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Ombudsperson's

Ex- officio Report

No. 150/2021

With regard to state's positive obligations for the right to life and protection from domestic violence

Addressed to:

Mr. Albin Kurti, Prime Minister of Kosovo Government

Mr. Samedin Mehmeti, Director of Kosovo Police

Mr. Skender Çoçaj, Presider of Kosovo Judicial Council

Mr. Jetish Maloku, Presider of Prosecutorial Council

Mr. Basri Kastrati, Manger of the Victim Protection and Assistance Office

Copies:

Mrs. Duda Balje, President of the Committee on Human Rights, Gender Equality, Missing Persons and Petitions

Mr. Habit Hajredini, Head of the Office of Good Governance, Office of Prime Minister

Prishtinë, 27 April 2021

Purpose of the Report

1. This Report aims to assess the liability of responsible authorities in protecting citizens' lives from domestic violence. Report gives attention to actions / inactions of the state regarding the right to life, related to the murder and committed suicide which occurred on 14 March 2021, in the neighborhood of Emshir in Prishtina, in which case media has reported that a man killed his wife with a fire gun and then committed suicide. The Report will analyze implementation of constitutional provisions, international human rights instruments, laws, policies and strategies against domestic violence.

Powers of the Ombudsperson

2. Constitution of Republic of Kosovo (hereinafter: Constitution), in Article 132, paragraph 1, stipulates: *“The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities”*; while in paragraph 3 defines: *“Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.”*
3. According to the Law No. 05/L-019 on Ombudsperson, the Ombudsperson, among others, has the following powers and responsibilities:
 - *“To draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases.”* (Article 18, par. 1, subparagraph 1.2).
 - *“To make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination.”* (Article 18, par. 1, subparagraph 5).
 - *“to publish notifications, opinions, recommendations, proposals and his/her own reports.”* (Article 18, par. 1, subparagraph 6).
 - *“to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo.”* (Article 18, par. 1, subparagraph 7).
 - *“To prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo;”* (Article 18, par. 1, subparagraph. 8).
 - *“To recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation.”* (Article 18, par. 1, subparagraph 9).

By delivering this Report to responsible institutions, as well as by its publication, the Ombudsperson intends to fulfill the following constitutional and legal responsibilities.

Description of the case

4. This Report was Ex-officio initiated based on printed and electronic media reports, which reported that on 14 March 2021, in the neighborhood of Emshir in Prishtina, a woman murdered with a firearm (with initials: S.S.) and a man (with initials: L.S.) were found. In this regard, media reported that it was suspected of murder and suicide, specifying that the murdered person and the suicide were married for many years and had four children, but due to exercised domestic violence the spouses lived separately and had begun the proceedings of wedlock dissolution. It was further reported that S.S. had reported domestic violence two times, but it is suspected that the authorities had not taken appropriate measures and the case ended tragically.¹ As a result of this event, various manifestations of the Kosovo Women's Network were reported under the motto "Justice for murdered women", disclosing that the violence against S.S. was neglected by institutions of justice in the country.²

Actions of the Ombudsperson Institution

5. On 22 March 2021, Ombudsperson's representative contacted the Manager of the Victim Protection and Assistance Office (VPAO) at the State Prosecutor's Office in Prishtina, with whom he discussed related to the case. On this occasion VPAO manager informed that the tragic event took place in Prishtina but L.S and S.S. had lived in the city of Gjilan, therefore the case was dealt by the VPAO in Gjilan.
6. On the same day, representative of the Ombudsperson spoke with the Protector of victims of VPAO in Gjilan, who informed him that he was aware of the case of L.S. and S.S., emphasizing that during 2019 a case of domestic violence had been managed by VPAO in Gjilan. The Basic Court (BC) in Gjilan on 26 November 2019, had issued a protection order (case C.nr.1002 / 2019) against the protected party S.S. and her brother. According to him, case prosecutor had issued a decision to detain the responsible party L.S., as well as had initiated criminal proceedings. Therefore L.S. had appeared before the pre-trial judge and the court had decided that he should be remanded in custody. On the other hand, L.S.'s daughters had submitted a request, first to the VPAO and then to the Prosecutor's office and the court, requesting that L.S.'s detention is terminated. Finally, the victim's Protector pointed out that no other violent incident has been reported in this family and that S.S. had moved from the city of Gjilan and was living with her daughter in Prishtina.
7. On 23 March 2021, Ombudsperson's representative received a letter from victims' Protector of VPAO in Gjilan, with attached case files. From the case files it is observed that S.S., on the occasion of case reporting to the police, as a victim (statement no. 2019-CA-136, of 10 November 2019) had stated, inter alia, that her husband had exercised violence against her continuously and due to that, she had been separated from him several times, but she never reported the case to the police. It was further asserted that

