly establishing the factual situation, has violated Article 132 of the Constitution of the Republic of Kosovo, Article 1, paragraphs 1 and 2, Article 3, paragraph 2, of Article 16, paragraphs 4 and 15, as well as Article 25, paragraph 1 of Law No. 05/L-019 on Ombudsperson, of Article 9, paragraph 1, 2.3 and 2.7, and of Article 12, paragraph 2 of Law No. 05/L/021 on Protection from Discrimination. Also, by this decision, the Labour Inspectorate has violated Article 4, paragraph 2, of Administrative Instruction (MLSW) No. 07/2017 for Regulation of Procedures for Competition in the Public Sector.

The Ombudsperson, in accordance with Article 132 and Article 135, paragraph 3, of the Constitution of the Republic of Kosovo, Article 18, paragraph 5, of Law No. 05/L-019 on Ombudsperson, Article 9, paragraph 2.3, and Article 12, paragraph 2, of Law No. 05/L/021 on Protection from Discrimination and Article 22, paragraphs 2 and 6, of Law No. 03/L-202 on Administrative Conflicts requests from the Administrative Matters Department of the Basic Court in Prishtina to postpone the forcible execution of Decision No. 01/10-01/2019A dated 23 January 2019, until rendering a court decision regarding the claim on administrative conflicts.

Ombudsperson's request addressed to the Constitutional Court on the abrogation of certain paragraphs of Articles of Law No. 06/L-010 on Notary

Through this Request, the Ombudsperson proposes to the Constitutional Court of the Republic of Kosovo the constitutional review of Article 32 (paragraph 1), Article 76 (paragraph 2) and Article 41 (paragraphs 1.3 and 1.4) of Law No. 06/L-010 on the Notary, alleging that the articles in question are in violation of a) Article 5 (paragraph 1) of the Constitution the Constitution of the Republic of Kosovo, which provides that: “The official languages in the Republic of Kosovo are Albanian and Serbian.”; and b) Article 46 (par. 1 and par. 3) of the Constitution, which provide that: “The right to own property is guaranteed.” and “No one shall be arbitrarily deprived of property.”

Based on the merits of the claim, due to the fact that different parties may suffer irreparable damages in the event of application of the disputed provisions, and on the fact that the application of such provisions would breach the public interest, the Ombudsperson, through this the Request proposes to the Constitutional Court the Interim measure for the immediate suspension of these provisions of Law No. 06/L-010 on the Notary, until the final decision of this court.

Ombudsperson's request addressed to the Ministry of Environment and Spatial Planning regarding the issue of hydropower plants operation in the country

On the basis of the complainants' claims and other information available to the Ombudsperson, the issue of hydropower plants operation in Decan and Shterpce is quite unclear, due to the lack of transparency of the institutions responsible for the legality of the operation, as well as due to shortcomings in the process of public participation in decision-making.

While a broad and comprehensive debate is taking place in public on this issue, the responsible institutions have never been sufficiently clear about the legality of hydropower plants operation and no efforts have been made to solve this matter, while on the other hand, the reactions and dissatisfaction of citizens and civil society are on the rise. All efforts made by the authorities so far to address the citizens' dissatisfaction and problems are proving to be ineffective means of resolving the issue.

Noting that in the present case we are dealing with environmental and water impact, the Ombudsperson, based on Law No. 04/L-147 on Waters of Kosovo, the purpose of which is protection of water resources from pollution, overuse and misuse, which clearly establishes that the Ministry of Environment and Spatial Planning is responsible for enforcing laws and sub-legal acts in the field of water resources, including other laws in the field of environment, considers that the Ministry is the competent body which should provide clear explanations on this matter.

While the Ombudsperson considers that the situation could have irreparable consequences on the environment, requests from the Ministry of Environment and Spatial Planning to suspend the activities of hydropower plants in Decan and Shterpce until clarifying the legality of hydropower plants operation concerned, as well as clarifications on the competences between the responsible authorities.

Ombudsperson's request addressed to the BCP in relation to the list of candidates of political entities for Early Elections 2019

The Ombudsperson has handled the issue of gender equality, guaranteed by the Constitution of the Republic of Kosovo, local legislation and international instruments, directly applicable in the Republic of Kosovo, and raised at the level of highest instances in the Government of the Republic of Kosovo and judicial system of the country, through the Report with recommendations in relation to the three general principles for the interpretation of normative acts and the application of these principles in the protection of human rights, namely respect for gender equality.

One of the examples of the application of the interpretative principles of law has to do with the relationship between Law No. 05/L-020 on Gender Equality and Law No. 03/L-073 on General Elections in the Republic of Kosovo on their respective requirements for gender representation among elected representatives.

Which Law should prevail in this matter: Law on General Elections or Law on Gender Equality? Both interpreting principles are relevant to this matter. Both give priority to the Law on Gender Equality.

With regards to the principle *lex specialis,* at first it may be seen ambiguous which law should be considered as special and which one as general, and that each law governs a different specific field. Therefore, none of the laws prevails over the other.

However, according to the common sense of ECtHR in the case *Kudla v. Poland (*[GC], Application No. 30210/96, ECtHR, 26 October 2000, § 1460, Law on Gender Equality should be considered as a special law. As mentioned above, ECtHR considers that, in most cases, Article 6, paragraph 1 is *lex specialis* in relation Article 13, as: "*The safeguards of Article 6, paragraph 1, implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13*" (*Kudla*, § 146; emphasis added).

According to the same common sense, the stricter requirement of the Law on Gender Equality for 50% representation of each gender may be considered *lex specialis* compared to the less strict requirement provided for in the Law on General Elections, which requires 30% representation for each gender. Therefore, according to the principle *lex specialis,* the stricter requirement under the Law on Gender Equality prevails over the less strict requirement provided for in the Law on General Elections.

Based on this and in-depth arguments provided in the lawsuit filed, the Ombudsperson requested from the Basic Court in Prishtina to approve the interim measure in the election processes, whereby requesting the respondent to review the list of political parties, in order for them to comply with the provisions of the Law on Gender Equality, namely Article 6, paragraph 8 and Article 14.

Referral of the Ombudsperson to the Constitutional Court for annulment and suspension of several provisions of the Law No. 06/L-114 on Public Officials

Law No. 06/L-114 on Public Officials vests on the Government of the Republic of Kosovo the competencies for administering the issue of employment of public officials, including public officials in independent institutions. Independent institutions are set out in Chapter XII of the Constitution, whereas Articles 132-135 determine the Ombudsperson as one of five independent institutions in the Republic of Kosovo.

Does the vesting of the Government of the Republic of Kosovo with competencies for employing the public officials in independent institutions, including the Ombudsperson Institution, constitute violation of the independence of independent institutions, as set out in Chapter XII of the Constitution of the Republic of Kosovo, namely independence of Ombudsperson according to Article 132, paragraph 2, of the Constitution?

This is not the first time for the Government of the Republic of Kosovo to infringe the constitutional independence of the Ombudsperson Institution by issuing laws and bylaws. Three years ago, the Government/Ministry of Public Administration issued the Administrative Circular No. 01/2016, whereby restricting the independence of the institution employees. The Ombudsperson raised the issue to the Constitutional Court, which, in the Judgment KO73/16, declared the referral of Ombudsperson as admissible.

Based on the arguments broadly elaborated in the referral, the Ombudsperson requests from the Court to impose the interim measure for the immediate suspension of challenged provisions, namely articles 2 (paragraph 3), 5 (paragraph 1, subparagraph 1.2, paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41(paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68, (paragraph 8), 70 (paragraph 8), 71 (paragraph 8), 75, 80 (paragraph 4), 83 (paragraph 18) and Article 85 of the Law No. 06/L-114 on Public Officials.

Referral of the Ombudsperson to the Constitutional Court for annulment and suspension of the Law No. 06/L-111 on Salaries in Public Sector

The Law No. 06/L-111 on Salaries in Public Sector defines, among others, the system of salaries and remunerations for public officials, who are paid from the state budget; and rules for determining salaries for employees in publicly owned enterprises in Kosovo. Law No. 06/L-111 on Salaries in Public Sector authorizes the Government of the Republic of Kosovo and Assembly of the Republic of Kosovo to issue bylaws for the implementation of this law.

The issues raised are related to the constitutionality of the Law No. 06/L-111 on Salaries in Public Sector, as follows: whether the Law on Salaries in Public Sector infringes the separation of powers, control and balance between them; whether the Law on Salaries in Public Sector has provided the guarantee in relation to the equality before the law, namely if the law in question managed to ensure equal salary for equal work; whether the Law on Salaries in Public Sector infringes the property right of public sector entities.

The Ombudsperson considers that the Constitutional Court should review the following issues: whether the principle of separation of power and constitutional guarantee, which is related to the equality before the law, has been fulfilled with the challenged Law and its Annex 1; whether the challenged law should include the publicly-owned enterprises, which exercise public authorization in the Republic of Kosovo and whether their inclusion in the challenged law infringes the Constitution, namely the principle of the free market economy, expressed in Articles 10 and 119 of the Constitution of the Republic of Kosovo, reflected in Law No. 03/L-087 on Publicly Owned Enterprises, whether the challenged law should carefully treat the employees of institutions, bodies and authorities of a special importance and employees in the public sector for specialization of whom it has been invested.

