



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



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## Foreword by the Ombudsperson

In fulfillment of the constitutional and legal obligation, through the 21st Annual Report, I hereby present to the Assembly of the Republic of Kosovo the situation of human rights in the Republic of Kosovo during 2021.

The report outlines the level of respect for fundamental human rights and freedoms in the Republic of Kosovo, according to the investigation and analysis of cases handled at all levels of government, mainly the role of the legislative, decision-making and sound administration of the executive, as well as judicial protection of rights.

Also this year, the situation caused by the COVID-19 pandemic, continued to be challenging for all sectors, especially for the sectors of health, education, economy, but also for other sectors. On 10 December 2021, the Ombudsperson has published a Special Report on the impact of COVID-19 pandemic on human rights in Kosovo. At the core of this report is the respect and protection of fundamental human rights and freedoms in cases when decisions on protection measures against the pandemic were issued.

I would like to emphasize the fact that, also this year, a large number of complaints related to delays of court proceedings have been addressed, whereas, the lack of a legal mechanism, which would enable compensation of litigants to protect their right to a trial within a reasonable legal deadline, continues to be of concern for the Ombudsperson.





For your attention, I reiterate that the findings and recommendations that I have addressed this year are a continuous efforts and commitment of the Ombudsperson in respecting, promoting and protecting the human rights. Therefore, in this respect, I hope that the findings and recommendations outlined in this Report will receive the deserved attention of the authorities, so that this document is a guideline for the orientation of state functioning policies, in accordance with the principles of respecting human rights, equality, the rule of law, transparency, accountability, as values of democracy.

The level of implementation of the Ombudsperson's recommendations remains a responsibility for all institutions. The Assembly of the Republic of Kosovo has a crucial role, and I believe that there will be efforts and commitment that, by seeking responsibility and accountability from public authorities, to demand implementation of the Ombudsperson's recommendations. Implementation of the recommendations will directly advance the observance of fundamental rights and freedoms for the citizens of this country, who expect, demand and deserve this.

# I. Ombudsperson Institution

## The role and mandate of the Ombudsperson Institution

The Ombudsperson Institution is an institution established under the Constitution of the Republic of Kosovo, with the main mandate of monitoring and defending human rights and freedoms. The Constitution defines the basic principles of its organization and functioning. In exercising its mandate, the Ombudsperson Institution is guided by the principle of institutional, functional and budgetary independence. In the sense of the latter, Article 132, paragraph 2 of the Constitution defines the principle of non-interference and prohibition of receiving instructions from any authority in the Republic of Kosovo. The Constitution also sets out the principle of the obligation of every public institution to respond to the requests of the Ombudsperson. According to Article 134, paragraph 4 of the Constitution, the Ombudsperson shall be immune from prosecution, civil lawsuit and dismissal for its actions or decisions. The Ombudsperson submits to the Assembly of the Republic of Kosovo annual report on the situation of human rights and fundamental freedoms in the country. The function of the Ombudsperson is exercised pursuant to Law No. 05/L-019 on Ombudsperson. According to this law, the Ombudsperson is governed by the principles of impartiality, independence, pre-eminence of human rights, confidentiality and professionalism<sup>1</sup> and enjoys organizational, administrative and financial independence.

1 Ibid, Article 3, paragraph 1.

According to the Law, the Ombudsperson is defined 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 and organizations exercising public authorizations in the Republic of Kosovo, and as a National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments.<sup>2</sup> Also, the Ombudsperson represents a mechanism of equality for promoting, monitoring and supporting equal treatment, without discrimination on grounds protected by the Law on Gender Equality and Law on the Protection from Discrimination.<sup>3</sup>

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 provided for by the Law on Ombudsperson.<sup>4</sup> Whereas, according to the Law on the Protection from Discrimination, the Ombudsperson is state institution for promotion and protection of human rights, which handles cases related to discrimination under the relevant Law on Ombudsperson.<sup>5</sup> Under the Law on Child Protection, the Ombudsperson is defined as a national mechanism for the protection of children's rights. There are also a number of laws that set out additional powers for the Ombudsperson<sup>6</sup>.

## The mandate of protecting human rights

The Ombudsperson exercises the mandate of protection of the human rights through the mechanism of investigation of cases raised by the complainants, the ex-officio investigation of a potential violation, the mechanism of contesting an administrative act in the capacity of a public interest defender, providing general recommendations on the functioning of the judicial system, providing friend of the court (*amicus curie*) services, giving individual recommendations for cases of delays of court cases, conducting mediation and

<sup>2</sup> Law No. 05 / L-019 on Ombudsperson, Article 1, paragraph 1.

<sup>3</sup> Ibid, Article 1, paragraph 2.

<sup>4</sup> Law No. 05 / L-020 on Gender Equality, Article 13.

<sup>5</sup> Law No. 05 / L-021 on the Protection from Discrimination, Article 9.

<sup>6</sup> Law on Access to Public Documents (No. 06/L-081), Law on Contested Procedure (No. 03/L-006), Law on the Kosovo Intelligence Agency (No. 03/L-063), Law on Tax Administration and Procedures (No. 03/L-222), Law No. 05/L-031 on General Administrative Procedure, Law on Administrative Conflicts (No. 03/L-202), Law on Protection and Promotion of the Rights of Communities and their Members in Kosovo (No. 03/L-047), Civil Law against Defamation and Insult (No. 02/L-65), Law on Execution of Penal Sanctions (No. 04/L-149), Criminal Procedure Code of Kosovo (No. 04/L-123), Law on the Use of Languages (No. 02/L-37), Law on Disciplinary Liability of Judges and Prosecutors (No. 06/L-057)

reconciliation proceedings, providing assistance to victims of discrimination, providing recommendations to public institutions for the proper implementation of obligations in the field of prevention from discrimination and equality, referring cases to the Constitutional Court and other mechanisms defined by special laws.

## **The mandate of monitoring the observance of human rights**

The Ombudsperson exercises the mandate of monitoring the observance of human rights through the mechanism of monitoring court cases, where the parties have a status of alleged victim of human rights or where ex-officio it is considered that there may be systematic violations of human rights, mechanism of the obligation of public authorities to respond to the requests of the Ombudsperson, monitoring the implementation of the recommendations provided by the Ombudsperson, overseeing the standard of drafting legislation regarding the definition of human rights and compliance with the Constitution, monitoring the implementation of laws focusing on human rights, and other mechanisms defined by specific laws.

## **The mandate of promoting human rights**

The Ombudsperson exercises the mandate of promoting human rights through the mechanism of raising awareness among the general public and public institutions on human rights, education, training and lectures, publishing opinions and brochures that outline the position of the Ombudsperson on a specific issue, statements on the implementation of certain measures, organization of open days for human rights, organization of thematic conferences / roundtables, exchange of visits with peer institutions, presentation in the media of the Ombudsperson's opinions, and other mechanisms defined by special laws.

## **Mandate as a NPMT**

The Ombudsperson exercises the mandate of the National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments, through regular and unannounced visits to all places where persons deprived of their freedom are held, including police apprehension, detention, staying in health institutions, customs detention, detention of immigrants and any other place where there are suspected violations of human rights and freedoms. In accordance with the Law on Ombudsperson, provides recommendations for the compliance of laws and other acts with the Constitution and international standards in the prevention of torture. The NPMT cooperates with international, local mechanisms and other mechanisms defined by a special law in the field of prevention of torture.

## **Mandate as a mechanism of equality**

The Ombudsperson exercises its mandate as an equality mechanism to promote, monitor and support equal treatment without discrimination on the grounds protected by the Law on Gender Equality and the Law on the Protection from Discrimination and in accordance with the Law on Ombudsperson. The Ombudsperson exercises such mandate through investigation of cases of discrimination, overseeing the implementation of the Law on the Protection from Discrimination, promoting good practices in promoting equality, informing the public about cases of discrimination, handling cases related to gender discrimination and cooperates with social partners, local and international non-governmental organizations.

## **International instruments and standards on which the exercise of Ombudsperson's function is based**

The Ombudsperson exercises its mandate first of all by relying on the international instruments included in Article 22 of the Constitution of Kosovo: Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities, Convention on Elimination of all Forms of Racial Discrimination, Convention on the Elimination of all Forms of Discrimination against Women, Convention on Child Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The Ombudsperson also takes into consideration other instruments of a universal character, which, although not included in domestic legislation, have a valuable status in consolidated democracies. Some of them are: Convention on the Rights of Persons with Disabilities, International Convention for the Protection of All Persons from Enforced Disappearance, UN Convention Relating to the Status of Refugees, etc. The Ombudsperson also applies a number of international standards, such as: Paris Principles, Venice Principles, etc.

## **Access to the Ombudsperson Institution**

Citizens who claim that their rights have been violated by the public authorities of the Republic of Kosovo, may address to the Ombudsperson Institution every work day through the Ombudsperson offices, through the Central Office in Prishtina and through its regional offices in Gjilan, Ferizaj, Prizren, Gjakova, Peja, Mitrovica South, Mitrovica North and Graçanica. In addition to physical access, citizens may also address to the Ombudsperson Institution by mail, telephone, social network Facebook, e-mail and the toll-free phone line: 080015555.

The Ombudsperson conducts regular visits to all prisons, police detention centers and detention facilities. To enable direct communication with prisoners, persons into custody and detainees, OIK has placed mailboxes in visible places at all prisons and detention centers in the Republic of Kosovo, to receive complaints. These boxes are managed and supervised by the Ombudsperson Institution.

## **Strategy of the Ombudsperson Institution 2021-2025 and Implementation Plan 2021-2023**

With the aim at advancing the implementation of its mandate, on 18 March 2021, the Ombudsperson has approved the Strategy of the Ombudsperson Institution 2021-2025. The strategy shall be implemented through a three-year Implementation Plan 2021-2023, which is an integral part of the Strategy. The Strategy has established the vision, mission, strategic and specific objectives and actions that aim to guide the work of the OIK in the medium-term, in implementing constitutional responsibilities and competencies; of the Law on Ombudsperson; the Law on Gender Equality and the Law on Protection from Discrimination; of other legislation in force in Kosovo and international standards.

The OIK Strategy aims to increase the impact of the Ombudsperson's work in the protection and promotion of human rights and fundamental freedoms, education on human rights, as well as in prevention of violations by public institutions. Identification and investigation of ex-officio cases and systematic violations, increase of the number of individual cases, their

effective investigation and review are the goals on which the institutional capacities will be focused.

The OIK Strategy aims to increase the level of implementation of the Ombudsperson's recommendations and deepen cooperation with relevant committees of the Assembly of the Republic of Kosovo, central and local level institutions, media, civil society, as well as international organizations in the country, with international human rights and equality mechanisms. All these goals will be achieved through four strategic goals:

1. Protection and monitoring of fundamental human rights and freedoms through the increased influence of the Ombudsperson Institution in fulfilling its mandate;
2. Promotion of fundamental human rights and freedoms and the role of the OIK;
3. Promotion of Sustainable Development Goals; and
4. Further development of the institutional capacity and human resources of the OIK.

An important novelty and step is the strategic goal for the promotion of Sustainable Development Goals and their relation with human rights, as well as building a system for data generation in relation to SDC indicators.

The OIK Strategy 2021-2025, in addition to being a planning document, also serves as a document by which the performance of the institution should be evaluated. The Strategy, its Implementation Plan 2021-2023 and its ongoing monitoring and reporting process should serve as a basis for improving the OIK's strategic decision-making process for the next five years.

## CENTRAL PART OF THE STRATEGY



GENERAL OBJECTIVES



SPECIFIC OBJECTIVES



INDICATORS



TARGET

## STRATEGIC OBJECTIVES

### 01

Protection and supervision of fundamental human rights and freedoms through the increased influence of the Ombudsperson Institution in fulfilling its mandate.