¹ For more info visit the link: <http://www.ekonomia-ks.com/sq/siguri/shteti-po-deshton-ne-mbrojtjen-e-gruas>

² Visit the link: https://twitter.com/KWN_Rrggk/status/1372478958126653447

recently L.S. was visited by a psychiatrist and has been using therapy. In this regard, S.S. had claimed that despite being separated from him, he exercised harassment of different types on her, by phoning her, showing in front of her in the street and similar actions.

8. In the Request for Protection Order, no. 13-11 / 19, of 12 November 2019, it is observed that S.S. as a victim, has stated that the violence against her had started since her family returned from France to Kosovo (where they had stayed from 2015 until 31 January 2019), after L.S. threatened her that if she separate from him, he would not leave her alone and would find her weaknesses. Therefore on this occasion, S.S. had declared that she did not trust her husband, as he was aggressive and due to this mental state had also visited the psychiatrist.
9. On 25 March 2021, the representative of the Ombudsperson talked with in charge psychiatrist of the Psychiatric Department of the General Hospital in Gjilan, for whom the victim S.S. had stated that she had treated her ex-husband L.S. On this occasion she stated that L.S., had been treated some years ago in the specialist ambulance of the Psychiatric Department and she had prescribed appropriate therapy to him. She further explained that at the end of 2019 she had visited L.S. again, but this time in the Detention Center in Gjilan, as he had been detained because he had exercised physical and psychological violence against S.S. Further, Ombudsperson's representative talked to the responsible officials of the Mental Health Center (MHC) in Gjilan, from whom he wanted to obtain information if L.S. was treated at MHC and received a response that L.S. was never a patient of this center.
10. On 25 March 2021, representative of the Ombudsperson sent a letter to the Kosovo Police requesting information regarding the criminal past of L.S., with regard to domestic violence and an informative report from the case investigators, in the sense of describing case circumstances of 14 March 2021 was requested Further, Ombudsperson's representative sent a letter to the director of the Center for Social Work (CSW) in Gjilan, from whom he requested information regarding the psycho-social treatment of the perpetrator of domestic violence L.S. and the victim S.S., informing him that in respect of this case, BC in Gjilan had issued a Protection Order (Decision C.nr.1002 / 2019, of 26 November 2019).
11. On 26 March 2021, Ombudsperson's representative was notified through a letter admitted by the director of the CSW in Gjilan, who explained that on 14 November 2019, the CSW was notified regarding the case of domestic violence caused by L.S., emphasizing that the case prosecutor had requested a written report from CSW on the case. According to him, the Kosovo Police, Station in Gjilan, on 18 November 2019, had notified the CSW regarding the same case, therefore the CSW had appointed the case manager who had held a counseling session with the victim S.S. and on 19 November 2019, he compiled a written report and sent it to the case prosecutor. The Director informed that the CSW had not received any other information from the Prosecution or the Court regarding the protection order against the victim S.S., except the submission of the BC in Gjilan (case C.nr.1043 / 2019, divorce lawsuit, of 3 March 2020), by which the court had sought professional opinion (as a custodian body) regarding entrustment of the child in the event of divorce.