VII. International cooperation

VII. International cooperation

National Human Rights Institutions (NHRIs), established in compliance with the Paris Principles, which represent the minimum criteria that a Human Rights Institution should have in order to be considered as credible, independent and effective in the international arena, have a crucial role, *inter alia*, in overseeing the effective implementation of international obligations for human rights deriving from international mechanisms and documents, which are part of the international human rights system.

Last year, on the occasion of 25th anniversary of adoption of Paris Principles, Mrs. Dunja Mijatović, Council of Europe Commissioner for Human Rights, showed the importance of NHRI in the international human rights system, whereas this year more work has been done in this regard. On 15 March 2019, the Venice Commission endorsed the "*Principles on the Protection and Promotion of the Ombudsman Institution*" (referred to as "Venice Principles")[279], which represent a summary of internationally recognized standards for Ombudsman Institution and are equivalent to the Paris Principles. They will play a key role in protecting the existing Ombudsman Institutions, which face various threats in independently exercising the mandate, provide instructions on functionalization and improvement and also serve as a basis for establishing new Ombudsman Institution in states in which they have not been established yet.

The Ombudsperson Institution in Kosovo, as an independent constitutional institution for human rights, remains committed to operate as a bridge in exchanging the best international practices in the field of human rights, but also to build its capacities in order to be able to assume in the future, when the Republic of Kosovo becomes member of United Nations and Council of Europe, its obligations within the international human rights system.

Aware of the importance of international cooperation and cooperation with various international organizations and networks for human rights, the Ombudsperson Institution participated in a series of meetings, as shown in the table below.

No.	Description of activity	Date
1.	Role of NHRI in Promoting and Protecting Human Rights in Non-Government Controlled Areas Brussels, Belgium	13-14 February 2019
2.	Conference on 20th Anniversary of the Greek Ombudsman Athens, Greece	20-22 February 2019
3.	Workshop on reviewing the Draft Law on Child Protection Durres, Albania	23-25 February 2019
4.	GANHRI Annual Meeting 2019 Geneva, Switzerland	4-7 mars 2019

[279] 25 Venice Principles for Ombudsman Institutions, Venice Commission, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e

5.	Workshop on Gender-Based Violence and Equal Access to Justice Sarajevo, Bosnia	4-5 March 2019
6.	Sixth Regional Rule of Law Forum for South East Europe Dubrovnik, Croatia	23 March 2019
7.	Workshop on Economic and Social Rights in (post-) conflict situations Mostar, Bosnia	25-27 March 2019
8.	12th European Forum on the Rights of the Child Brussels, Belgium	2-3 April 2019
9.	6th Meeting of the Council of Europe -FRA-ENNHRI-EQUINET Operational Platform for Roma Equality Bratislava, Slovakia	14-15 May 2019
10.	Meeting of the Committee on Political Affairs and Democracy of the General Assembly of the Council of Europe in relation to the situation in Kosovo and role of the Council of Europe Strasbourg, France	11 April 2019
11.	Second tripartite meeting of human rights institutions of North Macedonia Albania and Kosovo Tetovo, Macedonia	18-19 April 2019
12.	Meeting of the ENNHRI's Asylum and Migration Working Group Zagreb, Croatia	25-26 April 2019
13.	Meeting of the Working Group on Communication Brussels, Belgium	21-22 May 2019
14.	Training on "Human Rights and Protection of Minorities" Hague, The Netherland	15-24 May 2019
15.	National Human Rights Institutions Academy Venice, Italy	3-7 June 2019
16.	Meeting of the National Preventive Mechanisms of the South-East Europ Network	10-12 June 2019
17.	ENNHRI follow-up meeting on the roles and responsibilities of NHRIs i the promotion and protection of non-government controlled and non-recognized areas in disputed territories Brussels, Belgium	11-12 June 2019
18.	International Conference on Eliminating Violence against Children Sofia, Bulgaria	27-29 June 2019
19.	Training on "Detention and Alternative Sanctions" Hague, The Netherland	5-12 September 2019

20.	Second meeting of the South East Europe NPM Network Skopje, Macedonia	2-3 October 2019
21.	Study visit to the European Court of Human Rights Strasbourg, France	8-9 October 2019
22.	Launching of the Project "Horizontal Facility for the Western Balkans and Turkey - Phase II" Skopje, Macedonia	9 October 2019
23.	Study visit to the Austrian Ombudsman Board Vienna, Austria	14-18 October 2019
24.	Thematic meeting of the Children's Rights Ombudsperson's Network "Rights of migrant children" Tirana, Albania	17 October 2019
25.	Regional Conference "Population Dynamics, Human Capital and Sustainable Development in Southeast Europe" Sarajevo, Bosnia	21-22 October 2019
26.	Annual Meeting and General Assembly of European Network of Equality Bodies (EQUINET) Brussels, Belgium	23 October 2019
27.	11th International Conference of the Ombudsman Institutions on Armed Forces Sarajevo, Bosnia	27-29 October 2019
28.	Workshop "Exploring the Role of NHRIs in Peacebuilding" Zagreb, Croatia	29-31 October 2019
29.	Regional Conference of Equality Mechanisms Podgorica, Montenegro	28-29 October 2019
30.	Third Regional Meeting between Ombudspersons and Commissioners fo Protection from Discrimination from the region Vlora, Albania	31 October- 1 November 2019
31.	Conference of the Project Spider Web, "Strategic Project to Increase the Detection and Disruption of Environmental Crime in the Western Balkans Zagreb, Croatia	12-13 November 2019
32.	General Assembly Meeting and Annual Conference of ENNHRI Brussels, Belgium	13-14 November 2019
33.	Second International Ombudsman Conference Istanbul, Turkey	18-19 November 2019

34.	Study visit to the Office of the United Nations High Commissioner for Human Rights in relation to the establishment of human rights indicators Geneva, Switzerland	20-22 November 2019
35.	International Conference "Children and youth at risk" Podgorica, Montenegro	10-11 December 2019
36.	Conference "Freedom without Hate – Reconciling Freedom of Expressio with other Human Rights" Tirana, Albania	20 December 2019

Table: Participation in international meetings

Cooperation with counterparts and other international organizations

Cooperation with counterparts and other international organizations in Kosovo represents an important element of the work of Ombudsperson Institution (OI). It is our pleasure to report that this year this cooperation advanced further and it is extremely good. In this framework, a series of activities have taken place, which represented a good opportunity for exchange of information and best international practices, in order for the same to be implemented in Kosovo. These activities have been elaborated below.

Membership to European Network of National Human Rights Institutions (ENNHRI) brings benefits. From this membership, the Ombudsperson Institution has benefited from the participation in a series of meetings held this year.

Initially, we will mention the work being carried out within the Project "*The role of National Human Rights Institutions in Conflict and Post-Conflict Situations*", which is aimed at raising the awareness on the role of NHRIs in protecting and promoting the human rights, increasing solidarity and cooperation between European NHRIs, in particular those operating in post-conflict areas, as well as supporting their work in engagement with international and national stakeholders, including the civil society. In the framework of activities of this project, on 13-14 February 2019, high-level representatives of NHRIs in Europe, international organizations and civil society, convened in Brussels to discuss the role and responsibilities of NHRI in protecting and promoting the human rights in non-government controlled areas in the region. The meeting served as a platform for exchanging practices in relation to the role of NHRI in their work in these contexts and identification of more adequate work approaches in the future.

The work to address human rights in such circumstances is challenging and sensitive. The human rights of individuals who live in non-government controlled territories are especially at risk given the lack of recognised democratic structures and direct connection to international protection mechanisms. Also important in these contexts are the cultural, ethnic, religious, political and other tensions at play and the protracted character of conflicts that often last decades.[280]

[280]European NHRIs and other actors meet to discuss the promotion and protection of human rights in non-government controlled areas, ENNHRI, 18.02.2019, http://ennhri.org/news-and-blog/european-nhris-and-other-actors-meet-to-discuss-the-promotion-and-protection-of-human-rights-in-non-government-controlled-areas/

During this meeting, Mr. Hilmi Jashari, Ombudsperson of the Republic of Kosovo, recounted the experience of our institution in the work of the existing regional office in the Northern of Mitrovica and approach to addressing the violations of human rights and increasing the trust of different communities living there on the Ombudsperson Institution. He stated: "*increase of the number of complaints received from this part of Kosovo is an indicator measuring the trust of these communities on our work*".

On 11-12 June, ENNHRI organized a follow-up meeting on the same theme, focusing on the identification of concrete manners on how European NHRIs may improve human rights in non-government controlled areas due to the conflict.