- Protection and monitoring of the respect for the human rights, with a focus
- on systematic cases and those of the general interest;
- Improve efficiency and effectiveness in reviewing complaints and ex officio cases
- Increase the degree of implementation of OIK recommendations
- Monitoring of the legislation related to human rights and freedoms in Kosovo

### 02

Promotion of fundamental human rights and freedoms and the role of the OIK.

- Public awareness of fundamental human rights and freedoms
- Promotion and education for human rights in the institutions responsible for the implementation of constitutional and legal standards in the country
- Increase of OIK cooperation with other institutions and non-governmental organizations
- Advancing continuous communication and awareness on the role and importance of OIK;



# 03

## Promoting Sustainable Development Goals (SDG)

- Development of awareness programs for the promotion of Sustainable Development Objectives
- Development of a system for data generation in relation to the SDG indicators on the protection and promotion of human rights in the OIK
- Advancing the capacities of OIK staff in promoting and addressing of SDG's, and their interconnection to human rights
- International cooperation in mutual capacity building, exchange of experiences and good practices with regional countries towards achieving progress in promoting and addressing of SDG's

# 04

## Further development of the institutional capacity and human resources of the OIK

- Continuous provision of opportunities for learning and professional development for OIK staff
- Increase of international cooperation of staff through exchange programs
- Strengthening the institutional capacity, administration and internal management of the OI including through functional review and internal normative acts'

## II. The situation regarding respect for human rights during 2021<sup>7</sup>

### Progress of the legislative process

The Ombudsperson, similarly to previous years, has followed the legislative process at the level of Government and the Assembly of the Republic of Kosovo regarding the fulfilment of obligations deriving from human rights law. The focus of the Ombudsperson's monitoring was to assess the compliance of draft laws/laws with human rights standards in terms of fulfilling the positive obligations of the state in regulating certain rights and freedoms through the issuance of laws.

The Ombudsperson noticed that in the Legislative Program for 2021<sup>7</sup>, the Government of the Republic of Kosovo has foreseen the review and approval of 186 draft laws (106 new draft laws and 80 draft laws on amending and supplementing of the existing laws). Out of these draft laws, the Assembly has adopted only 36 of them. The low level of fulfilment of the Legislative Program for laws

<sup>7</sup> The Legislative Program for 2021 was approved at the 11th meeting of the Government of the Republic of Kosovo, under the Decision No. 01/11, dated 7.5.2021, as amended and supplemented by Decision No. 12/16, dated 22.6.2021, by Decision No. 23/16, dated 22.6.2021, by Decision No. 06/17, dated 26.6.2021, by Decision No. 02/31, dated 25.8.2021, by Decision No. 01/34, dated 8.9.2021, and by Decision No. 02/42, dated 27.10.2021.



affecting human rights has resulted in a lack of implementation of the positive obligations of public authority towards citizens.

Among the draft laws that were brought to the Assembly for review and adoption is the Draft Civil Code of Kosovo. Regarding this issue, the Ombudsperson in the past years has submitted its comments in order for the Draft Code, in accordance with the requirements of the constitutional right to respect for family life, to explicitly include the legal provisions for the recognition and protection of homosexual relations, even in non-marital form.

Also, the Ombudsperson noticed that in the Draft Civil Code, the recommendation of the Ombudsperson published in the ex-officio report 206/2019 regarding the prevention of child marriages has been implemented.

The Draft Law on Public Officials and the Draft Law on Salaries in Public Sector are in the process of being drafted at the ministerial level. In this regard, the Ombudsperson continues to hold the position that during the drafting of these two draft laws, the judgments of the Constitutional Court should be taken into consideration in detail, and the requests of the court regarding these draft laws should be fully included.

The Ombudsperson continues to ascertain that the lack of consolidated versions of the supplemented / amended legislation published in the Official Gazette of the Republic of Kosovo constitutes a barrier to the right of citizens to access information. The Ombudsperson finds that the non-approval of the Law on Salaries in Public Sector results in non-implementation of the principle of equality in compensation of employees in this sector. The Ombudsperson will also continue to follow the draft laws in the field of Labor Law, in the field of social and family services, in the field of state-funded pension schemes, in the field of evaluation and recognition of status and benefits and services of persons with disabilities, in the field of occupational health, in the field of protection from domestic violence, in the field of property restitution, etc.

The Ombudsperson recalls that failure to start the implementation of number of laws constitutes a violation of the rights of the subjects deriving from such laws. A concrete example is the failure to start the implementation of the Law on Health Insurance, the Law on Child Protection, the Law on Electronic Supervision of Persons whose Movement is limited by the Decision of the Court, etc.

## Judicial protection of human rights

The rule of law is one of the main principles of the constitutional order of the Republic of Kosovo.

Article 54 of the Constitution of Kosovo clearly stipulates that *“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”*.

The protection of human rights in court is complemented by the judicial control of the administration (control of the constitutionality and legality of certain acts of administrative bodies), which decide on someone’s law-based right, obligation or interest.

One of the ongoing challenges of the judicial system remains the non-full implementation of the standards for fundamental human rights and freedoms, as provided by Article 53 of the Constitution, according to which *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights (ECtHR)”*. References to the case law of the ECtHR by regular courts in reasoning their decisions continue to be scarce.

## Delays of judicial proceedings

The Ombudsperson finds that one of the most serious problems in terms of legal protection of human rights in the Republic of Kosovo is the delays of court proceedings. Despite the progress made by the judiciary in reviewing cases, there are still delays of court proceedings, primarily due to the large number of backlog cases from previous years, then filing of new cases and reversal of decisions by the higher courts decisions according to ordinary and extraordinary legal remedies in appeals proceedings, as well as their return for reconsideration and reinstatement.

Given the maxim *“Justice delayed is justice denied”* and *“Delaying justice and denying justice is the same thing”* (according to Magna Carta), delays of court proceedings is a violation of the fundamental human rights and freedoms of citizens guaranteed by the Constitution.

The Ombudsperson finds that the increase in the number of cases in the courts has been influenced by the fact that the executive has failed to systematically fulfil the obligations arising from the collective contract regarding jubilee salaries, travel expenses, meals, salary differences, etc. This situation, in addition to aggravating the situation with the number of cases in the courts, has caused consequences and other damages, thus hindering the realization of workers’ rights and on the other hand has created unnecessary expenditures for the state budget. No attempt has been made by public authorities to resolve this issue.

Delays of judicial proceedings is also a result of lack of capacities, which has also affected the duration of judicial proceedings, therefore the Ombudsperson notes that the Government of the Republic of Kosovo should support the judicial system with a budget and approve requests for increase of its capacity to contribute to increasing the efficiency and shortening the deadline for the completion of court proceedings within a reasonable legal deadline and in accordance with Article 31, paragraph 2 of the Constitution of the Republic of Kosovo and the European Convention on Human Rights.

In all cases of complaints which are within its competence, regarding delays of court proceedings by the courts, the Ombudsperson has conducted investigations and reacted to cases when it found that there are delays in court proceedings and in some cases the court has taken into account these reactions by proceeding these cases.<sup>8</sup> Complaints received during the reporting year for the delays of proceedings mainly relate to delays in proceedings related to legal-civil nature disputes, administrative disputes, delays in criminal proceedings<sup>9</sup> (inefficient and ineffective investigations).

Also, the Ombudsperson during the reporting year has received requests for monitoring court hearings in criminal<sup>10</sup> and civil<sup>11</sup> proceedings, with allegations of lack of objectivity of judges in deciding their cases.

The difficulties in the realization of the legal rights of the citizens before the justice authorities have created in the citizens perceptions and public opinions of distrust in the work of the judiciary,<sup>12</sup> despite the completion of numerous court cases, some of which were settled in optimal time.

A lack of a legal mechanism for protection of the right to a trial within a reasonable deadline remains a worrying problem for the citizens of the country, which would enable the parties to be compensated for the material damage caused. In 2018, the Ombudsperson recommended this issue to the Assembly of the Republic of Kosovo<sup>13</sup> for the issuance of the law on the determination of effective legal remedies for compensation in cases of violation of the right to judicial protection within a reasonable time.

The Ombudsperson notes that the COVID-19 pandemic was an additional challenge to the judicial system and affected the conduct of hearings and access of public to hearing sessions. As a result of the situation, the delays continued during the reporting year. In this regard, the Ombudsperson has published a Special Report on the health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo<sup>14</sup>.

During the reporting period, the Ombudsperson has published four reports with recommendations and three letters of recommendation to the courts. In case A. No.

8 Complaint No. 580/2021, Complaint No.316/2021, Complaint No.231/2021, which was monitored by OIK representatives, Complaint No.135/2021, Complaint No. 717/2020, etc

9 Complaint No.537/2021, Complaint No.597 / 2021, etc

10 The OIK has monitored the court hearings of the case A.nr. 131/2021, which continue in 2022

11 The OIK has monitored court hearings in cases A.nr.306 / 2021, 231/2021 etc.

12 Claim based on many of the citizens' complaints submitted to the Ombudsperson; also <https://www.gjyqesori-rks.org/>, according to the results of the online evaluation of the courts regarding the degree of satisfaction with the services of the courts, it is noticed that the citizens are somewhat satisfied with the services of the Basic Court in Prishtina at 89.42% and the Basic Court in Gjakova at 85.77%, while the citizens at least satisfied with the services of the Court of Appeals, but other courts are also below the level of 65.45%.

13 Report with ex-officio recommendations 129/2018, <https://oik-rks.org/2018/03/29/raport-me-rekomandime-ex-officio-nr-1292018/>

14 <https://oik-rks.org/2021/12/10/report-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-rajat-e-njeriut-ne-republiken-e-kosoves/>

482/2019, the complainant had filed a complaint with the OIK regarding the delays of court proceedings in the Basic Court in Prishtina. After the publication of the report, the court issued a meritorious decision regarding the case. Case A.No.58/2020, appeal against the Special Chamber of the Supreme Court of Kosovo (SCSCK) in the case C-III-14-0315, after the investigation, a violation of the right to a trial within a reasonable deadline was found, therefore the Ombudsperson had recommended to the SCSCK to take all necessary actions for the review and decision of the case and this recommendation is pending to be implemented.

Ex-officio case No. 150/2021, regarding the positive obligations of the state for the right to life and protection from domestic violence, after the investigation of the case, the Ombudsperson had issued three recommendations to the Kosovo Police, which have been implemented, one recommendation to the KJC and KPC, which has also been implemented, while recommendation to the KJC<sup>15</sup> is pending to be implemented.

With regards to cases A.No.168/2018, A.No.404/2020 and A.No.734/2020, complaints to the OIK were submitted regarding the delays of court proceedings in the Basic Court in Prishtina. The Ombudsperson, following the analysis of case files and conducting the necessary investigations, has found violations, therefore, published three letters of recommendation in terms of recommending the review and deciding of certain cases as soon as possible.

## **Delays of procedures in cases of privatization of socially-owned enterprises**

During the reporting year, the Ombudsperson received complaints against the KPA regarding the non-recognition of workers' rights deriving from the privatization of socially-owned enterprises. In this regard, the Ombudsperson noted that the practice of procedural delays in the Special Chamber of the Supreme Court of Kosovo regarding the appeals filed by former employees of socially-owned enterprises continues. Regarding this issue, the Ombudsperson has published reports and has recommended rendering decisions without further delay on issues that are under review by this court. Regarding such cases, the Ombudsperson in recent years has raised concerns about the delay of procedures related to the resolution of issues related to workers' rights arising from the process of privatization of the socially-owned enterprises, delays that violate the constitutional right to a fair and impartial trial.