12. On 30 March 2021, representative of the Ombudsperson was served with the response from Kosovo Police, in the course of which was notified that based on the records of police database with regard to domestic violence exercised by L.S., two cases were reported to the police by the victim S.S. The first case was reported on 10 November, 2019 at the Police Station (PS) in Gjilan, which was handled by the BP in Gjilan and the second case was reported on 3 March 2021 at the Police Station in Gracanica, for which, investigations were under progress by investigators of the same station. The police had also sent an informative report in the sense of describing the circumstances of the event of 14 March 2021. After that, Ombudsperson's representative sent a letter to the Kosovo Police requesting additional information regarding the actions taken by police officers of the PS in Gracanica (police actions from the moment the case was filed on 3rd of March 2021, hard copy of the statement of S.S. victim given to the PS in Gracanica, as well as whether on this occasion the police officers had notified the victim's Protector?)
13. On 31 March 2021, the representative of the Ombudsperson contacted the case prosecutor of the BP in Gjilan, with whom he discussed the progress of the criminal proceedings in the case of the perpetrator of domestic violence L.S. On this occasion she informed the representatives of the Ombudsperson that in November 2019, criminal proceedings were initiated against L.S. for two criminal offenses "assault" and "domestic violence", therefore he was held in custody as a security measure for almost two months and an indictment has been filed against him. In this regard, she had clarified that the criminal proceedings against L.S. had ended and he had been convicted by the court. Regarding the allegations of psychiatric problems of L.S., she stressed that no psychiatric examination was required for the same.
14. On 31 March 2021, Ombudsperson's representative through a letter requested from BC administrator in Gjilan, a copy of Judgment P.nr.1042 / 19, of 27 January 2020. The response was served on the same day and according to it, the pre-trial judge had remanded L.S. in custody, and the same had remained under this measure from 12 November 2019 until 20 January 2020 (69 days). She also clarified that the case prosecutor on 25 November 2019 had filed an indictment against L.S., for two criminal offenses "domestic violence" and the criminal offense of "assault", therefore after the main trial of this case on 30 January 2020, the court had rendered an adjudicate judgment to the accused L.S. The copy of Judgment P.nr.1042 / 19, of 27 January 2020 was attached to the response.
15. According to the Judgment L.S. was found guilty of the criminal offense of "domestic violence" and sentenced to 90 days in prison and a fine of 200 Euros, while the criminal offense of "assault" was sentenced by the court to 30 days in prison. This sentence was replaced by a fine in the amount of 1300 Euros, specifying that this amount will be returned to prison (75 days), if L.S. does not pay the fine. The court had calculated L.S. time spent in detention on remand (from 12 November 2019 until 20 January 2020), and had decided to confiscate a 14-cm-long razor blade from him and the injured party / victim S.S. was instructed in civil litigation for damage compensation.
16. On 1 April 2021, the Ombudsperson sent a letter to the Chief Prosecutor of BP in Prishtina, from whom he requested information regarding the progress of the

investigation of this case, the stages in which the procedure was at the moment, as well as a copy of case files.

17. On 1 April 2021, Ombudsperson's representative through a letter was informed by the Kosovo Police, that on 3 March 2021, around 19:40, a case of "Domestic Violence" was reported in the PS of Gracanica by M.S. (daughter of the victim S.S.) and within a few minutes the police patrol had arrived to the scene accompanied by Investigation Department, in which case they had admitted statements of the witness M.S. and the victim S.S. In this regard it is stated that on the same day, around 21:25 the case has been accomplished and criminal proceedings were initiated for the criminal offense "Domestic Violence", and the case was reported to the State Prosecutor at BP in Pristina (verbally and by forwarded an official letter to the Chief Prosecutor of BP in Prishtina). It is further stated that on 4 March 2021, the suspect L.S. has been summoned at the PS in Gracanica and his statement regarding the case has been taken. After that, police officers had contacted by phone the victim S.S., who had stated that she could not show herself at the police station and requested that L.S. is not incarcerated, but possibly to be released. Furthermore, it is noted that after interviewing the suspect L.S., the BP prosecutor in Prishtina was contacted again, who was informed in details about the case and she instructed the police that L.S. is released and the case proceed further in regular process.
18. Kosovo Police had attached the statement of the victim S.S. with number 2021-AT-086, of 3 March 2021 to the letter sent to the representative of the Ombudsperson, but no information has been acknowledged if the case was reported to the victim's Protector.
19. On 15 April 2021, the representative of the Ombudsperson through a letter, requested information from the Manager of the VPAO in Prishtina, if they had been informed, regarding the domestic violence reported to the PS in Gracanica on 3 March 2021. On the same day, the Ombudsperson's representative received a response stating that the victim's Protector had not been notified of the matter.
20. On 20 April 2021, Ombudsperson's representative received a response from the Basic Prosecution in Prishtina jointly with an official note on the case (2021-AT-0086, of 15 April 2021), as well as the case file, which according to the Prosecution, the Police had sent to them up to 19 April 2021. From case files sent it can be seen that the same had to do exclusively with the actions conducted by the police of Gracanica PS on 3 and 4 March 2021. Further information on the progress after this date or other clarifications about the event of 14 March 2021 has not been provided.