In the framework of the same project, on 25-27 March 2019, a workshop in relation to economic and social rights in (post-) conflict situations took place, where it was discussed the conflict and its impact on deprivation of people from their dignity, a situation which may last for years. Violation of economic and social rights may be both cause and consequence of the conflict. In such circumstances, the monitoring, documentation and reporting of human rights violations becomes a crucial manner whereby NHRIs my impact the short-term and long-term changes of the situation.

On 29-31 October, a workshop took place in Zagreb in relation to the role of NHRIs in peace building, aimed at addressing the conceptual approach to peace building, their link to human rights and practical impact on engaging the NHRI in their work in this context. At the meeting it was stated that "*NHRIs can become a very important and somewhat missing link in the peace building architecture. They stand to promote and protect the dignity of all people in societies that are impacted by memories of hostilities. With their independent status, NHRIs bridge various parts and levels of society, making them unique counterparts in the peace-building process."*[281]

In the light of activities with ENNHRI, we mention the National Human Rights Institutions Academy organized in cooperation with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) during 3-7 June 2019 in Venice, Italy. This year, it was focused on the role of NHRI in effective realization of economic and social rights. This meeting was attended by 26 participants, among whom a representative of the Ombudsperson Institution of Kosovo.

Also, the ENNHRI General Assembly and Annual Conference took place during 13-14 November 2019, which this year was focused on the realization of economic and social rights in Europe and role of NHRIs in this regard. Within this meeting, the OI contributed even with a good practice of our work, focusing on realization of rights for health and social protection.

Among the most important events this year was the participation of Ombudsperson, Mr. Jashari, in the meeting of the Committee on Political Affairs and Democracy of the General Assembly of the Council of Europe in relation to the situation in Kosovo and role of the Council of Europe, which took place on 11 April 2019. During this meeting, Mr. Jashari presented the real situation of human rights in Kosovo, achievements, challenges and opportunities for their promotion in the future. Also, he spoke on the rights of communities in Kosovo and existing good legal framework for realization of human rights. Among the achievements mentioned during this meeting, he emphasized: first parliamentary

[281] Workshop in Zagreb explores the role of NHRIs in peace building, ENNHRI, 19 November 2019, http://ennhri.org/news-and-blog/workshop-in-zagreb-explores-the-role-of-nhris-in-peacebuilding/

debate in relation to the implementation of Ombudsperson recommendations, decision of the Prime Minister on establishment of the inter-ministerial group for human rights based on Ombudsperson recommendation, increase of the level of implementation of Ombudsperson recommendations for 29% compared to the previous year, increase of the number of ex officio investigated cases, progressive increase of the number of complaints addressed by minorities, ranking of the Ombudsperson Institution as most trusted institution in the country and region by the Balkan Barometer, the same ranking by the European Commission in the country progress report, implementation of all measures within the Action Plan for Implementation of Stabilisation and Association Agreement, etc. Challenges mentioned by Mr. Jashari include: lack of international human rights mechanisms, such non-membership of the Republic of Kosovo to the Council of Europe and consequently inability to address the European Court of Human Rights, lack of other mechanisms for controlling various international conventions due to political barriers and also the lack of effective legal remedies in cases of court proceedings prolongations.

It is worth mentioning the participation in the Annual Meeting and Conference of the Global Alliance of National Human Rights Institutions (GANHRI) (which reviews the compliance of NHRIs with Paris Principles), which took place in Geneva during 4-6 March 2019, focusing on the topic "Ensuring human rights-based and gender-responsive implementation, follow-up and review of the Global Compact for Migration: The role of National Human Rights Institutions." As the Republic of Kosovo is not member to United Nations, the opportunity of the Ombudsperson Institution to be part of this important international organization is limited; however, it has been participating in its activities and meetings as observer member for many years now.

In the framework of our cooperation with the Office of the United Nations High Commissioner for Human Rights, from 20-22 November 2019, two representatives of the OI conducted a study visit to Geneva, focusing on operationalization of human rights-based approach to data and indicators in Kosovo. The delegation of this visit involved representatives from Kosovo Agency of Statistics, with whom a Memorandum of Cooperation is expected to be signed for creating measurement indicators for human rights in Kosovo.

This year, another study visit was conducted to Austria from 13-18 October 2019. This visit was hosted by Austrian Ombudsman Board, with whom we have a very good cooperation and they have been consistently willing to assist us with exchange of their excellent work experience, for which we are grateful. They lead the International Ombudsman Institute, in which the OI is full member.

During the reporting period, namely on 25 April 2019, a Memorandum of Understanding was signed between the Swiss National Commission for the Prevention of Torture and Ombudsperson Institution, which is aimed at jointly monitoring the forced return between Switzerland and Kosovo. This agreement is of special importance for both institutions: it represents the first international agreement of this nature for both institutions, namely Swiss National Commission for the Prevention of Torture and for the Ombudsperson Institution, within which operates the National Mechanism for Prevention of Torture for Kosovo. With this Memorandum, the parties agreed to closely cooperate and consult each other on issues of common interest in order to achieve the common purpose, to ensure that returnees are properly treated by the Swiss Police during the return operation and that they are treated

in a human manner from the moment of hand over to the police authorities of the Republic of Kosovo in Prishtina International Airport.

When it comes to the cooperation with counterpart institutions from the region, we mention three regional meetings held between the Ombudsman Institutions and Commissioners for Protection from Discrimination of Kosovo, Albania and North Macedonia, where the first meeting took place in January in Prizren, the second meeting took place in April in Tetovo, and the third took place in November in Vlora, resulting in the signature of a Memorandum of Cooperation, whereby signatories agreed to focus on the issues below:

1. In the meetings organized in the Balkans countries, requesting that the Albanian language be official language of the meeting, whereas in other meetings beyond, acting accordingly and subject to the level;
2. Creating the conditions for exchanging experts at the level of institutions in order to exchange experiences in protecting and promoting human rights and combating the discrimination and inequality;
3. Regularly exchanging the opinions and reports of mutual interest;
4. Using the mandate of lawyers to provide better service for foreign nationals (who are nationals to three neighbour countries signatories of this Memorandum of Cooperation), who may be victims of violations by authorities of relevant states and face problems in realization of their rights in countries where they live.
5. In the ongoing functioning of a discussion and advisory platform for issues of mutual interest.

Ombudsperson participated even in some other regional meetings to provide contribution. It is worth mentioning, among others, that upon the invitation of the counterpart from Montenegro, he participated in the Conference for Gender Equality Mechanisms held in Podgorica from 31 October-1 November 2019, where Mr. Jashari contributed with concrete proposals on what regional equality mechanisms may be focused in order to improve their work, such as the issues below:

1) Use of information technology means in creating a platform for publishing the decisions and opinions of the Equality Mechanisms
2) Cooperation at the technical level – exchange of experts between institutions
3) Solidarity between Equality Mechanisms – supporting each other in cases of threats in their respective work
4) Creative legal approaches – discussing the difficulties faced by Equality Mechanisms and creating unified standards to facilitate the daily work, e.g. Equality Mechanisms, working together with the courts to define the dividing line between the freedom of expression and hate crime.

There is good cooperation even with other counterpart institutions in region and beyond, with which the Ombudsperson Institution of the Republic of Kosovo maintains permanent communication for issues of mutual interest.

Membership in international organizations

Membership of National Human Rights Institutions (NHRIs) in international mechanisms and networks serves in advancing the dynamic relations that should exist between them and international human rights system. Given this, this year the Ombudsperson Institution (OI) continued its work towards membership to various international networks and organizations.

Given that with the Law on Protection from Discrimination the OI was mandated as an equality body, after a great work in consolidating the Department for Protection from Discrimination, on 1 February 2019, the OI submitted a formal request for membership to European Network of Equality Bodies (EQUINET). This request was followed by a series of formal communications for reviewing the OI mandate and fulfilling the criteria for membership to this network and on 23 October 2019, the Ombudsperson, Mr. Hilmi Jashari, presented before the members of the General Assembly of EQUINET the request of the Ombudsperson Institution to become full member to the European Network of Equality Bodies (EQUINET).

On this occasion, Mr. Jashari stated that the Ombudsperson Institution of Kosovo complies with EQUINET Statute and predefined criteria and meets the conditions required to be a member along with other equality institutions that are members of this network.

Despite the formal opposition of Serbia, namely the note of protest by the Commissioner for the Protection of Equality in Serbia, as well as previous lobbying by them, members of EQUINET voted with the majority of votes for membership of the Ombudsperson Institution of the Republic of Kosovo to this network.

Membership of Ombudsperson Institution of Kosovo to the European Network of Equality Bodies (EQUINET) represents another success for this institution and is added to the list of memberships to the international structures of human rights.