## **Disciplinary liability of judges and prosecutors**

Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors vests the Ombudsperson with additional competencies, including: the competence to send to the competent authority the complaint received against a judge or prosecutor; the competence to request the Prosecutorial and the Judicial Councils of Kosovo to initiate disciplinary proceedings; and the competence to appeal to the Supreme Court, in cases provided by law.

The Ombudsperson, also in previous annual reports, has emphasized that the above-mentioned competencies are additional competencies of the Ombudsperson, taking into

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15 The recommendation to the KJC was: "The Judicial Council should request from all judges that in all cases when they make a decision on a protection order, to act in accordance with Article 17, paragraph 2, of Law No. 03 / L-182 on Protection from Domestic Violence."

account the Law on Ombudsperson and other laws in force. The Ombudsperson, in line with Article 16, paragraph 8 of Law No. 05/L-019 on Ombudsperson, can give general recommendations for the functioning of the judicial system and may not interfere in cases or other legal proceedings that are taking place in the courts, except when there are delays in proceedings. With regard to the competence to request the initiation of disciplinary proceedings, Law No. 05/L-019 on Ombudsperson, in Article 25, paragraph 2, 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”*. However, as seen above, Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors gives the Ombudsperson the competence to request initiation of disciplinary procedures and in other cases provided for in Articles 9.5 and 9.7 of the said law, as well as the competence to submit an appeal to the Court Supreme in certain cases.

During the reporting year, based on Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors, the Ombudsperson has received a total of 12 complaints, of which 9 complaints have been declared as admissible and 3 of them as inadmissible. It is worth mentioning that the Ombudsperson in all these cases, within the legal deadline, has received responses from the responsible authorities within the legal deadline and has had good cooperation with the competent authorities regarding the review of these complaints of citizens within the legal deadlines provided by law. Out of 9 complaints, which were declared by the Ombudsperson as admissible, and which were opened for investigation, 2 of them were submitted based on Article 12.3 of Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors: *“The Ombudsperson may request the Council to initiate disciplinary investigations against a Court President or the Chief Prosecutor if they have reasons to believe that they have committed a disciplinary offense pursuant to Article 9, paragraph 7 of this Law”*. After investigating these cases, it was concluded that the complaints of the parties have not met the requirements of Article 9, paragraph 7 of the Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors, therefore the cases were not processed to initiate disciplinary investigations by the relevant Council. With regard to other seven complaints declared by the Ombudsperson as admissible, they were processed according to the requests of the complainants for further treatment by the competent authorities and in accordance with the Law on Disciplinary Liability of Judges and Prosecutors, the Ombudsperson has received the decisions of competent authorities within the legal deadline provided by law, and has notified the complainants of the decisions it received.

## Monitoring of the justice system reform

**In July 2021 the Strategy on Rule of Law 2021-2026 was approved.**<sup>16</sup> Integral part of the Strategy is the Action Plan, which specifically provides all activities, within the policy measures that are expected to be undertaken by the Government, Ministry of Justice, KJC, KPC, Academy of Justice, Kosovo Police and other relevant institutions, to address the identified problems and achieve the intended objectives.

According to the strategy in question, it is foreseen that for the proper and independent functioning of the judiciary, the following is important: efficiency, professionalism, accountability and integrity. Further according to the strategy, the main problems identified are: delays in the judicial and prosecutorial system, the need to increase professionalism and competence, insufficient accountability and a vulnerable system against external

<sup>16</sup> <https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>

stakeholders. Based on these, the Ombudsperson considers that it is of special importance to reform the judiciary system through implementation of the Strategy and Action Plan by the justice institutions.

However, the Ombudsperson reminds on the need to respect opinions of the Venice Commission regarding the instruments of justice reform, with particular emphasis on respect for the standards of judicial independence, impartiality of the judge and protection of the judiciary and prosecutorial competencies from political interference. The Ombudsperson will continue to monitor and provide recommendations for justice system reform to be in line with the best international standards.

Regarding the protection of human rights and freedoms in the field of judiciary, it is known that the Ombudsperson has a limited mandate, defined by the Law on Ombudsperson, according to which the Ombudsperson can give general recommendations for the functioning of the judicial system, not interfering in cases and legal proceedings that are taking place in the courts, except for cases related to delays in judicial proceedings.

## **Enforcement of human rights by the executive authorities**

The Ombudsperson continued to monitor the adaptation of the work of the administration and executive bodies in general to the obligations arising from human rights law. In this regard, attention has been paid to the monitoring of Government decisions in respect of human rights and good governance, with particular emphasis on the monitoring of Government decisions in the area of restrictive measures for the management of the COVID-19 pandemic.

As in the previous year, during the reporting year the work of the executive authorities was largely characterized by the COVID-19 pandemic.

The Ombudsperson has closely followed the issues related to the impact of Government decisions. In this regard, on 10 December 2021, the Ombudsperson has published a comprehensive report *“Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo”*. The main findings of this report, among others, are: lack of budget for the improvement of health services at all levels of the health system, lack of adequate treatment of chronically ill persons during the pandemic, lack of planning for the allocation of funds for the support and treatment of cases of domestic violence during pandemic period, etc.

Regarding the issues related to the pandemic, the Ombudsperson has received a number of complaints related to the criteria set by the Government for the possession of certificate confirming vaccination with two doses of vaccine against COVID-19. Although in Government decisions related to measures for the prevention of COVID-19, vaccination has not explicitly been made mandatory, but the established measures themselves provide it as a requirement so that citizens can access public facilities and enter the Republic of Kosovo. The Ombudsperson considers that the Law on Preventing and Combating COVID-19 Pandemics in the Territory of the Republic of Kosovo authorizes the Ministry of Health that during the COVID-19 pandemic, in addition to the authorizations deriving from the Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases and Law No. 04/L-125 on Health, to have the authority to limit freedoms and human rights, except those specified in Article 56(2) of the Constitution, for as long as such is necessary to combat and prevent the spread of COVID-19 disease.



On the other hand, the case law of the European Court of Human Rights, according to which are interpreted human rights in the Republic of Kosovo, in the case of *Varvicka and Others vs. the Czech Republic*, has ascertained that vaccination constitutes a restriction of the right to private life. However, the court considers that such a restriction is justified because it is necessary measure for the protection of public health and the rights and freedoms of others.

During the reporting year, the Ombudsperson issued a number of special reports for the executive central and local level bodies. The main findings of the Ombudsperson regarding the violation of human rights will be presented based on the findings and reports with recommendations, which the Ombudsperson has addressed to executive authorities.

- Health care services for people affected by HIV and Tuberculosis, in circumstances created as a result of COVID-19 pandemic and with a focus on persons with HIV and TB in Kosovo, as well as the necessity of their access to health services in times of pandemic. The Ombudsperson, based on the findings presented and the facts gathered, as well as analysis of relevant laws, which determine the right of persons infected with HIV/AIDS and TB in Kosovo, finds that there have been violations of fundamental human rights and freedoms, as the relevant authorities have failed to meet their constitutional and legal obligations towards persons infected with HIV/AIDS and TB, as a result of the situation created by the COVID-19 pandemic.
- The issue of effective realization of health rights during the COVID-19 pandemic in Kosovo, in relation to access to health care and treatment, mainly in secondary and tertiary level institutions, focusing in particular on restrictions on the provision of health services (specialist visits and elective surgeries) for persons who were not infected by COVID-19 virus. The Ombudsperson, among others, found that the action of health authorities regarding the cessation of elective surgeries and specialist visits, in addition to not having legal grounds, had left no alternative where these people could be treated and that the state had not assumed responsibilities, including financial costs if these services could have eventually been obtained from private health institutions.
- The issue of legality of the operation of Hydropower Plants in Deçan and Shterpce. After analysing the case, the Ombudsperson concluded that competent bodies, despite the impact on the environment of the hydropower plants, reactions, dissatisfaction and protests of citizens and civil society, have not made any attempts to provide accurate information regarding the legality of the operation of hydropower plants, and compliance with the principle of public participation in decision-making.
- The Ombudsperson concluded that the Republic of Kosovo failed to fulfil its positive obligation to protect victims of domestic violence due to non-implementation of provisions of the Law on the Electronic Supervision, based on information gathered from the Kosovo Police, Basic Prosecution Offices and Basic Courts.
- The Ombudsperson has addressed positive obligations of the state for the right to life and protection from domestic violence. In this regard, a report was published dealing with the murder and suicide, which occurred on 14 March 2021 in the Emshir neighbourhood in Prishtina, in which case the media reported that a man killed his wife with a firearm, and then committed suicide. The Ombudsperson concluded that despite the fact that since 2013, the Standard Operating Procedure for Protection from Domestic Violence in Kosovo has been drafted, which set out checklists for actions to be taken by the responsible authorities, in this case these procedures were not observed, that the responsible authorities had not sufficiently assessed the potential risk of the case and that there was a lack of coordination of actions between authorities, which raises the need to improve the quality and security of services for cases of domestic violence and strengthen the control mechanisms of

each institution, from the moment of reporting the case of domestic violence until its conclusion.

- During the reporting year, the Ombudsperson issued a report on the rights of single mothers (parents) to leaves, as provided for by Labour Law, respectively the legal definition according to which mothers with children up to three years old, single parents and persons with disabilities are entitled to annual leave for two additional working days. In this case, the Ombudsperson found that there is a violation of the Labour Law and recalled that discrimination in the area of labour is prohibited.
- In order to improve the situation with implementation in practice of the Labour Law, the Ombudsperson has sent an Opinion to the Constitutional Court on a case raised by the Supreme Court concerning the review of Article 94 of the Labour Law, which relates to the competencies of the Labour Inspectorate. Through this Opinion, the Ombudsperson has emphasized that the review of cases related to the termination of employment contract, compensations to which employees are entitled according to this law, as well as the return of employees to work and wage compensation for the time of illegal termination of employment relationship by the Labour Inspectorate, constitutes exceeding the competencies of the Labour Inspectorate, which consequently results in violation of the principle of separation of competencies, because a body that operates within the executive branch cannot review and decide issues which the law has expressly left to the jurisdiction of the courts, i.e. within the judiciary. The Ombudsperson states that this issue has not been decided by the Constitutional Court until the time of drafting this report.
- Complaints of students and former students of private colleges, higher education bearers in Kosovo, related to the non-recognition/non-verification of diplomas, have been handled. The Ombudsperson has issued a report dealing with the issue of student complainants who had completed the study programs at the Higher Education Bearers (BAL), in areas which had not received accreditation or license, and the issue of enrolment in college, which had accreditation, but upon completion of studies, the college's the request for re-accreditation was rejected, and as a result in these cases the applicants' diplomas were invalid. In other cases, the complainants were not recognized/verified diplomas due to non-submission of registry books by BALs, and they also cannot continue further studies or studies abroad. The report assesses that the inaction of institutions responsible for overseeing the implementation of legal provisions has created space for BALs to operate contrary to legal provisions, in the absence of accreditation and improper administration of relevant documentation, as provided by legal provisions. Since accreditation is a process that guarantees that a higher education institution and its programs meet internationally accepted quality standards, and that the qualifications issued by BALs give their holders a number of rights, the Ombudsperson states that some BALs have issued diplomas in complete violation of accreditation and licensing procedures. The Ombudsperson has also issued a number of reports with recommendations regarding the amendment or issuance of normative acts.
- The Ombudsperson noted that the Law on Minor Offenses stipulates that "*no person shall be convicted for a minor offense nor impose a minor offence sanction for an offense which was not defined as an offence by law or acts (municipal regulation) of the Municipal Assembly before the omission, and for which a minor offence sanction was not determined*". Furthermore, the Law on Minor Offenses obliges that the provisions on minor offenses that are not in compliance with it, including provisions of the Law on Pre-University Education, be harmonized within one year from the date of entry into force of the Law on Minor Offenses. The Ombudsperson further noted that more than four years have passed since the entry into force of the Law on Minor Offenses, therefore, recommended amending and supplementing of Law

No. 04/L-032 on Pre-University Education in the Republic of Kosovo, respectively Articles 15 and 47 be harmonized with Law No. 05/L-087 on Minor Offenses.