Legal bases

21. Article 21, paragraphs 2 and 3, of the Constitution of Republic of Kosovo (henceforward: *Constitution*) defines as follows: "*The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution, Everyone must respect the human rights and fundamental freedoms of others.*"
22. Article 22 of the Constitution stipulates: "*Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions*" while

Article 23 determines: *“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.”*

23. Article 25, paragraph 1, of the Constitution stipulates as follows:

“Every individual enjoys the right to life [...]”;

While Article 26 determines:

“Every person enjoys the right to have his/her physical and psychological integrity respected, which includes [...].”

24. Constitution of Republic of Kosovo, in Article 29, paragraph 1, defines: *“Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:*

- *pursuant to a sentence of imprisonment for committing a criminal act; [...];*
- *for the purpose of medical supervision of a person who because of disease represents a danger to society, [...]”;*

While Article 53 reads:

“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”

25. Constitution makes directly applicable a number of instruments and international agreements in the field of human rights in the legal order of Kosovo. It stipulates that *these acts are directly applicable in the Republic of Kosovo and, in the case of conflict, prevail over provisions of laws and other acts of public institutions.*

26. The Assembly of the Republic of Kosovo, in the plenary session held on 25 September 2020, adopted Amendment no. 26 of the Constitution of the Republic of Kosovo, according to which the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) becomes an integral part of the Constitution.³

27. The Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (henceforth: the Istanbul Convention), adopted on 11 May 2011 in Istanbul, in Article 1, [Purposes of the Convention], clearly states that its purposes are:

- a) *Protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;*
- b) *Contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;*
- c) *Design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;*

³Official Gazette of Republic of Kosovo / No. 4/30 September 2020, Prishtinë

- d) *Promote international co-operation with a view to eliminating violence against women and domestic violence;*
- e) *Provide support and assistance to organizations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.*
28. Istanbul Convention in Article 5 [*State obligations and due diligence*] in paragraph 1 stipulates: *“Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation”,* while paragraph 2 of this Article defines: *“Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors”.*
29. Istanbul Convention in Article 55 [*Ex parte and ex officio proceedings*] in paragraph 1 defines: *“Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependent upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.”*
30. Istanbul Convention in 1st paragraph of Article 56 [*Measures of protection*] reads: *“Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular: a). providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimization [...].”*
31. Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) (hereinafter: the *European Convention*) provides::
- “Everyone’s right to life shall be protected by law. [...]”;* while Article 5, paragraph 1, of this Convention stipulates: *“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law [...].”*
32. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women states that: *“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...] To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination [...].”*
33. Article 1, paragraph 1, of the Law No. 03/L-182 on Protection against Domestic Violence provides: *“This Law aims to prevent domestic violence, in all its forms, through appropriate legal measures, of the family members, that are victims of the domestic*

violence, by paying special attention to the children, elders and disabled persons”, while paragraph 2 continues further: “*This Law, also aims, treatment for perpetrators of domestic violence and mitigation of consequences..*”

34. Article 4, paragraph 1, of the Law No. 03/L-182 on Protection against Domestic Violence stipulates: “*The protection measure for psycho-social treatment may be issued to a perpetrator of domestic violence in combination with any other preventing measure with the aim of eluding violent behaviors of the perpetrator or if there is a risk to repeat the domestic violence.*”
35. Article 17, paragraph 2, of the Law No. 03/L-182 on Protection against Domestic Violence determines: “*A protection order or emergency protection order is executed immediately with a respective decision, issued by the competent court and shall be sent immediately to the domestic violence perpetrator, Kosovo Police, social welfare centers, as well as other parties in procedure*”, while Article 27 of this Law defines: “*Ministry for Labor and Social Welfare, in cooperation with: Ministry of Health, Ministry of Justice, Ministry of Internal Affairs, Ministry of Culture, Youth and Sports and Ministry of Education is responsible for support and raise ancillary structures and necessary infrastructure, which serves to support and meet the needs of persons against whom domestic violence is exercised, including social assistance and medical services, in accordance with applicable law.*”
36. Article 24, paragraph 1, of the Law No. 03/L-182 on Protection against Domestic Violence provides: “*Kosovo Police shall respond to any report for acts or threats to commit acts of domestic violence or a violation of a protection order or emergency protection order, regardless of who reports*”. Further, paragraph 2 of this Article determines: “*Where there are grounds for suspicion that a crime involving domestic violence was committed, Kosovo Police shall arrest the alleged perpetrator according to the law*”, while paragraph 4 of the same Article defines: “*The law enforcement authorities shall complete an incident report whether or not a crime was committed or an arrest was made and provide a copy of the incident report to the victim or the legal representative of the victim.*”
37. Article 1, paragraph 3, of the Law No. 02/L-17 on Social and Family Services provides: “*Person in Need shall mean any person found on the territory of Kosovo, regardless of status or place of origin, who is in need of social services because of [...]mental illness [...].*”
38. Paragraph 1 of Article 1 of the Law No. 05/L -036 on Compensation of Crime Victims reads: “*The purpose of this law is to establish and make functional the program for compensation of victims of crime.*” While Article 2 determines: “*This Law regulates the right to financial compensation of victims of violent criminal offenses and their subordinates, decision-making authorities and procedures for exercising the right to compensation in local and cross-border situations.*” Furthermore the Law in Article 6 provides: “*Violent offenses which fall under the category of compensable offenses under this Law are: [...] criminal offenses that fall within the definition of domestic violence under the Law on Protection against Domestic*”