Find below current situation of memberships of the Ombudsperson Institution to international mechanisms:

No.	Network/Mechanism	Year of membershi
1.	European Ombudsman Institute (EOI)	2002
2.	South East Europe Children's Rights Ombudsperson Network (CRONSEE)	2009
3.	International Ombudsman Institute (IOI)[282]-	2012
4.	European Network of National Human Rights Institutions (ENNHRI)[283]	2013
5.	Association of Ombudsmen and Mediators of La Francophonie (AOMF)[284]	2015
6.	Association of Mediterranean Ombudsmen (AOM)	2016
7.	Network of Ombudsmen for the Environment and Human Rights[285]	2017
8.	European Network of Equality Bodies (EQUINET)[286]	2019

[282]For more information on International Ombudsman Institute, visit the following website: www.theioi.org

[283]For more information on European Network of National Human Rights Institutions, visit the following website: www.ennhri.org

[284] For more information on European Ombudsman Institute, visit the following website: http://www.aomf-ombudsmans-francophonie.org/

[285]This network has been established in 2017 and singed by the following states: Bosnia, Croatia, Kosovo, Montenegro, Macedonia, Serbia and Slovenia

In addition, the OI is invited to and participates in activities of some other mechanisms and networks, where, due to the political barriers, only as observer member, such as:

- Global Alliance of National Human Rights Institutions - GANHRI (which reviews the compliance of NHRIs with the Paris Principles)
- European Network of Ombudspersons for Children - ENOC
- South-East Europe Network of National Preventive Mechanisms - SEE NPM (within which the OI participates in various meetings aimed at ensuring cooperation, promotion and exchange of experience in the field of protection of the right of persons deprived of liberty).

Reporting to various international mechanisms

Annually, the OI receives questionnaires of various topics from international organizations to report on the situation of human rights in Kosovo. This year, five questionnaires have been submitted, as listed in the table below.

Date	Topic of reporting/survey	Organization/institution to which the repor has been submitted
1 February 2019	Report related to the situation of missing persons in Kosovo	United Nations Working Group on Enforced Disappearances
27 February 201	Report related to the situation of homeless people in Kosovo	European Network of National Human Rights Institutio (ENNHRI)
27 February 201	Report related to the situation of realization of economic and social rights in Kosovo	European Network of National Human Rights Institutio (ENNHRI)
18 April 2019	Report related to the access to healthcare of Roma, Ashkali and Egyptian communities in Kosovo	Asylum Agency in Belgium
2 May 2019	Report related to Women, Peace and Security	United Nations Secretary General
28 August 2019	Report related to the situation of convicts and prisoners in Kosovo	American Embassy to Kosovo
29 August 2019	Report related to the situations of persons with intellectual disabilities	Swiss Refugee Council

Table: List of reports submitted to international organizations

[286] For more information on European Network of Equality Bodies (EQUINET), visit the following website: https://equineteurope.org/

VIII. Public communication and media

VIII. Public communication and media

During 2019, the Ombudsperson further deepened the cooperation with media, thus timely published information that are useful for the general public. The OI considers that the communication and information are the main pillars of accountability and transparency towards the public.

During this year, the Ombudsperson, as well as his deputies, dwelt on various issues of human rights, such as protection from discrimination, gender equality, well-administration, environment, domestic violence, and other topics falling on the mandate and competencies of the Ombudsperson.

All these topics have been carefully transmitted to the Kosovar public through interviews, statements, debates and press conferences. As presented below in Table 3, the OI has cooperated with print media, radio and televisions and also online media cover a larger part of institution's activities. The Ombudsperson gave interviews for Serbian, Bosnian and Turkish media and activities of the OI have been covered even by regional media.

It is worth mentioning that the mutual relationship with media has brought results in the work of the OI. During 2019, the Ombudsperson initiated ex officio 29 cases based on the articles of local media.

Table 1: Cases initiated ex officio based on media reports

Cases initiated ex officio based on media reports	2
Portal "Gazeta Express"	
Newspaper "Koha Ditore"	
Portal "Klan Kosova"	
Portal "Indeksonline"	
Portal "Kallxo.com"	
Others	1

On the other hand, the climate of trust on the OI has been created by the credible and accurate information provided by the Institution to the public.
The Institution has organized several conferences held in the Institution and presented reports and recommendations to the relevant institutions and bodies and thus the media coverage has been satisfactory. The Office of Public Relations has provided press releases to ensure proper feedback aimed at well-administration.

The Ombudsperson Institution has promoted its work and activities using other alternative communication forms, such as Facebook, thus creating a more efficient networking for presenting information directly to the public.

However, the correct relationship between the Office of Public Relation, Ombudsperson and his associates and journalist has played an important role in deepening the cooperation with media.

Office of Public Communication continued increasing contact and ongoing and proactive information with the citizens in order to raise awareness in relation to the rights and freedoms guaranteed in the Republic of Kosovo, as well as the role and mandate of the Ombudsperson.

With regards to the reports, 43 ones have been published, of which 20 case reports, 11 ex officio reports and 12 reports of National Mechanism for Prevention of Torture (NMPT). Table 2 shows statistics of reports by months:

Table 2: 43 Reports published in official website, by months

2019	**I**	**II**	**III**	**IV**	**V**	**VI**	**VII**	**VIII**	**IX**	**X**	**XI**	**XII**	**Total**
Case reports	-	1	1	4	4	-	1	-	-	1	5	3	20
Ex officio reports	-	-	-	1	2	2	2	-	-	-	-	4	11
Reports NMPT	-	-	-	2	3	2	-	3	-	-	2	-	12

These reports have been published in the OI official website, accompanied with summary information. Moreover, reports and information have been submitted to media and shared in the official website and profile of the OI in Facebook.

Also, during the reporting period 1 January – 31 December 2019, 66 other information and notifications related to the activities and engagements of the Ombudsperson have been shared through the OI official website, email and Facebook. Table 2 below shows numbers of these publications, by months.

Table 3: 66 information/statements/notifications published in website, by month

2019	**I**	**II**	**III**	**IV**	**V**	**VI**	**VII**	**VIII**	**IX**	**X**	**XI**	**XII**
	2	1	8	8	10	7	4	3	6	3	6	8
TOTAL	**66**											

Even this year, the Ombudsperson presence in media in relation to its numerous activities and reports has been significant. Table 3 lists media appearances by media, based on the request of media and journalists for statements, interviews, shows and other debates. The number of media appearances of the Ombudsperson and his associates exceeds 100.

Table 4: Various new published and broadcasted in media, by media

The OI in media - news			
News Agency “Kosovapress”	28	Portal “Arberesh.com”	26

BIRN/Kallxo.com	36	Periskopi	20
Ekonomia Online	26	Telegrafi	19
Newspaper “Bota Sot”	6	Insajderi	19
Newspaper “Epoka e Re”	12	Indeksonline	15
Newspaper “Koha Ditore”	14	Koha.net	44
Newspaper “Kosova Sot”	6	Kosova-sot.info	11
Newspaper “Zeri”	10	Zeri.info	26
Gazetaexpress.com	17	Bota sot	15
Newspaper “Metro.net”	15	Rtklive.com	37
RTK 1	14	Lajmi.net	12
RTK 2	9	Fakteplus.net	34
KTV	15	Gazeta Blic	18
TV 21	9	Frontonline.net	26
Klan Tv	20	Gazeta Tribuna	16
TV Dukagjini	13	Faks.al	3
TV 7	12	Kosova Today	2
RTV Puls	5	Zhurnal.mk	7
RTV Gracanica	3	Time Ballkan	3
TV Most	4	Radio Europa e Lirë	1
Radio Kontakt Plus	1	Radio Kosova	3
RTV Kim Radio	2	Kosovapost.net	1

At the end of the year, the Ombudsperson presented preliminary data on statistics and work carried out during 2019 in a special media conference.

Office of Public Communication and Media also manages the receipt of requests for Access to Public Documents (APD) addressed to the OI and proceeding of responses of institutions to the parties.

During 2019, the Ombudsperson has received 4 requests for access to public documents and provided all of them with positive response. With regards to the positively resolved requests, the parties have been provided with the requested documents, in compliance with the requirements (in physical, electronic format and sometimes in both formats).

IX. Financing

IX. Financing

The OI is an independent institution financed from the Budget of the Republic of Kosovo. According to the Law on Ombudsperson, "*OI prepares its annual budget and submits it for approval to the Assembly of the Republic of Kosovo*".[287] According to the same legal provision, the OI is provided with the necessary additional budget for cases of increase of obligations and competencies with this law and other laws, namely additional relevant and adequate financial and human resources.[288] During 2019, the OI has received great support from various donors.

Financing of the OI from the Budget of the Republic of Kosovo

The OI, based on the legal process for preparing and submitting the regular budget request, submitted its budget request for 2019 to the Assembly of the Republic of Kosovo and Ministry of Finance.

The budget request of the Ombudsperson for 2019 has been prepared based on the work plan and activities planned for 2019. Budget allocated to the OI for 2019 amounts to € 1.373.753.99, earmarked for the following budget categories:

a) Wages and salaries in the amount of € 990.900.99;

b) Goods and services in the amount of € 309.353.00;

c) Utilities in the amount of € 25.500.00;

d) Capital Expenditures in the amount of € 48.000.00.