- The Ombudsperson has addressed the issue regarding the fact that in some Kosovo municipalities, in addition to the legal criteria set out in the Administrative Instruction (MEST) No. 19/2016 for Children Inclusion in Preschool Institutions in Kosovo, they have set additional criteria for the admission of children in public kindergartens. The additional criterion required that both parents be employed and that this criterion is set by preschool institutions due to limited capacity. The Ombudsperson considers that Administrative Instruction (MEST) No. 19/2016 is not clear, concise and that its relevant norms are contradictory, have no consistency and are not in compliance with the basic principles and authorizations arising from the Law on Preschool Education and, as such, can be considered as a basis for discrimination. Therefore, it has recommended amendment of the Administrative Instruction (MEST) No. 19/2016 for Children Inclusion in Preschool Institutions in Kosovo by regulating, among others, the procedure and criteria in accordance with the basic principles of the Law No. 02/L-52 on Preschool Education.
- The Ombudsperson issued a report with recommendations, which highlighted the lack of sub-legal acts for the implementation of the Law on Child Protection and non-compliance with legal deadlines for the issuance of all acts provided by the said law. The Ombudsperson noted that out of 18 sub-legal acts that were provided by law, only 2 have been issued, therefore it recommended the relevant institutions to issue them as soon as possible.
- The Ombudsperson issued recommendations to the Mayor of Gracanica and the Ministry of Local Government Administration, regarding the non-implementation of Article 61 of Law No. 03/L-040 on Local Self-Government and Article 5, paragraph 1 of the Administrative Instruction (MLGA) No. 02/2020 for the Procedure of Appointing Deputy Mayors in Municipalities. The case concerns the non-appointment of Deputy Mayor for Communities in the municipality of Gracanica. During the investigation of the case, it was noticed that there is a discrepancy in the naming of Article 60 between the Albanian language and the Serbian language, as well as Article 61, which in practice may lead to uncertainty about the implementation of the law. Therefore, the Ombudsperson, in addition to requesting from the MLGA supervision of the implementation of Article 61, which has to do with the appointment of the Deputy Mayor, which was not initiated by the Mayor of Gracanica almost throughout his term as Mayor, also required linguistic alignment of Law No. 03/L-040 on Local Self-Government, namely Articles 60 and 61.
- The Ombudsperson has requested from the Ministry of Health to issue the Administrative Instruction on Procedures for Licensing Public Health Institutions, as well as implementation of Article 42 of the Law No. 04/L-125 on Health, which deals with the licensing and accreditation of public and private health institutions. According to Article 42 of the Law on Health, the MoH is obliged to have a sub-legal act on licensing procedures for health institutions. The Ombudsperson noted that MoH issued an Administrative Instruction on Procedures for Licensing Private Health Institutions, but has not issued such an instruction on public health institutions. MoH has not fully implemented the obligation deriving from Article 42 of the Law on Health, according to which there must be a legal basis for licensing and accreditation of health institutions, without distinction. Therefore, it considers it necessary for the MoH to take urgent actions to issue an Administrative Instruction on Procedures for Licensing Public Health Institutions.
- The Ombudsperson has recommended amending of the Regulation (MCYS) No. 04/2019 on the Establishment and Functioning of the Resident Ensemble of the National Theatre and City Theatres with government Regulation (GRK) No. 15/2018 on the ranks and salaries of creators and performers of culture and professional employees of culture heritage, as it was noted that there are some unclear and non-

harmonized notions. The Ombudsperson noticed that in Article 8 of the Regulation No. 04/2019, as work experience is recognized only the experience of actors, who are employed as regular members of the resident ensemble (or sister theatres), but no other criteria are defined according to which actors can be categorized. In this case, according to the content of the provision in question, it is unclear whether the experience realized in the city theatres is taken into account, as a criterion for the categorization of actors. The Ombudsperson considers that the shortcomings in the normative acts affect the rule of law, respectively legal certainty. Legal certainty requires that legal rules be clear and precise, intended to anticipate situations, and actions or promises given to individuals by the state (legitimate expectations) must be respected.

- The Ombudsperson has received individual complaints regarding the implementation of the Law on Public Officials, whereby encountered circumstances where the authorities had misinterpreted this law. In one of the complaints received, the Ombudsperson was noted that the Ministry of Internal Affairs had misinterpreted the provision governing annual leave. The MIA, instead of implementing these provisions from the moment of entry into force of the Law on Public Officials, had retroactively implemented the provisions of the Law on Public Officials by subtracting the number of annual leave days obtained in accordance with provisions of the Law on Civil Service of the Republic of Kosovo.
- The Ombudsperson has encountered misinterpretation of the provisions of the Law on Public Officials also during the investigation of two individual complaints against the Privatization Agency of Kosovo in the case of issuing decisions to impose a preventive suspension measure, due to the initiation of criminal proceedings. It is noted that the KPA has implemented the provisions of the Law on Public Officials (Article 58, paragraph 4) for procedures that started at the time when this law was not in force. The issue of suspension did not start with the entry into force of the Law on Public Officials, but the complainants continued to be suspended until a decision of the competent court. Retroactive application of the law directly affects legal certainty and consequently the rule of law. Retroactive application of the law, in addition to being directly related to the legal certainty of the parties, it may cause irreparable damage to the parties against whom proceedings were being conducted. Retroactive application of the law is in principle prohibited, except when permitted by law and when such a thing is more favourable to the parties. Therefore, the Ombudsperson considers as necessary to increase the capacity of law enforcement officials, because in this case we are dealing not only with misinterpretation of the law, but also with the violation of basic principles of law enforcement.
- The Ombudsperson has dealt with a number of individual complaints against Kosovo Customs regarding the customs privilege of customs facilities for the import of passenger vehicles, adapted to the needs of persons with disabilities, which, according to the received complaints, Kosovo Customs provides only to one category of persons with disabilities from the age of 18, not taking into account and not making a distinction based on the degree and nature of their physical disability. The Ombudsperson concluded that the Kosovo Customs, by imposing a general requirement - possession of a driver's license for all categories of persons with disabilities, excluded persons with paraplegia, tetraplegia, blind persons, as well as other persons with disabilities, to enjoy their legally granted right to the customs privileges in question. The requirement imposed on the beneficiaries of the right in question, due to the nature of their disability, is an objectively impossible condition, which they cannot fulfil in any way, and puts them in an unequal position in relation to the other category of persons with disabilities, for whom, by the nature and degree of their disability, this requirement is feasible. Therefore, the Ombudsperson has addressed recommendations to the Kosovo Customs to create conditions for the full implementation of the right provided by law for customs facility with the possibility

of indirect exercise of the rights of the beneficiary through the legal guardian or authorized persons, provided with driver's license and that their practices are in accordance with anti-discrimination legislation.

The Ombudsperson appreciates the cooperation and readiness of the executive power to respond to requests related to cases that the Ombudsperson has opened for investigation. However, the level of implementation of the Ombudsperson's recommendations remains relatively low.

The Ombudsperson appreciates the request of the Prime Minister addressed to the ministers of the country's Government, by which he reminds them of the seventh indicator in the framework of the Sector Reform Contract in Public Administration, which deals with the implementation of the Ombudsperson's recommendations. Furthermore, the Ombudsperson appreciates the request of the Prime Minister to prioritize the review of the Ombudsperson's recommendations.

The Ombudsperson has analysed the Sigma Report, regarding the monitoring of the principles of public administration for 2021. According to this report, the low level of implementation of the OIK recommendations is considered worrying. In this regard, according to this report, it is recommended that the Assembly of the Republic of Kosovo should increase cooperation with the OIK, in order to increase the accountability of public administration in terms of implementing the OIK recommendations.

The Ombudsperson further noted that according to this report it is estimated that, despite the sufficient legal basis, the OIK could not be effective; because the implementation of recommendations by state administration bodies is deteriorating (the implementation rate of recommendations in 2020 is 19%).

According to this report, it is deemed that the Assembly of the Republic of Kosovo has not given the necessary support to OIK, and for these reasons the OIK was not able to exercise its mandate in terms of monitoring and sanctioning of the executive power. This report constantly reiterates the position that cooperation between the Assembly of the Republic of Kosovo and the OIK should be strengthened in order to increase the level of implementation of the OIK recommendations, because according to the current assessment of this report, the level of implementation of the OIK recommendations is alarming. The Ombudsperson emphasizes that the responsibility for implementing the recommendations falls on the public authorities, to whom these recommendations are addressed. As for the level of implementation of the recommendations, the Ombudsperson explains that the reported levels of implementation of the recommendations increase progressively every year after reporting, so that the level of implementation of the recommendations for 2020 from 19% as reported in the annual report, has already reached to 43%.

The Ombudsperson concludes that a number of issues relating the activity of the executive power with human rights standards have been identified, for which monitoring and reporting will continue. The Ombudsperson emphasizes the importance of increasing transparency and accountability, good governance and respecting the recommendations of the Ombudsperson. The executive institutions should take particular care when drafting sub-legal acts, in accordance with human rights standards, as well as respecting international standards in terms of human rights restrictions through Government decisions.

## Human rights monitoring at the Kosovo Security Force

The constitutional and legal mandate of the Ombudsperson in Kosovo makes it the oversight authority of the security sector as well, including the Kosovo Security Force. The country's constitution clearly states: "*Civil and democratic control over security institutions shall be guaranteed*". (Chapter XI, Security Sector, Article 125, paragraph 4). Civil democratic control and oversight is also defined in Article 14 of Law No. 06/L-123 on the Kosovo Security Force, which is in force since January 2019. Although this law does not specify the Ombudsperson as one of the institutions in the chain of democratic and civil control, the Constitution of the country has done so by establishing the Ombudsperson as a separate constitutional category, with an extremely broad mandate (see Chapter XII, particularly Article 132).

The Ombudsperson in Kosovo is independent of other state bodies, including those he oversees, and is impartial in conducting investigations. These two characteristics are essential for a National Human Rights Institution (NHRI) to be considered in accordance with the Paris Principles, such as: minimum international standards for these institutions to be effective and reliable and to be able to exercise an oversight role, even for sensitive and complex sectors, such as security sector structures.

Respect for human rights and fundamental freedoms for all, including members of the armed forces, is a comprehensive security concept that links peacekeeping with respect for human rights and fundamental freedoms. The personnel of armed forces have the same rights and protection as all other persons, except for certain restrictions imposed by military service.

For the reporting year, the Ombudsperson has received three complaints with allegations of violations of human rights and freedoms by the KSF authorities. The complaints are related to the process of recruiting new members in the KSF, and issues related to professional capacity building for the people in uniform. During the process of investigation of complaints, responsible officials have shown cooperation and correctness, with whom communication was developed regarding the cases.

Over the years, the Ombudsperson has received few complaints against the Kosovo Security Force component. The complaints received did not give any signal that the violations could be systemic. On the other hand, the OIK has borne in mind that the construction and strengthening of the KSF has always had close international allies with experiences built within international standards of work, treatment and conduct of people in uniform.

However, the legislative transformation of the KSF, including the operational one, responsibilities, obligations and rights enjoyed by people in uniform, increase in the number of its members, recruitment, promotion, capacity building (as separate processes), significant increase of budget, processes that require investment and attract budget expenditures, etc., already require increased and special attention and control through the democratic and civil chain. However, the Ombudsperson considers that its role as an oversight institution in terms of human rights violations and mismanagement should already be more active and more visible in all components that include bilateral mandates, according to constitutional and legal responsibilities.