39. Article 1 of Administrative Instruction (GRK) No. 01/2017 on the Manner of Compensation including the Calculation of the Compensation for Multiple Damages determines: *“The purpose of this Administrative Instruction is to determine the manner of compensation, including the procedure of receiving, handling and reviewing applications, calculation and decision-making on the compensation of crime victims.”*
40. Article 1, paragraph 1, of Administrative Instruction No. 12 / 2012 for Determining the Place and Way of Psychosocial Treatment of Perpetrators of Domestic Violence, stipulates: *“This Administrative Instruction regulates and determines the place and manner of implementation of psychosocial treatment on a perpetrator of domestic violence in order to prevent the recurrence or if there is a risk of repeated domestic violence.”* While paragraph 2 of this Article determines: *“Psychosocial treatment to perpetrators of domestic violence is aimed at preventing further violent behavior, increasing the self-control by the perpetrator of violence and overcoming situations that could lead to a violent behavior by offering counseling perpetrators of violence, identifying the origin of violent behavior and increasing the responsibility of the perpetrators violence for his violent behavior.”*
41. The National Strategy of the Republic of Kosovo on Protection from Domestic Violence and the Action Plan 2016–2020, exposes the serious commitment and responsibility for priority treatment of the phenomenon of domestic violence where in occasion of which has been determined that the focus will be on:
- *Information and awareness raising activities that aim to prevent the phenomenon of domestic violence;*
 - *Coordination of actions of all the actors for protection, treatment, rehabilitation, and reintegration of the victims of domestic violence;*
 - *Punishment and holding accountable the perpetrators of domestic violence;*
 - *Harmonizing the national legislation with the international legislation, as well as reviewing the standards of services for the domestic violence victim;*
 - *Change of the mentality, prejudice and culture of blame towards domestic violence victims;*
 - *Provision of specialized services according to modern standards which are extended throughout the country and are accessible by all the individual victims of domestic violence, regardless of their attributes related to age, gender, disability, gender identity or sexual orientation, etc;*
 - *Treatment of domestic violence perpetrators through compulsory rehabilitation programs; as well as many other actions planned more specifically in this strategy.*

Legal analyses

42. It is generally accepted that in international human rights law, domestic violence raises many issues related to human rights. In general, human rights and mental health share the same objective of promoting and protecting the right to welfare of all individuals. The

Vienna Declaration and Program of Action, adopted at the World Conference on Human Rights in 1993, confirmed that all human rights are universal, indivisible, interrelated and interdependent.⁴ Main human rights principles, which are essential for an effective response of states against violence towards an individual and abuses with human rights, can be found in several international instruments.