The budget of the OI for 2019 is presented below in tabular form by the budget request, initial budget, budget spending and budget saving based on general data according to the economic budget categories. Detailed financial report for budget year 2019 will be drafted separately for all economic budget categories and special economic budget subcategories and will be submitted to the Assembly of the Republic of Kosovo based on the unique financial reporting form by the independent institutions, as required by the Budget and Finance Committee of the Assembly of the Republic of Kosovo.[289]

The table below shows the budget of the OI for 2019, presenting the *budget request, initial budget according to the Law on Budget for 2019, declaration of budget saving by the OI and budget cuts with the Decision of the Government of the Republic of Kosovo and final budget for 2019*

Table 1: OIK budget according to budget request, Budget Law, statement of budget savings by OIK and budget cuts by Government decision and final budget for 2019.

[287] Law No. 05/L-019 on Ombudsperson, Article 35, paragraph 3.
[288] Ibid
[289] Detailed financial report on OI budget will be submitted to the Assembly of the Republic of Kosovo based on the unique financial reporting form.

Economic category	Budget request	Allocated budge for 2019	Statement of savings by IOI	Budget cut with Government decisior	Final budget 2019
Wages and Salaries	1.058.332.00	990.900.99	50.000.00	17.160.80	923.740.19
Goods and Services	309.353.00	309.353.00	75.000.00	0.00	234.353.00
Utilities	25.500.00	25.500.00	17.000.00	0.00	8.500.00
Capital expenditure	66.000.00	48.000.00	0.00	0.00	48.000.00
Total budge	1.459.185.00	1.373.753.99	142.000.00	17.160.80	1.214.593.19

Budget planning, budget spending, and budget savings statement for 2019 were carried out according to the planned needs and the intended destination for meeting the needs and work activities of the OIK, which were of interest to ensure the exercise of the mandate, the performance of the work and the functioning of the OIK. While there has been no monitoring and internal control over the economical and efficient use of the budget.

In observance of legal procedures, the OIK also made a statement of budget savings for 2019 in October 2019, which amounted to € 142,000.00. However, with the proposal of the Ministry of Finance (MoF) and the decision of the Government of the Republic of Kosovo, in December 2019 the OIK budget was harmonised and reduced in the different budget categories in the amount of € 17,160.80.

Final budget and actual expenditures for 2019

The OIK budget for the 2019 budget year was realized at the level of 92.56% in relation to the final budget of the year end. The table below presents the final budget situation in relation to the budget expenditures for 2019. The budget data is expressed in this table by economic category and according to expenditures expressed in percentage.

Table 2: Final budget and actual budget spending for 2019

No.	Economic categor	Final budget for 2019	Budget spending	Free means	Implementation i %
1.	Wages and salarie	923.740.19	923.740.19	0.00	100.00
2.	Goods and service	234.353.00	195.230.89	39.122.11	83.31
3.	Utilities	8.500.00	5.262.96	3.237.04	61.92
4.	Capital expenditur	48.000.00	0.00	48.000.00	0.00

Total	1.214.593.19	1.124.234.04	90.359.15	92.56

OIKs donor-direct financing

During 2019, the OIK received a donation from the Council of Europe, which was earmarked for the funding and engagement of four (4) external legal advisors for the purpose of exercising the mandate by the Ombudsperson following the entry into force of Human Rights package of laws. The monetary amount of this donation was € 19,194.47.

X. Statistics

X. Statistics

Statistics summary of complaints and cases for 2019

From 1 January to 31 December 2019, 2014 complaints and requests were filed in the OIK headquarters in Prishtina and the regional offices from Kosovo citizens for advice or legal assistance.

The largest number of cases investigated by the OIK during the reporting period were mainly related to the *right to impartial and fair trial; the right to legal remedies; the right to work and practice the profession; health and social protection; the right of access to public documents, property protection, etc*.

The following tables show in detail the total number of complaints filed and cases investigated, the number of cases investigated ex officio, the complainants' ethnicity, the complainants' gender, the number of cases solved, the authorities responsible against which the complaints have been filed, the number of reports with recommendations and letters of recommendation for the cases investigated, etc.

Table 1: Complaints filed with the OIK during 2019

	Total number of complaints filed with OIK	**2014**
	Numbers of persons involved in the filed complaints	**9468**
Ethnicity of complainants		
	Albanian	1810
	Serbian	91
	Bosnian	28
	Ashkali	24
	Roma	21
	Egyptian	20
	Turkish	12
	Other	8
Gender of the complainant filing with OIK		
	Male	1464
	Female	550
The responsible authorities against which the complaints have been filed (one complaint may have more than one responsible party).		
	Courts	620
	Ministries	532
	Municipalities	270

	Police	128
	State prosecution offices	84
	Private persons	84
	Public enterprises	59
	Private companies	39
	Privatization Agency of Kosovo	24
	Foreign authorities	17
	Kosovo Property Agency	4
	Other	288

Table 2: Rejected complaints during 2019

	Number of rejected complaints	1037
Legal grounds for rejection of complaints based on Law on Ombudsperson		
	Non-exhaustion of legal remedies – Article 22, point 1.4	361
	There is no violation or maladministration – Article 22, point 1.1	249
	Use of legal remedies ongoing - Article 22, point 1.3	191
	Outside the jurisdiction - Article 21, point 1.3.1	176
	Lack of interest, failure of the party - Article 22, point 1.2	48
	Filed after the legal deadline - Article 21, point 1.3.2	8
	Anonymous complaint - Article 21, point 1.3.3	4

Table 3: Pending complaints for 2019

	Pending complaints	34

Table 4: Cases investigated by the OIK during 2019

	Initiated investigations upon complaints filed by citizens	943
	Initiated investigations according to official duty (Ex Officio)	54
Ethnicity of citizens in the investigated cases		
	Albanian	828
	Serbian	68

	Egyptian	13
	Bosnian	12
	Turkish	9
	Roma	8
	Ashkali	2
	Gorani	2
	Other	1
Gender of complainants in the cases investigated by the Ombudsperson Institution		
	Male	681
	Female	262
The responsible authorities in cases investigated by the OIK (a case may have more than one responsible party**)**		
	Courts	335
	Ministries	264
	Municipalities	138
	Police	60
	State prosecution offices	47
	Public enterprises	22
	Private companies	12
	Privatization Agency of Kosovo	11
	Private persons	8
	Kosovo Property Agency	1
	Foreign authorities	2
	Other	159

Table 5: Subject of investigated cases based on the rights guaranteed by the Constitution (a case may involve violations of more than one guaranteed right)

	Right to impartial and fair trial	316
	Right to legal remedies	205
	Right to work and exercise of profession	180

	Health and social protection	115
	Right of access to public documents	99
	Property protection	80
	Rights of the child	71
	Equality before the law	58
	Rights of the accused	36
	Right to education	34
	Prohibition of torture, cruel, inhuman or degrading treatment	28
	Responsibility for the living environment	14
	Right to marriage and family	12
	Right to life	11
	Human dignity	11
	Right to election and participation	8
	Freedom of movement	7
	Right to privacy	4
	Intermediation cases	2
	Judicial protection of rights	2
	Freedom of the arts and sciences	2
	Freedom of media	2
	Religious confessions	2
	Right to liberty and security	1
	Limitation of rights and fundamental freedoms	1
	Freedom of associatiation	1
	Right to personal integrity	1
	Freedom of expression	1
	Freedom of belief, conscience and religion	1
	Principles of legality and proportionality of criminal offences	1

Table 6: General number of cases closed by the OIK during 2019 (not only cases of 2019, but also of cases registered previously but closed during this year)

	General number of closed cases	849
Legal basis for closure of cases based on Law on Omdusperson		
	Resolved positively, upon the complainant's request - Article 21, point 1.5.	345
	Inadmissible, there is no violation or maladministration – Article 22, point 1.1	162
	Inadmissible, in the proces of exhausting legal remedies – Article 22, point 1.3	138
	Closed with report – Article 24.3	101
	Inadmissible, non-exhaustion of legal remedies - Article 22, point 1.4	58
	Closed due to complainant's lack of interest or failure – Article 22, point 1.2	36
	Inadmissible, outside jurisdiction - Article 21, point 1.3.1	9

Table 7: Reports with recommendations from the OIK, Opinions and requests for interim measures from the OIK

	Reports for cases investigated (from citizen's complaints)	20
	Reports for cases investigated *ex officio*	11
	Reports of NPMT	12
	Letter with recommendations	33
	Recommendations in the Reports and letters with recommendations	225
	Request for interim measure	6
	Amicus Curiae	5
	Opinions	2

Table 8: Implementation of recommendations issued in the reports and letters with recommendation for cases investigated by OIK during 2019

Responsible authority	*Implemented recommendations*	*Unimplemented recommendations*	*Pending implementatio*
Ministry of Justice	16	4	34
Ministry of Health	4	0	4
Ministry of Lbour and Social Welfare	5	2	24
Ministry of Internal Affairs	3	0	11
Ministry of Education, Science and Technology	0	1	8