Regarding the initiative on the draft law on the KSF Commissioner, on 9 December 2021, the Ombudsperson held a meeting with the Working Group of the members of parliament engaged in this draft law. In this meeting, the Ombudsperson presented its position regarding this initiative and stressed that with the status and competencies of

the Ombudsperson, the appointment of a Commissioner creates overlapping and doubles responsibilities. The broad constitutional mandate of the OIK and the organic law and other laws that give it additional mandate provide the ideal basis in the sense of the legislative framework for oversight from a human rights perspective in all its complexity. International instruments included in the Constitution of the country, and the standards on which the OIK in the Republic of Kosovo has been legally established, are guarantees that the OIK has the powers to oversee the KSF. The role of this Commissioner, which is provided for by Law No. 06/L-124 on Service in the Kosovo Security Force, is internalized by the current constitutional and legal mandate of the Ombudsperson. Meanwhile, the active role of the OIK is seen as imperative for what was said above, in fulfilling its responsibilities.

In function of the oversight mandate for the Kosovo Security Force, the OIK during 2021 has been invited and has followed (through a special electronic platform) the proceedings of the 13<sup>th</sup> International Conference of Ombuds Institutions for the Armed Forces (13<sup>th</sup> ICOAF). The conference was organized by DCAF and Inspector General of the Australian Defense Force (with the support of the Commonwealth Ombudsperson), from 18 to 22 October 2021, in Canberra, capital of Australia. The topic addressed this year was the Ombuds Institutions contribution to the operational effectiveness of the Armed Forces. Over the course of five working days, the conference examined how Ombuds Institutions can positively impact the work of the armed forces and introduced good practices across the globe.

For years, the OIK has attended such annual Conferences with the Ombuds of the Armed Forces, which are organized by DCAF and the respective countries where it is decided to hold them. Next year, the 14th Conference will be held in Oslo, Norway. Through them, Ombuds Institutions from participating countries, not only will have the opportunity to share their experiences and discuss the lessons learned, their mandate, power and functioning, but will also have the unique opportunity to provide the perspective of the rule of law, good governance, transparency and accountability in the uniformed security structures in the Republic of Kosovo.

## **Billing of the electricity spent in the four northern municipalities of the country**

The Basic Court in Prishtina, Department for Administrative Affairs, through Judgment A.No.1373/2017, date 15 September 2019, has approved as grounded the claim of the Ombudsperson for the annulment of Decision V\_399\_2012, dated 6 February 2021 as illegal, and the obligation of ERO to take actions that oblige KEDS to make the return of the billed amount, respectively compensation of damage to customers, who have been billed for the electricity consumed in the four northern municipalities of the Republic of Kosovo during the period from 6 February 2012 to 20 October 2017, in the amount of forty million eight hundred fifty five thousand four hundred eighty euros (EUR 40.855.480.00). Against this judgment, within the legal deadline, ERO has filed an appeal with the Court of Appeals. The Court of Appeals is expected to render a decision relating this complaint.

The Judgment, *inter alia*, found that the above-mentioned decision of ERO is not in accordance with the Law on Electricity Regulatory Office, because the residents of the four northern municipalities were treated unequally in relation to the residents in the rest of the Republic of Kosovo, and that the same billing is not authorized by law.

On the other hand, the Ombudsperson outlined the findings of the expertise, which was conducted during the court proceedings, according to which, in addition to expenses in the north, Kosovo citizens also cover commercial and technical expenses which

amount to an average annual value of about EUR 40 million. The issue of commercial and technical expenses has not been subject of the claim; however this is a concern for the Ombudsperson, which in this case it presents to the Assembly for addressing.

## General and local elections

During 2021, the Ombudsperson has monitored the electoral processes, namely the general elections, local elections and the second round of local elections (runoff), which were held in 2021.

From what has been identified during the monitoring of these electoral processes, the Ombudsperson considers that these electoral processes have taken place in a safe, peaceful, free and democratic atmosphere. The maturity of the citizens on the one hand, the maximum commitment that the CEC has shown in its entirety, in the preparation and organization of these elections, have marked an extremely important moment for respecting the free will of citizens and the level of democracy in the country.

Therefore, in terms of respecting and exercising this political right, the Ombudsperson expresses its maximum consideration and appreciation. Also, the Ombudsperson praises the Kosovo Police for the professional support it has provided during the conduct of these election processes throughout the territory of the Republic of Kosovo, guaranteeing security and smooth running of the electoral process.

However, given the difficulty of an electoral process, there have been specific segments from a human rights perspective that have caught the attention of Ombudsperson's observers.

The Ombudsperson considers that the conduct of elections during a pandemic situation has imposed specific requirements regarding anti-COVID measures. Possibilities of implementing distance between voters did not exist in each polling station, in the first place, but neither did it exist between the administrators of the process. This problem has appeared separately in large polling stations (mainly in cities), where the influx of voters was greater. However there has been respect in terms of wearing masks and the use of sanitizers.

On the other hand, most of the schools that served as polling stations did not provide adequate infrastructural conditions (lack of ramps, elevators, etc.) for people with walking disabilities. Most of the time, the polling stations were on the upper floors, and this has presented difficulties in exercising their right to vote. Meanwhile, almost all polling stations were equipped with Braille ballot papers.

Also, based on its specific mandate, the Ombudsperson has closely monitored the institutions where persons deprived of their freedom are held, such as: detention centers, correctional centers and the High Security Prison. Observers during the monitoring noticed that due to transfers of detainees that took place, after sending the data regarding those who have the right to vote, there were cases where persons deprived of their freedom did not have the opportunity to vote, because their names did not appear on the mobile team lists, while they were not verified on the spot under the general list of voters.

Finally, the Ombudsperson highly appreciates the organization and conduct of these electoral processes and considers that the electoral rights have been generally observed, except for the cases mentioned above, which have not directly affected the violation of the electoral rights as defined by the Constitution of Republic of Kosovo.



The Ombudsperson, with the aim at expressing its views from the perspective of human rights regarding the issue raised with the Constitutional Court by political entities: **Partia Liberale Egjiptiane (PLE)**, **Partia Rome e Bashkuar e Kosovës (PREBK)**, and individuals: Veton Berisha from the Egyptian community and Albert Kinolli from the Roma community, in the capacity of applicants, who asked the court to: *Review the constitutionality of Judgment AA.No.29/2021 of the Supreme Court of Kosovo, as well as Decision A.No. 736/2021 of the Election Complaints and Appeals Panel (ECAP)*”, on 3 August 2021 has submitted an opinion to the Constitutional Court on this request.

Through this opinion, the Ombudsperson has assessed that for the same cases the decision-making bodies should issue the same decisions. This guarantees the indiscriminate realization of the right to vote and to participate, guaranteed by the Constitution and international instruments, on the contrary, if for the same cases different decisions are issued, then a situation of inequality and double standards is created by the decision-making bodies, emphasizing that it is important for the Constitutional Court to assess this issue and decide whether the constitutional electoral rights have been violated in this case.

The Ombudsperson also considers that the institutions of the Republic of Kosovo should be responsible and should guarantee organization and conduct of the electoral process as a whole, fully and indiscriminately respecting the constitutional provisions regarding voting and participation rights.

On 27 October 2021, the Ombudsperson received the complaint of Ms. Valdete Daka, filed against Decision of the President of the Republic of Kosovo No. 42/2021, dated 14 June 2021, for the termination of her mandate as Chair of the Central Election Commission (CEC). Ms. Daka claimed that the President’s decision is unconstitutional and illegal, and that it has violated personal rights and freedoms, therefore she requested from the Ombudsperson to send the case to the Constitutional Court.

The Ombudsperson has assessed that the issue of termination of the mandate of Ms. Daka, as the Chair of the CEC, constitutes a legal issue and that in these circumstances the legality of the President’s decision should be assessed, and that this could not be subject of an assessment by the Constitutional Court.

Furthermore, the Ombudsperson has referred to the Decision on Inadmissibility in Case No. KI 142/13, dated 18 November 2013, complainant Mr. Fadil Maloku, regarding the *Request for Constitutional Review of the Decision of the President of the Republic of Kosovo, No. 686-2013*, dated 6 September 2013, which is a case similar to the issue raised in the complaint of Ms. Daka. The Constitutional Court in this case had assessed that there were effective remedies which had to be exhausted before the case could be raised with the Constitutional Court. Based on this practice, Ms. Daka should use legal remedies against the President’s decision, to which the Constitutional Court referred in Decision No. KI 142/13 regarding the case of Mr. Maloku.

On the other hand, the Law on Ombudsperson, Article 22, paragraph 1, subparagraph 4, stipulates that *“Ombudsperson rejects the request when all regular and extraordinary remedies are not exhausted, unless he/she considers it would be useless for complainant to initiate or continue proceedings, or if he/she estimates that the persons have endured severe damage or in a meantime the persons may suffer huge damage which might not be repairable.*

Therefore, on 17 November 2021, the Ombudsperson issued the Decision A. No. 625/2021, by which it rejected the complaint submitted by Ms. Daka.

## The right of access to public documents

During 2021, the Ombudsperson has received 45 complaints related to access to public documents, 7 of which have been declared inadmissible, while the other 38 have been opened for investigation. Of the opened complaints for investigation, 12 have been received from civil society, 6 from the media, and 20 are individual complaints. The responsible parties in these complaints are mainly at the central and local level (13 ministries, 10 municipalities and 15 others).<sup>17</sup>

During the investigation of these complaints, it is noted that in most cases the responses of the institutions for receiving the request are timely and within the legal deadlines. However, the decision-making time for granting or refusing access exceeds the deadlines provided by law, despite the importance of providing timely information.

The Ombudsperson has published 14 reports with recommendations and a letter of recommendation regarding the restriction of the right of access to public documents. Of these recommendations, three<sup>18</sup> have not been implemented, one has been partially implemented<sup>19</sup> and one is pending<sup>20</sup> for implementation, while 10 recommendations have been implemented.

From the investigated complaints, it was noticed that there are cases where public documents, requested by the document requesters, which belong to the category of documents according to sub-paragraph 2.6 of Article 5 of the Law No. 06/L-081 on Access to Public Documents, are not accessible, are foreseen to be accessible at the initiative of public institutions, which through proactive approach should be placed on the official website of the public institution.

It has also been noted that delays in responding to granting, restricting or refusing access are often due to a lack of human capacity. In cases where public institutions refuse access or allow limited access, in most cases they fail to make a decision and provide reasoning based on law.

However, compared to previous years, there is a difference for the better when it comes to issuing decisions to grant or refuse the access to the required documents. In this regard, the Ombudsperson considers that public institutions have made progress in implementing legal procedures regarding requests for access to public documents. In this regard, it is worth noting that the election of the Commissioner of the Information and Privacy Agency has had a positive impact on the realization of the right of access to public documents<sup>21</sup> in which case the functioning of the Information and Privacy Agency was enabled.

The implementation of the Law on Access to Public Documents is important, which in addition to ensuring transparency and accountability of the government, it also raises awareness of administration employees and the obligation they have to provide services to the citizens, but also raises awareness of citizens for services, which they expect from the administration. In this regard, the Ombudsperson emphasizes the need to increase the

17 Others: HUCSK (2), ERO (1), FVA (1), KMA, (1), prosecutors (1), court (1), KCCH (1), KAA (1), KCS (1) etc.

18 A.No.486 / 2020, 574/2020, both against the municipality of Mitrovica North, and A.No. 454/2020 against KPC

19 A.No.658 / 2020 against the Municipality of Gjilan

20 A.No.205 / 2021 against MESP

21 The Assembly of the Republic of Kosovo in the parliamentary session held on June 17, 2021, has elected the commissioner of IPA.

human capacity of officials regarding the implementation of the LAPD, both at the local and central level.