43. Constitution, the highest legal act, protects and guarantees human rights and fundamental freedoms, therefore enforcement and practical accomplishment of these rights is in the interest of rule of law functioning. Constitutional guarantees serve the protection of human rights and rule of law functioning. The Constitution, in Article 21, explicitly defines the obligation of all bodies to respect the freedoms and rights of others; therefore this principle is imperative and must be respected by all.
44. Constitution in Article 25, paragraph 1, provides: “*Every individual enjoys the right to life.*” This paragraph obviously indicates that the right to respect for the life of the citizen is at the center of the constitutional system for the protection of human rights and the right to life (its inviolability) is an absolute human right, which cannot be limited under no circumstances, as well as avoiding from it is not permitted. The state has a positive obligation to take all measures to protect the citizen, especially when human integrity and life are endangered. Constitutional Court of the Republic of Kosovo, in Judgment KI 41-12, found that there was violation of the right to life in cases when the competent state bodies did not provide sufficient protection to citizens exposed to domestic violence and when the circumstances so required. Constitutional Court, in the course of treatment of this category of rights, has declared that the right to life is the most important right of all human rights, from which all other rights derive and clarified that there are positive obligations for state bodies to take preventive and operational measures to protect the lives of all those at risk.⁵
45. According to Istanbul Convention, combating violence against women should not be understood as a matter of crime control, but requires comprehensive measures to achieve greater equality between women and men. Only sustainable equality between women and men with the same rights and responsibilities, with equal opportunities in all areas of life and when their contribution to society is valued and respected equally along with a change in state’s dynamics and attitudes, can really eliminate violence against women.
46. The Ombudsperson recalls that, in accordance with Article 53 of the Constitution, human rights and fundamental freedoms guaranteed by this Constitution are interpreted in accordance with the judgments of the European Court of Human Rights (hereinafter: *European Court.*).
47. Article 2 of the European Convention sets out the general obligations of the State to safeguard the right to life and includes the positive and negative aspects: *a)* the positive obligation to safeguard life; and *b)* the negative obligation to refrain from taking life illegally. Positive obligation imposes obligations of prevention and investigation. Obligations of prevention (see the case of the European Court: *Osmani v. Great Britain, of 28 February 1998*) oblige the governments of the states to prevent and fight criminal

⁴ See : A/CONF.157/24 (Part I), chap. III, World Conference on Human Rights in Vienna on 25 June 1993.

⁵ Constitutional Court, Judgment KI 41/12, Article 57

offenses. Therefore, if it is proven that authorities knew or ought to have known at time of existence of real and immediate risk to life of identified person by the criminal offenses of third parties and if they have not taken appropriate measures within their powers, which according to a reasonable assessment, could be expected, in order to avoid the risk to life, they should be held responsible for non-fulfillment of positive obligations.

48. The European Court, in the course of interpreting Article 2 of the European Convention, in the case of *Branko Tomašić and Others v. Croatia*, of 15 January 2009, regarding positive obligations, analyzes the case where a person has carried out his previous threats to kill his partner and their little daughter. He had been incarcerated for five months because of death threats he had previously made to his family, so authorities ordered compulsory psychiatric treatment in custody. Shortly after his release, he killed his wife and child, before committing suicide. The court found that the authorities were aware of the seriousness of the threats, but failed in their positive obligations, primarily due to insufficient psychiatric treatment considering that it lasted too short, and it was not clear whether this psychiatric treatment was provided appropriately to the person. A very similar situation is presented to us by the subject of this Report. From the evidence secured during the investigation of this case it can be seen that L.S., constantly threatened the victim S.S. and at least since the case was reported to the police in November 2019, the relevant authorities were aware of the seriousness of the threats against the victim S.S., but did not take the necessary action to safeguard her and others' lives. The victim reported on the seriousness of the situation, but her statements had not been adequately assessed and there was no prior risk assessment prior to L.S.'s release from the measure of detention.
49. In the case of *Kontrová v. Slovakia no. 7510 04*, the victim of domestic violence filed a criminal complaint against her husband for physical assault on her. After that, she, accompanied by her husband, went to the authorities and tried to withdraw her criminal complaint and amended the complaint in such a way that her husband's alleged actions were treated as minor offenses and she did not seek further action. Two months after the incident, her husband killed her daughter and son. Before the European Court, the claimant alleged that the police, aware of the abusive and threatening behavior of her husband, had not taken appropriate action to protect the lives of her children. She further complained that it was not possible for her to receive compensation. The European Court considered that there had been violation of Article 2 of the European Convention, regarding the authorities' failure to protect the life of children of the claimant and noted that her family circumstances were known to the local police in view of criminal complaint of November 2002 and emergency telephone calls in December 2002. The Court also found violation of Article 13 (Right to an effective remedy) of the Convention, as the claimant should have been able to claim compensation for non-pecuniary damage, but no such remedy had been at her disposal.
50. In a situation comparable to the case under consideration by this Report, the victim S.S., had reported the case to the police in 2019 and L.S. was remanded in custody and subsequently found guilty by a court but sentenced to a fine (see paragraph 15). So the victim S.S., even on 3 March 2021, had reported the case to the PS in Gracanica and had informed them on the ongoing danger that she is exposed to.