Ministry of Infrastructure and Transport	0	0	3
Ministry of Finance	0	1	0
Ministry of Local Government Administration	2	0	1
Ministry of Environment and Spatial Planning	1	0	2
Ministry of Foreign Affairs	0	0	6
Kosovo Hospital and University Clinical Service	4	0	1
Government of Kosovo	0	1	3
Assembly of Kosovo	1	0	2
Basic Court in Prishtina	1	0	3
Basic Court in Mitrovica	0	0	1
State Prosecution	0	0	2
Basic Prosecution in Prishtina	0	0	2
Kosovo Judicial Council	1	1	1
Kosovo Police	3	1	12
Kosovo Telecom	0	0	1
University of Prishtina	1	0	0
Universitety of Mitrovica	0	0	1
Municipality of Prishtina	0	0	2
Municipality of Ferizaj	0	0	3
Municipality of Podujeva	0	0	3
Municipality of Skenderaj	0	0	2
Municipality of Gjilan	0	0	6
Municipality of Fushe Kosova	0	0	3
Municipality of Kaçanik	1	0	0
Municipality of Graçanica	2	0	1
Municipality of Junik	0	0	1
Municipality of Partesh	0	0	1
Municipality of Mamusha	0	0	1

Municipality of Kllokot	0	0	1
Independent Media Commission	0	0	1
Kosovo Intelligence Agency	0	0	1
Kosovo Cadastral Agency	0	0	1
Kosovo Association of Blind People	1	0	0
Kosovo Landfill Management Company	0	0	1
KEDS	1	0	0
Health Inspectorate	2	0	1
Central Bank of the Republic of Kosovo	2	0	0
Kosovo Prosecutorial Council	0	0	4
Victim Protection and Assistance Office	1	0	0
District Heating Company, “Termokos”	0	0	2
Energy Regulatory Office	1	0	0
Chamber of Private Enfrocement Agents	0	1	0
Kosovo Doctors Chamber	1	0	1
Kosovo Accreditation Agency	1	0	0
Total	**55**	**12**	**158**

Graphic presentation of statistics for the period 1 January 2019 - 31 December 2019

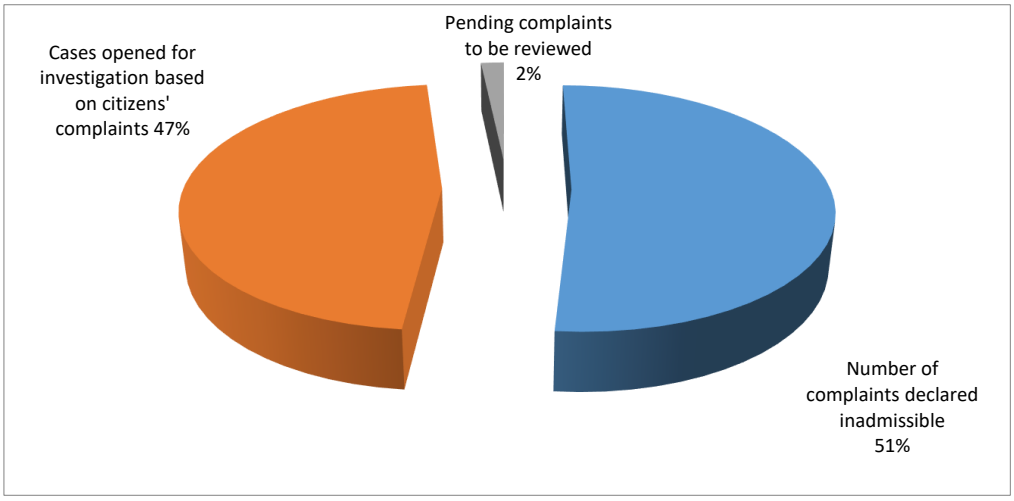


Figure 1: Review of complaints filed with the OIK during 2019

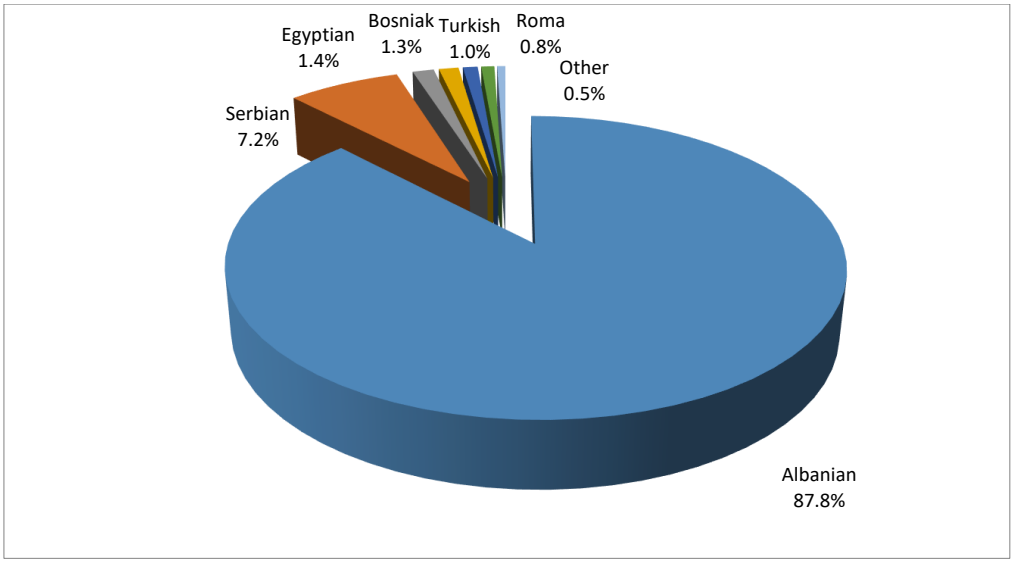


Figure 2: Ethnicity of citizens filing complaints with the OIK

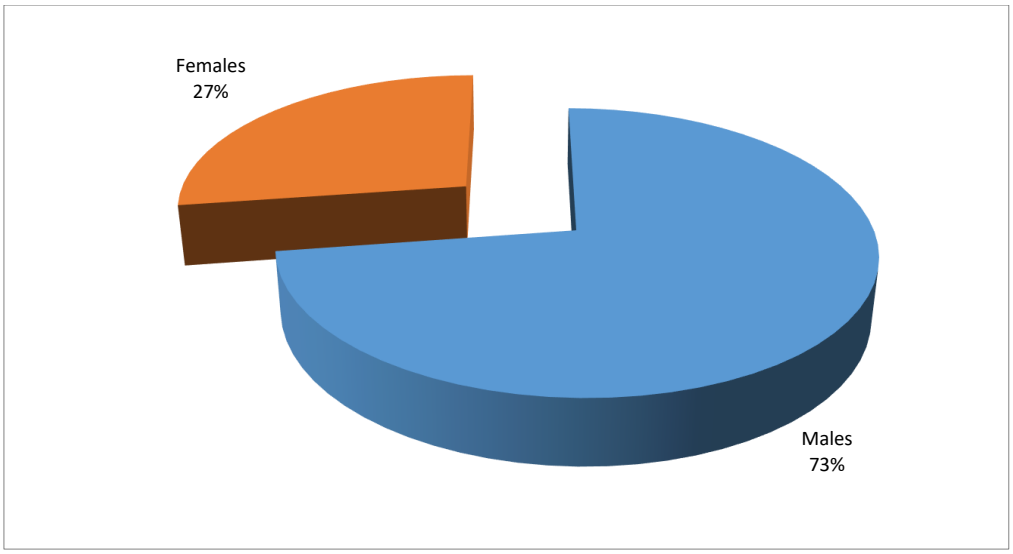
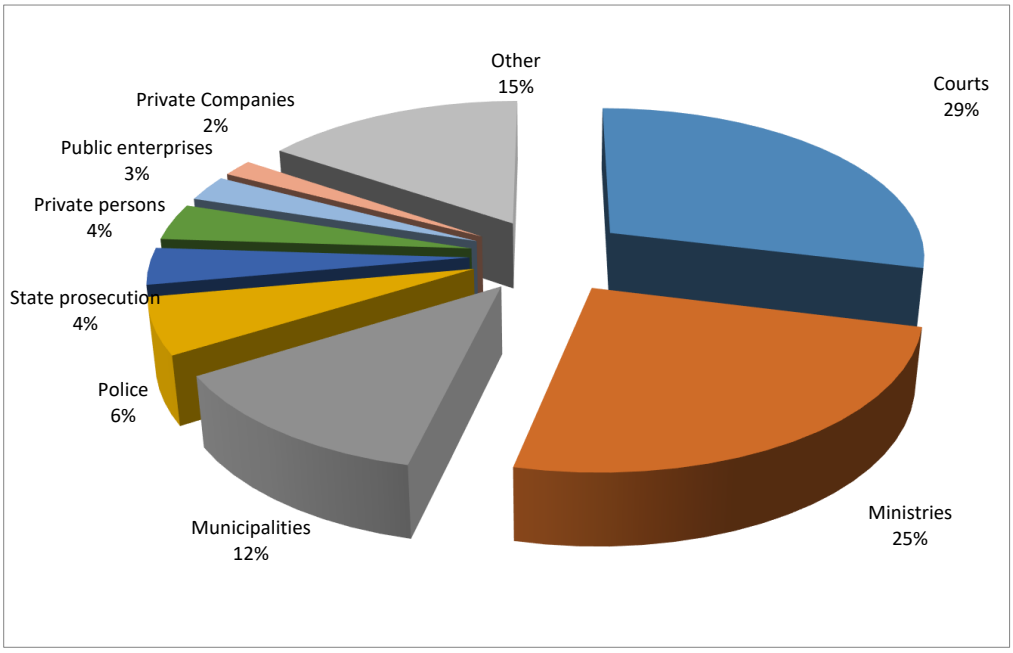