## Institutional responsibility for the living environment

The Ombudsperson notes that also in 2021 there have been no positive changes through which the protection of environment and sustainable development would be promoted. Despite the lessons learned and the lack of integration of the environmental factor in government decisions on protection from pandemic in the first year of the COVID-19 pandemic, the fragile situation as a result of long-term inclusion of the environment in state priorities, insufficient capacity, public authority even this year failed to develop strategies through which it would balance the interests between health protection and environmental protection.

Despite the situation created with the environment, the necessity to prevent problems and avoid them, the budget allocated to the Ministry of Environment, Spatial Planning and Infrastructure (MESP)<sup>22</sup> continues to be low. Ecological tax, foreseen under the Law on Road and Ecological Tax for Vehicles<sup>23</sup>, which aims to increase the quality of environmental protection, continues not to be used according to the purpose of collection.

The lack of sustainable policies, which would mark a step forward in changing the state of the environment in the country, as well as the situation with the pandemic have made the state of the environment continue to affect the restriction of citizens' constitutional right to a safe and healthy environment. The impact on air, water and land remains almost the same. Also, no improvement has been observed in terms of preventing environmental degradation. Destruction of forests and deforestation, as well as encroachment on agricultural land<sup>24</sup> has continued with the same trend. Despite the constant fluctuation of temperatures and the tendency for growth in the country, the country has not yet taken concrete actions in response to join global initiatives in terms of climate change challenges<sup>25</sup>. The requirements of the Sustainable Development Goals, as well as the Green Agenda for the Western Balkans are an ongoing challenge.

Although improvements were noticed in adhering the three procedural principles of environmental law, the principle of public participation in decision-making, access to environmental information and the principle of access to justice, institutions still have work to do in this regard. Most environmental projects continue to be implemented with or without qualitative environmental impact assessments. The non-implementation of the principle "polluter and user pays" has continued, as well as the rehabilitation of degraded spaces and non-implementation of other provisions of the law.

Compared to previous years, there has been an increased public debate on the environment and environmental issues. In this regard, environmental developments have been given

22 MESP, competent body for the development and implementation of legislation for the general management in the field of Environment, Water, Spatial Planning and Housing.

23 Law No. 04 / L-117 on Road and Ecological Tax for Vehicles, Article 1, par. 2.

24 Law on Agricultural Land; Article 2, Purpose: "Agricultural land, as national wealth of general interest, shall have special protection and shall be used for agricultural production and may not be used for other purposes, except in cases as provided for by this law, and other provisions issued in accordance with this law"

25 KEPA, 2020, "Kosovo Environment 2020, Report of Environmental Indicators" in Kosovo, from 1900 until today there have been movements of average annual temperatures with an increasing trend. Thus the average annual temperature for the period 1930-1990 was 8.6 degrees Celsius, for the period 1990-2002 it was 9 degrees Celsius, while for the period 2003-2019, over 10 degrees Celsius.

more space in the media and on social networks<sup>26</sup>. Progress towards environmental democracy is the activation of civil society. Promotion, education and integration of the law on environmental protection in teaching curricula need to seriously be addressed.

The Ombudsperson notes that in terms of air quality, despite the fact that approval of the new Law on Air Protection from Pollution was foreseen in the legislative program, it has not been approved even during 2021. The citizens of the country have been facing with the occasional restriction of the right to a safe and healthy environment, due to poor air quality. Pollution already poses a serious threat to the health of citizens<sup>27</sup>. The autumn-winter season, as every year, marked an increase in air pollution values<sup>28</sup> and exceeding values for the air quality.

According to the above reports, the biggest pollution, almost 50%, comes from small combustion, industry is second with the exceedances of 37%, transport - mainly road traffic, is the third source with 11% and 7% of emissions. The remaining sectors account for less than 5% of emissions. Out of 38 municipalities, only Municipality of Glllogoc has drafted a local Air Quality Action Plan.

There has been no improvement in preventing pollution from road construction, burning of forests, stalks and waste, as well as odours from irregularities in the waste management system. Also, the failure of the competent bodies to implement the planning, construction and inspection legislation for the control of the ventilation infrastructure and the fumigators of the facilities has continued.

Although the impact of air pollution on public health is already undisputed, the lack of functionalization of the HIS makes it impossible to produce clear statistics on the impact of pollution on the health of citizens. Also, there is still no research by the KPHI regarding the impact of polluted air on public health. Air quality information remains to be improved. The Ombudsperson, given this situation, urges the government and other competent institutions to give priority to the issue of the right to clean air.

The Ombudsperson also notes that water protection under the principles of sustainable management remains a challenge. Degradation and arbitrary use of water resources has continued to grow almost equally. Despite the alarming situation, no concrete preventive actions and policies have been observed, which would affect the sustainable use of water resources. Although provided for in the legislative program, the new Law on Waters was not adopted.

No measures have been observed that would prevent the discharge of untreated water<sup>29</sup>, especially waste, mining<sup>30</sup>, and industrial<sup>31</sup> ones. The practice of indiscriminate overuse of aggregates (sand and gravel) has continued in an uncontrolled manner, resulting in the utilization of natural reserves of rivers over their regenerative capacities. Already the natural ability of rivers to cover open pits of large surfaces, many parts can be considered

26 <https://bbgreenkosova.com/2021/10/16/gazetaria-e-gjelber-ne-kosove/?fbclid=IwAR1ry41jZpFvHzJK3uv6ObcU2C77fiu1aXOFobDtQH39mvWi3dG24lxrmBw>

27 Report on Kosovo \* 2021, European Commission, Environment and Climate Change, p. 1000.

28 <http://ammk-rks.net/?page=1,163>, Monthly air quality report, November 2021.

29 Kosovo Environmental Protection Agency, Water Status Report 2020: "Wastewater treatment plants, built in: Llausha - K. Skenderaj, Harilaq village, Dubrava prison and Lipjan prison, Business Park in Drenas"

30 Report on Kosovo\* 2019: "Hazardous mineral waste, as well as direct industrial discharges into rivers and industrial landfills continue to pose a serious risk to soil and water."

31 Kosovo Environmental Protection Agency, Annual Report on the state of the environment in Kosovo 2018-2019

irreversible. Since 2012, no assessment has been made of the damage caused to the country's rivers by the exploiters. Failure to avoid large pits, as well as diversion of river beds is causing permanent danger to the life and health of citizens and floods.

The rivers that are considered as the most polluted and most degraded are: Drini i Bardhë<sup>32</sup>, Lumëbardhi of Peja<sup>33</sup>, Ereniku<sup>34</sup>, Toplluha<sup>35</sup>, Desivojcë, Krivarekë, Sitnica<sup>36</sup>, and Iber.

The Ombudsperson notes that the government should increase the expansion of drinking water supply mainly in rural areas, which today remain inaccessible, as well as take effective measures towards the good management of water resources.

The Ombudsperson notes that the issue of hydropower plants operation in the country continues to pose a serious problem in the sustainable utilisation of water resources, environmental protection and socio-economic development of the Republic of Kosovo. Despite the need for serious addressing, problems regarding the lack of transparency in terms of legality of commissioning and operation of hydropower plants have continued in 2021. Although uncontrolled use of water by hydropower plants has been found, which has affected the temporary drying of some rivers, MESPI and local level institutions continued to issue environmental, water acts, construction certificates for these activities.<sup>37</sup> It is estimated that the process was conducted in violation of laws and planning documents<sup>38</sup>. The Ombudsperson highly appreciates the commitment of civil society in monitoring administrative processes, in raising issues, promoting debate and engaging in court proceedings.

In this regard, on 3 February 2021, the Ombudsperson published the Report with *Ex-officio Recommendations 365/2018 regarding the issue of legality of procedures related to hydropower plants in the country and access to documents related to Deçan and Shterpce hydropower plants operation. The report with recommendations, which is also the first institutional document, has found ambiguities in the procedures related to hydropower plants operation in the country. The report aimed to draw attention of the Ministry of Economy and Environment, the Municipality of Deçan, Municipality of Shterpce and other competent authorities to respect the right to citizens' information, by providing access to documentation for hydropower plants, respect for the right of the public to participate in decision-making processes and have access to justice. The Ombudsperson, noting the uncertainties regarding the process of hydropower plants operation, the dissatisfaction of citizens, and above all, the impact of hydropower plants on the environment, through the report seeks the attention of state to balance public and economic interests, carefully assessing the interest between the importance of energy production through hydropower plants in the country against the impact on the environment, which can be severe and irreparable.*

32 Kosovo Environmental Protection Agency, Report on the State of Water in Kosovo 2020: "Drini i Bardhë basin water is polluted by discharge from sub-basins which have previously been subjected to human impacts."

33 Ibid: "In this river the water gets very murky due to the extraction of gravel from its bed by private companies."

34 Ibid: "The water quality of this river in this station is poor, since during the analysis the presence of the amount of detergents was noticed."

35 Ibid: "Water has a poorer quality; it is known as a river with permanent high turbidity due to the extraction of gravel from the river bed almost continuously throughout the year."

36 Ibid: "Contains household discharge waters as well as industrial discharge waters."

37 MESPI, Report of the working group for reviewing the administrative procedures implemented for hydropower plants and their impact on water and the environment, June 30, 2021, [https://mmphi.rks.gov.net/assets/cms/uploads/files/Raporti%20Final%20i%20Grupit%20Punues%20per%20Hidrocentralet-converted-2\(2\).pdf](https://mmphi.rks.gov.net/assets/cms/uploads/files/Raporti%20Final%20i%20Grupit%20Punues%20per%20Hidrocentralet-converted-2(2).pdf), "Water permit No. 102-2 / 21 issued on 9/02/2021, for Matkos Group".

38 Ibid.

*From the overall analysis, the Ombudsperson has concluded that the process of licensing and operation of hydropower plants in the country has been accompanied by continuous shortcomings in terms of three-dimensional procedural aspect: access to information, public participation in decision-making and access to justice. The process was accompanied by a lack of transparency of the institutions responsible for the legality of the operation, as well as ambiguity regarding the procedures for organizing public hearings, as forms of public participation in decision-making. The Ombudsperson also considers that the judicial system in the country, not only in this case, but also in all cases related to the environment, is failing to meet the principle of legal certainty, as an important element of the rule of law, to ensure a fair trial and within a reasonable deadline. Cases initiated in courts by both natural and legal persons are not shown to be effective remedies..*

The Ombudsperson recommended to the MESPI, the Municipalities of Deçan and Shterpce to make public all documentation related to the operation of hydropower plants in Deçan and Shterpce, while to the Judicial and Prosecutorial Councils to take measures to address cases related to hydropower plants with priority. MESPI, in response to the Ombudsperson's recommendation, on 29 September 2021, informed the OIK: *"To any organization or individual requesting access to official documents, this will be provided by the Ministry"*. While on 16 February 2021, the Ombudsperson was notified through a letter by the Chair of the Kosovo Judicial Council that in order to implement this recommendation dedicated to the courts, the Kosovo Judicial Council has sent this report with recommendations to the Basic Court in Pristina.

The Ombudsperson notes that despite the requirements for sustainable and balanced development of land protection, deriving from the Law on Spatial Planning, there continues the serious lack of commitment of the central and local level competent bodies to control and prevent continuous land pollution from all kinds of waste discharges and untreated water, etc., as well as from rapid alienation of agricultural land into construction land and loss of green spaces. No action has been taken to close and rehabilitate the so-called "Blue Lake", where the hydraulics discharges take place (ash transfer)<sup>39</sup>. Improvement and re-cultivation of degraded spaces remains a challenge.