51. European Court in the case of *Talpis v. Italy* (no. 41237/14), which refers to domestic violence to which a mother of two children has been exposed and which resulted in the death of her son and her attempted murder, the Court found that there had been a violation of Article 2, due to the murder of her son and the attempted murder on her; there had been a violation of Article 3 (prohibition of torture or inhuman or degrading treatment or punishment), due to authorities' failure to fulfill their obligations to protect Mrs. Talpis against acts of domestic violence, as well as there has been violation of Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 3 of the Convention. The European Court found that the national authorities failed to undertake effective action against the complaint lodged by Mrs. Talpis and created a situation of impunity for the perpetrator of domestic violence, which led to the repetition of acts of violence, which then led to the tragic end.
52. Law on Protection against Domestic Violence clearly stipulates that the decision on a protection order, or an emergency protection order, is immediately executed by a relevant decision, issued by the competent court and immediately sent to the perpetrator of domestic violence, Kosovo Police, Centers of Social Work, as well as other parties in the procedure, specifying that the Ministry of Labor and Social Welfare, in cooperation with the Ministry of Health, the Ministry of Justice, the Ministry of Local Government Administration, the Ministry of Internal Affairs, the Ministry of Culture, Youth and Sports and the Ministry of Education are responsible for supporting and setting up the necessary support structures and infrastructure, which serves to support and meet the needs of persons who have been subjected to domestic violence including social assistance and medical services, in accordance with applicable law. Based on the investigation of this case, apart from issuance of protection order by the court, no other procedure has been undertaken in terms of supporting and setting up ancillary structures, or the necessary infrastructure, to support and meet the needs of the persons who have been subjected to domestic violence, including psycho-social assistance from the CSW and other services, in accordance with applicable law.
53. From case legal analysis it can be seen that the same situation is presented to us in the case that is under review by this Report, since as a result of negligence or lack of professionalism of relevant authorities, firstly when the victim S.S. had reported the case in Gjilan as well as secondly when the daughter of the victim S.S., had reported the case to the PS in Gracanica, the victim had faced authorities' negligence or lack of professionalism, therefore this event ended with fatality. On the other hand, control mechanisms also proved inefficiency, as at least until the publication of this Report none of the responsible officials was called to disciplinary, administrative, criminal or civil liability. Many articles have been written by media as per this event and all of them laid the responsibility and accused the prosecution and the police for negligence, who solely provided recommendations regarding the event,⁶ but no tangible action were seen in the field by authorities in terms of accountability of officials responsible for such events so that similar cases are not repeat in the future.

⁶ See the link: <https://kli-ks.org/shteti-me-mos-veprim-privon-nga-jeta-sebahate-sopin/>

54. Standard Operation Procedures for Protection from Domestic Violence in Kosovo, document drafted by the Office of Prime Minister, Agency of Gender Equality, details the measures to be taken by each institution when dealing with domestic violence cases. This Document in Annex No. 3 “*Basic Data Form for Victims of Domestic Violence*” determines the basic form of data which is determined to be confidential and to be in service only to the parties in the procedure. This document defines, among others, the risk indicators, which are divided into low, medium and high risk indicators. In this case, we will mention only some of the high risk indicators which could have been assessed in the case under consideration, actually when the case has been reported to the PS of Gracanica. Among the indicators of high risk in the Standard Action Procedures for Protection from Domestic Violence are defined the situations when:

- The perpetrator threatened the victim with a weapon;
- The perpetrator has been arrested several times;
- The perpetrator is not afraid of the police, he attacks the victim even in their presence;
- The perpetrator controls every daily activity of the victim, knows every detail about the victim;
- The perpetrator does not allow the victim to associate with anyone, not even her family members;
- The perpetrator beats the victim and the children;
- The perpetrator threatens the victim that he or she will hurt the children if she leaves the house;
- The perpetrator is able to easily find the victim if she leaves home;
- The perpetrator has a mental disorder and does not use medication, etc.

55. Despite the fact that the Standard Operating Procedures for Protection from Domestic Violence in Annex no. 9, the " Checklist for Police " sets out the checklist for police actions to be taken in cases of protection from domestic violence, the responsible officials in the PS in Gracanica seem to have neglected this. This list includes, among others :

- *Response in cases of domestic violence*
- *Protect victims, children and other witnesses*
- *Perpetrator of domestic violence is taken away;*
- *Basic form completed, needs and risk assessments’ conducted;*
- *Inform the Centre for Social Affairs and Victims’ Advocates or victim’s legal representative;*
- *Copy of the form submitted/information sharing with other actors involved in the process;*
- *Report compiled for the case and a copy of the report given to the victim, CSA and Victims’ Advocate;*
- *The domestic violence case investigated;*

- *If there are elements of a criminal offence, a criminal charge shall be initiated and case referred to the competent prosecutor, etc.*

The responsible officials of the PS in Gracanica did not notify the CSW and the victim's Protector or the victim's legal representative, they failed to compile a report on the case and consequently we have no information that a criminal report has been filed.