Figure 3: Gender of citizens filing complaints with the OIK



-Figure 4: Responsible authorities for complaints filed with the OIK during 2019

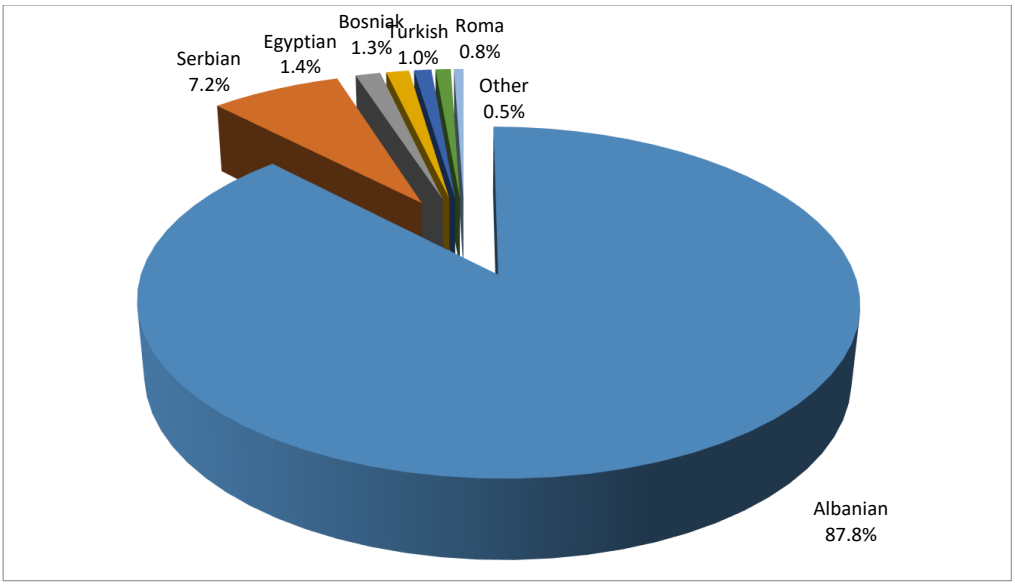


Figure 5: Ethnicity of citizens of cases subject to investigations

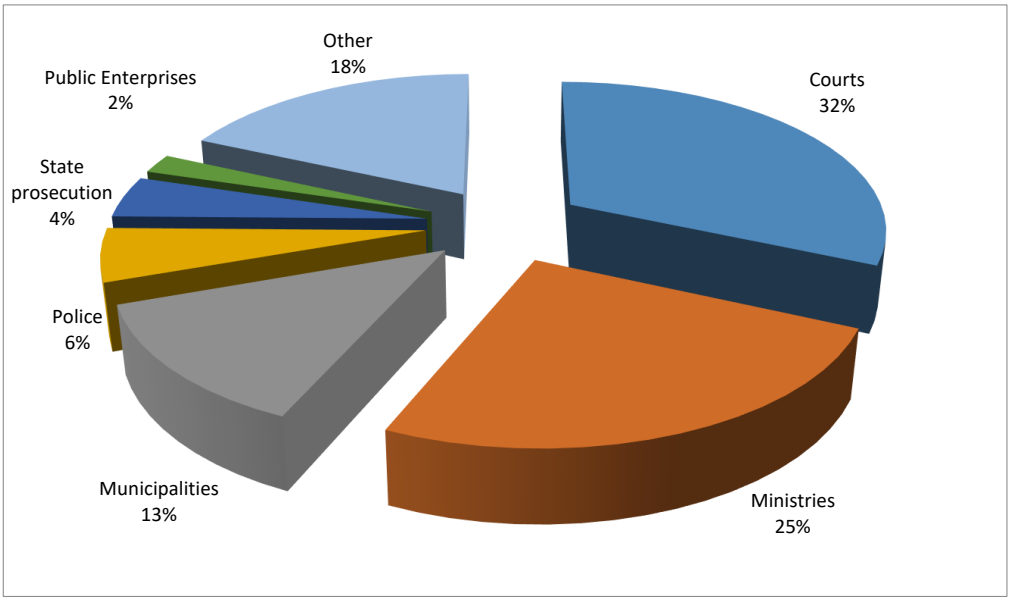


Figure 6: Responsible authorities for cases investigated by the OIK

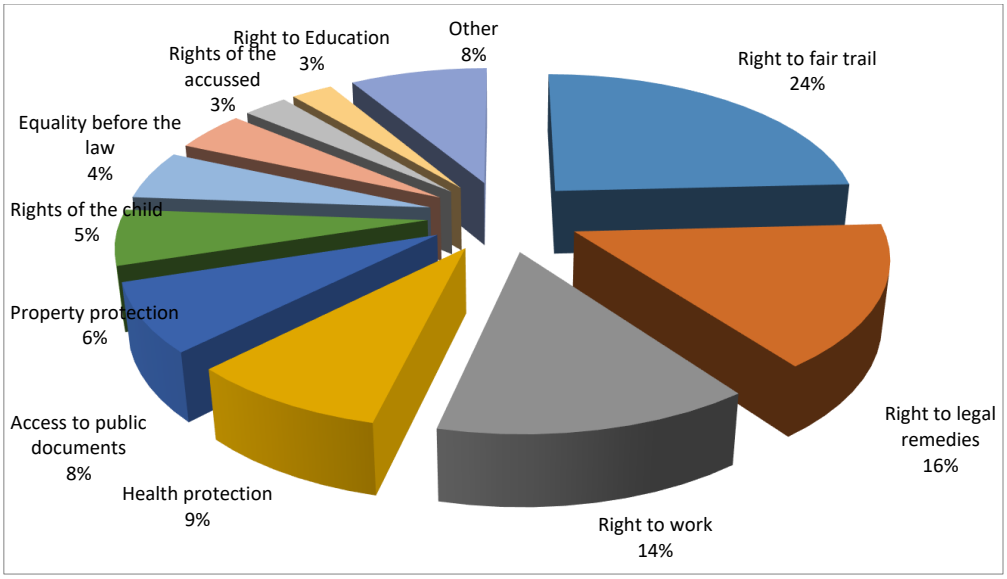


Figure 7: Subject of investigated cases based on rights guaranteed by the Constitution

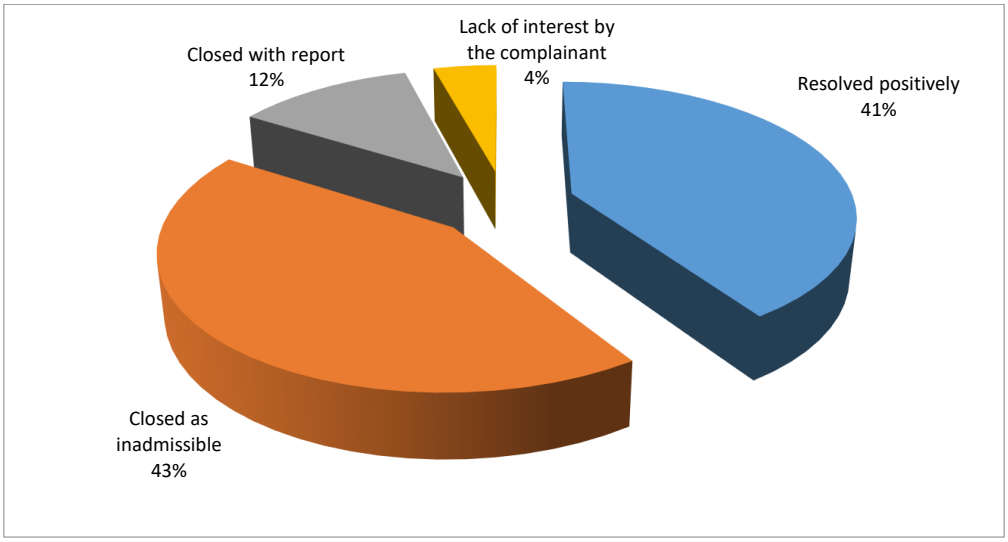


Figure 8: Cases closed by the OIK during 2019 (not only cases of 2019, but also cases registered previously and closed during this year)