No improvement has been observed in relation to global obligations for sustainable forest management, considered as a platform contributing to climate change, improving air quality, water quality, retention of biodiversity and quality of life. Illegal logging and fires have been registered this year as well. The previously started phenomenon of building houses in national parks has continued to affect the ecosystem, water values and landscape and other values of nature. Hard constructions of houses and high buildings in the National Park "Sharri" and in "Bjeshkët e Nemuna" mountains have continued, without environmental impact assessment, contrary to the Law on Spatial Planning, Law on Environmental Protection, and Law on Kosovo Waters and national park laws.<sup>40</sup> Also, uncontrolled construction and indiscriminate intervention in forests continued in the Novo Brdo area. Reforestation and revitalization failed to be done in approximate proportion to the degradation of degraded surface areas.

39 Kosovo Report \* 2020, European Commission, 6.20 Environment and Climate Change, p. 106

40 <https://www.evropaelire.org/a/arrestime-te-reja-ne-rastin-brezovica/31642030.html>

The Ombudsperson also notes that the operation of quarries in the country, especially operation of illegal operators<sup>41</sup> continues to be one of the biggest problems, with a serious impact on the environment. The exploitation of minerals is not done in accordance with the mining strategy. Arbitrary impact on the environment by economic operators has continued during the reporting period, not sparing the cultural heritage<sup>42</sup>, as well as non-compliance with the safety criteria related to the distance to infrastructure and facilities. While the state did not suspend activities for the extraction of coal, lignite, metal ore, ores and quarries, as well as a few other activities during the period of public health emergency, at the same time did not provide mechanisms for overseeing the activity. A serious threat to the citizens' right to a safe environment and public safety are construction sites that are rarely fenced<sup>43</sup>, enabling unimpeded access and also transport of sand, mud, etc. on public roads.

The criteria for the rehabilitation programs for the exploited areas, submitted by operators when applying for a permit, remain to be strengthened and to be seriously reviewed by the competent authorities. Despite the situation on the ground, the competent bodies MEE and ICMM fail to adequately monitor and inspect the implementation of criteria that would keep under control the protection of the environment from the operation of operators. Failure to rehabilitate areas degraded by activities of mining operators requires serious review by the competent authorities, and even addressing by the Assembly of the Republic of Kosovo.

The Ombudsperson notes that waste management in the country continues to be a challenge. Measures have not been taken to prevent the negative impact of waste on the environment and human health.

Apart from individual initiatives for the recycling of waste from metals, plastics and paper, the country still does not have an organized waste processing and recycling system that would adequately respond to the current requirements and the development of sustainable methods of final waste disposal in an environmentally acceptable manner.

The Ombudsperson considers the non-involvement of the interests of all citizens, in particular the needs of persons with disabilities, the elderly, children, youth, within detailed regulatory plans to be an issue that has a serious impact on unequal treatment and restriction of the right to a safe and healthy environment<sup>44</sup>.

The Ombudsperson notes that public authorities continue to fail in meeting positive obligations arising from the individual's right to a clean environment, despite the fact that Ombudsperson has consistently recommended policy changes in this area. One such example is the letter of recommendation<sup>45</sup> addressed to the Municipality of Prishtina, regarding the dislocation of waste containers, positioned in the Kodra e Diellit neighbourhood, due to causing environmental pollution.

41 <https://www.kosovo-mining.org/aktivitet/komunikate-per-media-prishtine-31-dhjetor-2019/>: "During 2019, the ICMM Inspectorate in the action for the implementation of the Operational Plan for the prevention and prohibition of illegal operations, together with the Kosovo Police, the Environmental Inspectorate, the Forestry Inspectorate and the Municipal Inspectorates. "After the completion of this action, in 194 places of illegal operations, tape roll have been placed for stopping work, of which 99 are separations, 16 are exploitation, 78 are concrete and asphalt bases, as well as a processing factory".

42 Report, "The erosion of cultural heritage", 13 September 2021 (link: [http://preportr.cohu.org/sq/hulumtime/Gerryerja-e-trashegimise-kulturore-346?fbclid=IwAR1eqwohKqea-2PsMEZgudFaFRoSRZ88\\_6\\_QeOVGow4\\_caMxqeGhdDUMhbja\\_e\\_prej](http://preportr.cohu.org/sq/hulumtime/Gerryerja-e-trashegimise-kulturore-346?fbclid=IwAR1eqwohKqea-2PsMEZgudFaFRoSRZ88_6_QeOVGow4_caMxqeGhdDUMhbja_e_prej)).

43 National Audit Office, Performance Audit Report: "Licensing process of users of construction and industrial minerals and protection of the environment from this activity."

44 Administrative Instruction No. 01/2018 on Basic Elements and Requirements for Drafting, Implementing and Monitoring Detailed Regulatory Plans.

45 A. No. 59/2020

## The impact of COVID-19 pandemic in Kosovo and responsibility for the environment

The Ombudsperson in the report: *“Health emergency and the impact of pandemic on human rights”*, has assessed how much the state managed to include the integration of measures for respect and protection of the environment in measures responding to the COVID-19 pandemic<sup>46</sup>, as well as to adapt policies for the functioning of environmental protection bodies in an effort to protect the life and health of officials, in compliance with the rules for protection from COVID-19.

With this report, the Ombudsperson has ascertained the lack of concrete plans, which would have clear instructions for operation under the pandemic conditions, in accordance with the instructions of the NIPHK to organize the work of supervisory and inspection bodies.

Although the government through decisions on the progress of economic activities during the public health emergency allowed operation and functioning of the largest operators with environmental impact, such as: construction, logging, coal, ore and quarrying, activities related to waste etc.,<sup>47</sup> no solutions for environmental protection were found.

With regard to the right of access to environmental information, the Ombudsperson found that the competent ministry for environmental protection has not made sufficient efforts to improve the publication of environmental information on the official website.

The Ombudsperson further found that the situation created by the pandemic deepened the challenge of delayed court proceedings in the realization of rights related to environmental issues. The situation also affected the barring, dismissal and delays of environment-related cases.<sup>48</sup>

## 2030 Agenda and Sustainable Development Goals - The role of the Ombudsperson as a National Human Rights Institution

The eradication of poverty and inequality, realization of human dignity and the promise to leave no one behind as well as to reach out first those who are left behind, are based on the principles of human rights, equality and non-discrimination, and constitute a commitment and promise of states through the 2030 Agenda for Sustainable Development.

This Agenda is based on Resolution A/RES/70/1 of the United Nations General Assembly, adopted on 25 September 2015. In the local context, on 25 January 2018, the Assembly of the Republic of Kosovo expressed political will and readiness to engage in implementing this global framework, through Resolution No. 06-R-001 on the approval of Sustainable Development Goals (SDGs). Meanwhile, in October 2018, the Assembly established the Council for Sustainable Development, as an inter-institutional mechanism within the Assembly, in the service of coordinating processes towards implementation of this Agenda.

46 [https://oik-rks.org/wp-content/uploads/2021/12/Raport-i-Avokatit-te-Popullit\\_-Emergjencashëndëndësi-dhe-ndikimi-i-pandemisë-në-të-rajat-e-human\\_\\_FINAL.pdf](https://oik-rks.org/wp-content/uploads/2021/12/Raport-i-Avokatit-te-Popullit_-Emergjencashëndëndësi-dhe-ndikimi-i-pandemisë-në-të-rajat-e-human__FINAL.pdf)

47 MEETIESI Ordinance, No. 01/05, dated 23 March 2020.

48 A. 198/2015, Criminal report PPN 154/2015, dismissed by the Basic Prosecution in Prishtina on 17 June 2020. The case was initiated on 10 March 2015, filed a criminal report against the Ministry of Environment and Spatial Planning, for violation of procedures in issuing integrated environmental permit. Request K.No. 48/1 of the Environmental Inspectorate of MESP for initiating the misdemeanour proceedings initiated against SharCem.



The 2030 Agenda represents a global level action plan, in line with which the states have expressed commitment and strive to be partners in meeting the 17 objectives, with 169 specific targets, to which correspond 231 indicators<sup>49</sup>. This document at its core, as key pillars of the universal vision it carries, puts: population, prosperity, planet, peace and partnership (known as the five Ps), on which the real development, and consequently sustainable development, is based.

For this to be implemented, it is extremely important that the Agenda is seen as interconnected and interdependent in its objectives and pursued to be realized as a complex and multidimensional vision. The Agenda calls for inclusion and partnership in terms of knowledge, expertise, experience, resources, etc., so that progress towards achieving the objectives can occur everywhere globally.

The objectives and goals of the 2030 Agenda reflect the internationally accepted standards of human rights, and integrate the cross-cutting human rights principles related to them, in order to achieve the commitment to leave no one behind and to influence the enjoyment of these rights by anyone and in any country. From a human rights perspective, approximately half of the SDG indicators have the potential to produce data that are directly relevant to the monitoring of specific human rights instruments, while the rest have indirect relevance or provide contextual and analytical information.<sup>50</sup> This interconnection of the Agenda with human rights is emphasized in the Merida Declaration<sup>51</sup> on the role of the National Human Rights Institutions (NHRI) in implementing the 2030 Agenda for Sustainable Development.

It also states that the Agenda firmly enshrines the Charter of the United Nations<sup>52</sup>, Universal Declaration of Human Rights<sup>53</sup>, international treaties and instruments. Parts of these international agreements and instruments have been integrated in the Constitution (Article 22)<sup>54</sup> of the Republic of Kosovo. However, the fact that our country is not a United Nations member state results in non-reporting to treaty bodies, including the Human Rights Council and the Universal Periodic Review (UPR) process.<sup>55</sup> This inevitably affects the way in which mechanisms and processes are reported at the level of monitoring and implementation of international instruments and progress in this regard. The Ombudsperson also points out that our country has not yet included in its Constitution the International Covenant on Economic, Social and Cultural Rights, a key instrument in terms of enjoyment of

49 For more see <https://unstats.un.org/sdgs/indicators/indicators-list/#:~:text=The%20global%20indicator%20framework%20includes%20231%20unique%20indicators>

50 For more see: [https://www.humanrights.dk/what-we-do/sustainable-development-goals/sdgs-indicators-data#:~:text=Approximately%20half%20\(49%25\)%20of,enable%20or%20limit%20the%20realisation](https://www.humanrights.dk/what-we-do/sustainable-development-goals/sdgs-indicators-data#:~:text=Approximately%20half%20(49%25)%20of,enable%20or%20limit%20the%20realisation)

51 The Merida Declaration was adopted by the Global Alliance of HRDIs (GANHRI) at the 12th Conference of the International Coordinating Committee of National Human Rights Institutions (ICC), held in Merida, Yucatan, Mexico, 8-10 October 2015. The focus of the Conference was on "Sustainable Development Objectives and the role of HRMI in this context. For more on the role of HRMIs under this Declaration, please see: <https://ennhri.org/our-work/topics/sustainable-development-goals/#:~:text=The%20M%C3%A9rida%20Declaration%2C%20adopted%20by,human%20rights%20and%20sustainable%20development>.

52 For more, see: <https://www.un.org/en/about-us/un-charter>

53 For more, see: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

54 For more, see: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

55 The Universal Periodic Review is a unique process that involves reviewing the human rights records of all UN member states. As a process, it is run by the state, under the auspices of the Human Rights Council, which provides an opportunity for each state to state what actions it has taken to improve the human rights situation in their countries and to meet their obligations on human rights. As one of the Council's key features, the UPR was created to ensure equal treatment for each country when assessing their human rights situations. The ultimate goal of this mechanism is to improve the human rights situation in all countries and to address human rights violations wherever they occur. There is currently no other universal mechanism of this kind. (information available at :<https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>)

human rights, and a basic pillar for achieving the Agenda objectives and goals. Moreover, both documents complement and reinforce each other, confirming the dimension of interdependence and universality of rights.