Findings of the Ombudsperson

56. The Ombudsperson finds that despite the fact that Standard Operating Procedures for Protection from Domestic Violence in Kosovo⁷ has been drafted in 2013, which also defines checklists for actions to be taken by the responsible authorities, in the given case these procedures have not been respected.
57. The Ombudsperson finds that the responsible authorities did not sufficiently assess the potential risk of the case, even though the victim had pointed out L.S.'s ongoing actions and had given indications of mental health problems.
58. The Ombudsperson finds that coordination of actions between authorities was missing, which raises the need of improving the quality and security of services in cases of domestic violence as well as strengthening of control mechanisms of each institution, from the moment the case of violence in the family is reported until it is completed.
59. The Ombudsperson finds that the police officers in the Gracanica Police Station did not act in accordance with the provisions of the Standard Operating Procedures for Protection from Domestic Violence, since they did not notify the victim Protector that he/she should be present with the victim as well as no victim safety plan had been drafted.
60. The Ombudsperson recalls that, as an integral part of the principle of legal certainty, the principle of legitimate expectation is also guaranteed. Legitimate expectations can be established by public policies, public statements and enforcement of regular practices. A legitimate expectation can be violated even when public officials fail to implement a policy or abide with the procedure. Despite a large number of legal acts which refer to protection from domestic violence, international instruments that are applicable in our country, the Law on Protection against Domestic Violence, the Law on Protection from Discrimination, the Law on Gender Equality, the Criminal Code, Procedures as well as a number of other acts and ongoing statements of government officials to combat domestic violence, it seems that the legitimate expectations in this case have not been met.

The Ombudsperson, based on what has been stated above, pursuant to Article 135, paragraph 3 of the Constitution of Republic of Kosovo: “...*is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed.*” Within the meaning of Article 18, paragraph 1.2, of the Law No. 05/L-019 on Ombudsperson, the Ombudsperson: “(*...*) *has responsibility to draw attention to cases when the institutions violate human rights and to make*

⁷ Visit the link:

<https://abgj.rksgov.net/assets/cms/uploads/files/Publikimet%20ABGJ/Procedurat%20Standarte%20t%C3%AB%20Vepimit%20p%C3%ABr%20Mbrojtje%20nga%20Dhuna%20n%C3%AB%20Familje.pdf>

recommendation to stop such cases (...) “as well as” to recommend (...) promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo” (Article 18, paragraph 1.7).

Therefore, the Ombudsperson

RECOMMENDS

1. To Kosovo Police:

- *To establish a professional commission (ad hoc) to assess actions of responsible police officers regarding the case of domestic violence filed on 3 March 2021, at Gracanica Police Station, if the same had acted pursuant to Standard Operating Procedures for Protection from Domestic Violence, as well as Law no. 03 / L-182 on Protection against Domestic Violence.*
- *To request from all responsible officials in Police Stations to act in accordance with standard operating procedures, when dealing with reporting of domestic violence case.*
- *To require from all police stations that in cases of reporting domestic violence, responsible officials act in accordance with Article 24, paragraph 4, of Law no. 03 / L-182 on Protection against Domestic Violence.*

2. To Prosecutorial and Judicial Council:

- *To organize special training modules with assistance of Academy of Justice for judges and prosecutors in order to assess the risk of such cases and measures to be taken to prevent domestic violence.*
- *Judicial Council to requests from all judges that in all cases when taking decision for issuing protection order, to act in accordance with Article 17, paragraph 2, of Law no. 03 / L-182 on Protection against Domestic Violence.*

3. Victim Protection and Assistance Office:

- *To increase professional capacity of victims' Protectors through adequate trainings, so that in the course of accomplishment of their duties be positioned to understand needs of victims of domestic violence and treatment of responsible parties, so that situations of domestic violence do not recur.*

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

undertaken regarding this issue.

Warmly submitted,

Naim Qelaj
Ombudsperson