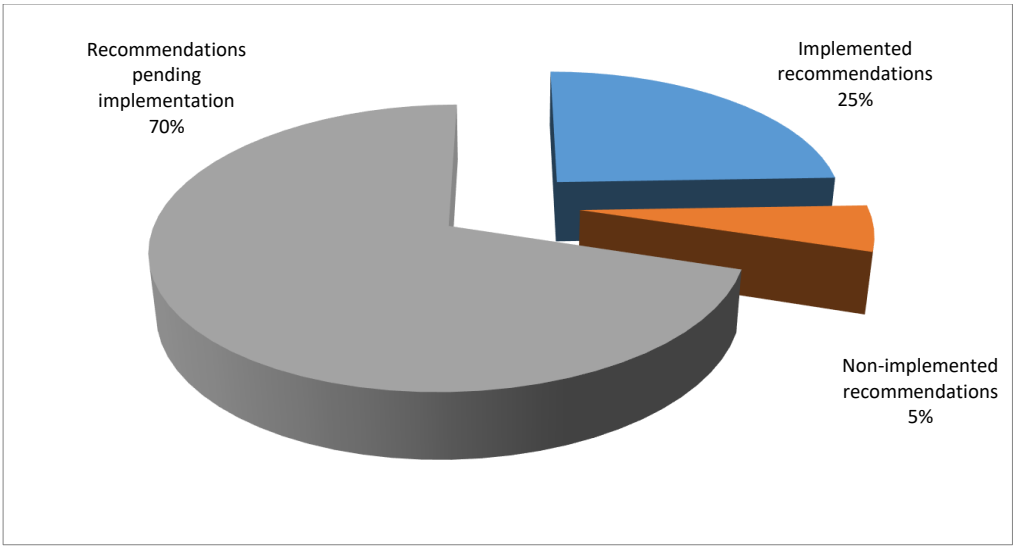


Figure 9: Implementation of recommendations provided in reports and letters with recommendations on cases investigated by the Ombudsperson Institution

Statistics on Indicator No. 7 of the Sector Reform Contract for the Public Administration Reform[290]

On 7 December 2017, the Financial Agreement between Kosovo and the European Union on Instrument for Pre-Accession Assistance - IPA 2016, Part Two, for the Public Administration Reform was signed. The maximum contribution of the European Union under this agreement amounts to € 25,000,000.00.

The overall objective of this agreement is "*to support the administration reform process in Kosovo in order to increase the accountability, transparency and effectiveness of public administration, with a greater focus on the needs of citizens and businesses. This program aims to assist the Government of Kosovo in implementing the strategic package of public administration reform adopted in 2015, specifically focused on improving administration accountability, harmonizing policy development and coordination, introducing modern human resource management, and modernization of consumer oriented public services. The program will also strengthen the administrative capacity needed to develop and implement the EU acquis*".[291]

It is noteworthy that in order to increase the level of implementation of the Ombudsperson's recommendations, this issue is included under this agreement through Indicator No. 7, which stipulates that by 2020, the implementation of the Ombudsperson's recommendations by the central level institutions will reach no less than 60%. In 2016, the implementation rate of recommendations

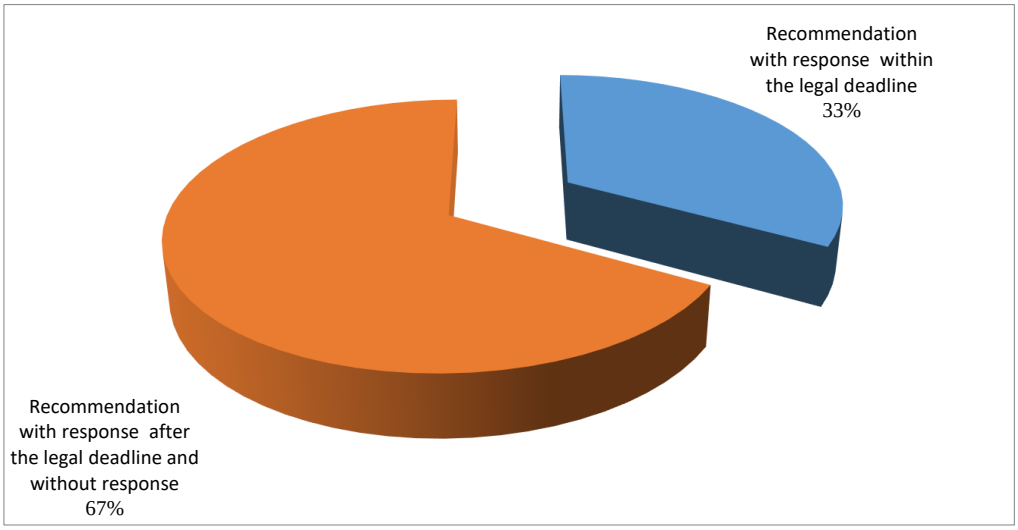
[290] https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707
[291] Financial agreement for IPA 2016-Part Two between the Republic of Kosovo and EU, p. 18;

addressed to the central level institutions was 16%. This agreement entered into force on 15 December 2017.

Below we will present the achievements related to the implementation of Indicators No. 7.2.1 and 7.2.2 for 2019 through statistics:

Indicator No. 7.2.1 requires that at least 90% of central level institutions addressed by the Ombudsperson with recommendations between 1 January and 30 November 2019 have responded with a letter within the legal deadline of 30 days.

During the period from 1 January to 30 November 2018, the Ombudsperson addressed 109 recommendations to central level institutions,[292] of which only 36 recommendations received a response within the 30-day legal deadline set out under Articles 25 and 28 of Law No. 05/L-019 on Ombudsperson.[293] Therefore, it is concluded that the implementation rate for Indicator No. 7.2.1 is quite low as during this period the Ombudsperson has received a response within the 30-day legal deadline for only 33% of the recommendations addressed to the central level institutions. As such Indicator No. 7.2.1 has not been met.[294]



Indicator 7.2.2 requires that at least 50% of all recommendations addressed to central government institutions, issued in 2018 and 2019, to which central government institutions responded positively, have been implemented.

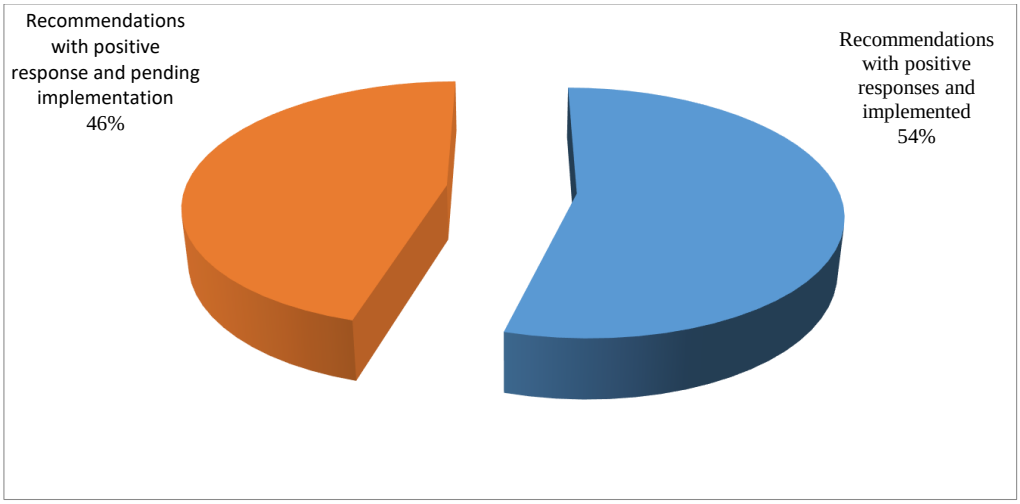
[292] 1 Central level institutions as defined by Indicator No.7 of the Financial Agreement between Kosovo and the European Union; This agreement can be found in the official gazette at https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707

[293] https://www.oik-rks.org/2018/08/20/ligji-per-avokatin-e-popullit-nr-05l-019/ accessed on 13/02/2019

[294] The calculation method for indicator 7.1.1 is made according to the formula:

X = number of recommendations with responses from central level institutions received by the Ombudsperson within the legal deadline / total number of Ombudsperson's recommendations addressed to the central level institutions during the period defined x 100

During the period from 1 January 2018 to 30 December 2019, the Ombudsperson addressed 313 recommendations to central level institutions [295] (151 recommendations addressed in 2018 and 162 recommendations addressed in 2019), of which only 107 recommendations were implemented. On the other hand, in terms of recommendations addressed during the same period and concerning which we received positive responses or positive intention to implement the recommendations, we have 182 recommendations, out of which 99 have been implemented or, in other words, the implementation rate of the Ombudsperson's recommendations under Indicator No. 7.2.2 is 54%.[296]



[295] Central level institutions as defined by the methodology of indicator 7 (7.1.1 and 7.1.2) of the Financial Agreement between Kosovo and the European Union; This agreement can be found in the official gazette at https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707

[296] The calculation method is based on the formula set out in indicator 7.1.2: X = number of recommendations addressed to central level institutions over the specified period, to which the responsible institutions have responded with positive intent on implementing the recommendations, have been implemented / the total number of recommendations addressed to central level institutions during the specified period for which the responsible institutions have responded with a positive intention on the implementation of recommendations x 100