However, based on the principles of establishment and operation, the OIK is the HRNI, in compliance with the Paris Principles<sup>56</sup> and due to the importance of these institutions at the international level, the Agenda has set as a special indicator the existence of these institutions in accordance with the Paris Principles (Objective 16, indicator 16.a.1)<sup>57</sup>. Institutions of such nature, wherever they operate, apply a *human rights-based approach*<sup>58</sup> throughout their work, in the exercise of the functions and competencies and responsibilities they have. This approach is a conceptual framework based on internationally accepted standards, which seeks to place human rights and relevant state obligations at the centre of policies and other strategic documents.

In accordance with this approach, during the reporting year, the Ombudsperson responded to the invitation of the Strategic Planning Office within the Office of the Prime Minister of the Republic of Kosovo, to participate in Stakeholders Dialogue on the National Development Strategy (NDS) 2030, at the end of October 2021, an event organized with the support of GIZ<sup>59</sup>. This document is expected to be finalized and approved in the first part of 2022, as the National Development Strategy 2016 - 2021 has already completed the time cycle for which it was drafted. This Strategy tends to be seen as an umbrella for numerous sectoral strategies, some of which even have action plans. Referring to a rapid assessment of policy alignment and available data, prepared by the United Nations Agencies in Kosovo, under the leadership of the United Nations Kosovo Team (UNKT), Kosovo: “[...] **continues its efforts to integrate SDGs into policy documents, while measuring of the progress towards achieving SDGs is being systematized**”<sup>60</sup> It also analyses that the overall policy approximation with the SDGs is spread over three levels: fully 28% (36 objectives of 10 documents); partially 66% (84 objectives of 28 documents); while 6% (8 objectives of 5 documents) are considered not approximated<sup>61</sup>.

On the other hand, the commitment of the Government for good governance, rule of law, economic growth, clean environment, sustainable resources, effective health services, quality and competitive education is significant from a human rights perspective within the country’s vision of being in line with global efforts to achieve SDGs. This commitment creates the confidence that even the policies and strategic documents under development (such as the NDS in question) will move towards further alignment with the SDGs and the goals of the 2030 Agenda.

In view of the willingness to cooperate and provide perspective on the human rights, the Ombudsperson also participated in the High-level Political Forum for 2030 Agenda integration within the framework of strategic planning in Kosovo, held at the end of November 2021, convened by the Association of Kosovo Municipalities and Institute for Development Policy (INDEP).

56 The Paris Principles relate to the status of national institutions for the promotion and protection of human rights, adopted by UN General Assembly Resolution 48/134, dated 20 December 1993.

57 For more, see: [https://www.ohchr.org/Documents/Issues/HRIndicators/SDG\\_Indicator\\_16a1\\_Metadata.pdf](https://www.ohchr.org/Documents/Issues/HRIndicators/SDG_Indicator_16a1_Metadata.pdf)

58 For more see: <https://ennhri.org/about-nhris/human-rights-based-approach/>

59 Deutsche Gesellschaft für Internationale Zusammenarbeit, on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ)

60 Rapid Integrated Assessment: Policy Approximation and Data Availability in Kosovo, 2021. For more, see p. 4 <https://kosovoteam.un.org/sites/default/files/2021-09/Kosovo%20SDG%20Report%20AL.pdf>

61 Ibid, p.5

In the function of the partnership for Sustainable Development with multilateral partners that mobilize and share knowledge and are encouraged to promote effective partnerships, among others with civil society, on 1 and 2 December was held the IV Regional Meeting between the peer Ombudsperson Institutions of Albania, North Macedonia and Kosovo, as well as the Commissioner for Protection from Discrimination in Albania, a role currently performed in Kosovo by the Ombudsperson Institution, as well as involvement of civil society organizations (CSOs) representatives in discussions on the second day of work.

**Human rights-based approach** serves to empower human rights holders (individuals, communities) to seek and exercise their rights, as well as to increase the capacity of those responsible to respect, protect and promote guaranteed rights and freedoms, and to fulfil the obligations and liabilities they have.

Based on the Resolution for 2030 Agenda, it is the responsibility of the respective governments to monitor and evaluate the progress in terms of achieving the objectives and targets. To assist in this regard and in the service of accountability on the part of governments, a global framework of indicators has been developed. Qualified, qualitative, accessible, reliable and timely data are essential for assessing progress on human rights, highlighting inequalities, ensuring accountability and transparency, and providing the necessary information for decision-makers<sup>62</sup>.

In this context, the Merida Declaration defines the role of the NHRI in terms of their advisory competence in shaping contextual indicators and sound data collection systems, as well as the monitoring role in terms of progress in implementing the Agenda.<sup>63</sup> In this spirit and in fulfilment of obligations under the Resolution of the country's Parliament of 2018, in January 2020 the OIK and Kosovo Agency of Statistics (KAS) have signed a bilateral Memorandum of Understanding.<sup>64</sup> This Memorandum was supported by the UN's Office of the High Commissioner for Human Rights (OHCHR) in Geneva, mediated by the Office for Human Rights of the United Nations Mission in Kosovo, with which contacts and meetings continued during 2021, regarding issues of human rights and freedoms that are in the focus of common interest, including the 2030 Agenda.

With the aim at implementing the Memorandum of Understanding between the OIK and KAS, a Joint Working Group has been established, which, despite the difficulties created by the pandemic and the general functioning in unusual circumstances, as well as developments in the context of institutions and processes in the country, has held several meetings with the aim at clarifying the institutional roles and obligations according to the mandates they have. It is worth mentioning the workshop in August 2021, which was attended by the heads of the both institutions, parties to the Memorandum, who reiterated their commitment to play an active institutional role in fulfilling the 2030 Agenda.

Meanwhile, in the function of increasing the capacity of National Human Rights Institutions in Albania and Kosovo and the respective institutions of official statistics in both countries, in December 2021 training was held,<sup>65</sup> conducted by experts from the United Nations Office in New York and the OHCHR Office in Geneva. Members of the Working Group participated in this training for the operationalization of the Memorandum from the OIK and KAS. A workshop on capacity building and the role of the OIK and KAS for the members of

62 For more, see: [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

63 For more, see: <https://www.theioi.org/ioi-news/current-news/merida-declaration-on-nhris-role-in-implementing-the-2030-agenda-for-sustainable-development>

64 For more, see: <https://oik-rks.org/2020/01/17/>

65 The training is organized by the Ombudsperson Institution of Albania, in relation to the 2030 Agenda and human rights, through the electronic platform Zoom.

the Working Group in the function of Memorandum operationalization was held in October 2020, by an external expert engaged on a voluntary basis.

The Memorandum of Understanding between the OIK and KAS serves to help identify the indicators for which Kosovo currently has data; indicators for which, from a human rights perspective, data are relevant; contextual indicators; vulnerable and neglected groups; as well as target groups. Also, statistical data, including specific indicators, serve to measure the implementation of the recommendations of international and local human rights mechanisms, including the recommendations of the OIK.

During the communications and cooperation that the OIK-KAS Working Group had, emphasis was placed on the fact that there is data on a number of indicators, some of which correspond to the SDG indicators, but there are also gaps and lack of data. This lack of data deepens when it comes to their disaggregation, which from a human rights perspective presents issues that require special and increased attention.

Identification of relevant indicators, which are based on guidelines on human rights indicators and **access to human rights-based data**,<sup>66</sup> compiled by the OHCHR Office, is inevitable for the implementation of the 2030 Agenda. In this context, the Ombudsperson recalls that the responsible and competent authorities to lead the process for the development of indicators at the national level are the offices for national statistics, such as KAS, as they have knowledge of accessible data sources and have knowledge of the main obstacles that need to be addressed. However, the involvement of other key and relevant actors in this process is imperative.

Therefore, it has been identified as essential to expand institutional interaction, in terms of data collection, identification and measurement of indicators and the use of this data to monitor and measure progress or delays towards the implementation of the SDGs. This is extremely important to reflect the current situation in relation to the progress over the years, as well as in comparison with the intended standards and in accordance with the set objectives. In this context, it remains challenging that administrative data sources often have non-standardized methodologies and definitions with the criteria according to which KAS operates, so that they are reliable and disaggregated, to measure progress in the country, taking into account the contextual requirements. The Civil Registry Agency and rule of law institutions require special attention from this perspective. However, development in these segments will have additional costs or reduction of resources in other areas.

An aspect that reflects difficulties even in the work of the Working Group, especially in this period when the preparations for the General Census Project are being finalized, which is carried out by KAS is also the unsuitable building<sup>67</sup> where KAS operates, as well as the need for more employees. On the other hand, the positioning of KAS within the institutional structure (Agency within the Ministry of Finance and Transfers) requires careful and responsible assessment. The Ombudsperson encourages the Government and the Assembly of the Republic of Kosovo that KAS becomes directly accountable to Parliament or the Government (OPM).

In addition to its advisory and monitoring role, the NHRI is also seen as a bridge between rights holders and the state, in terms of designing and monitoring policies, strategies and

66 Complete guide: <https://www.ohchr.org/documents/issues/hrindicators/guidancenoteonapproachtodata.pdf>

67 See the same finding in the European Union Report on Kosovo 2020: [https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/kosovo\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/kosovo_report_2020.pdf)

actions. As such, the Ombudsperson, in accordance with its mandate and the functions it performs, constantly addresses issues that affect human rights, focusing on vulnerable and marginalized groups.

A commitment of this nature can also be seen in the establishment of the Informal Advocacy Task Force on gender-sensitive standards for occupational safety, health, and decent work. This Task Force consists of the Ombudsperson, as Chair, while the Co-Chair will be the representative of the Group of Women MPs, a number of civil society organizations, as well as Labor Inspectorate, Kosovo Chamber of Commerce and the Union of Independent Trade Unions of Kosovo. The Secretariat of the Task Force will be provided by UN Women. This commitment is closely linked to Objective 5 and Objective 8 of the 2030 Agenda.

Also, in October 2021, the Dialogue Forum between the OIK and Civil Society Organizations (CSOs) has been established. The purpose of the Forum is a structured cooperation and development of a common platform for active involvement of actors involved in the Forum, as well as development of joint activities to address issues that prioritize progress in respecting, protecting and promoting the rights of human beings in Kosovo. This commitment is related to Objective 17 of the 2030 Agenda.

Also, representatives of the OIK attended meetings through electronic platforms of the Results Team for priority 4 and Results Team for priority 5 within the framework of the United Nations Sustainable Development Cooperation Framework (UNSDCF) 2021–2025.<sup>68</sup>

In terms of the issues it addresses, in terms of mandate, competencies and responsibilities and interconnection with the SDGs, during 2021 the Ombudsperson has launched a general investigation into reproductive health, focusing on maternal health, family planning and abortion in Kosovo. This investigation will be based on direct evidence from women/girls, whose rights have been potentially violated; witnesses and experts, including civil society, on systematic violations of human rights in the field of health and sexual and reproductive rights.

Spread across the country, this investigation represents a continuation of the Ombudsperson's work and is closely linked to 2030 Agenda, particularly with some of the Objective 3 goals: **“Ensure healthy lives and promote well-being for all at all ages”**; and Objective 5: **“Achieving Gender Equality and Empowering all Women and Girls”**. The investigation follows the General Assessment of Sexual and Reproductive Health and Rights<sup>69</sup>, conducted in 2016 by the OIK, which was an assessment of progress and political,

68 The inaugural meeting of the Joint Steering Committee (JCC) of the United Nations Sustainable Development Cooperation Framework (UNSDCF) 2021–2025 was held on 25 June 2021, co-Chaired by the Prime Minister and the UN Development Coordinator, with the participation of representatives of the government and of the Agencies, Funds and Programs of the UN Team for Kosovo (UNKT). The adopted UNSDCF provides a strategic and harmonized approach to UNKT cooperation in Kosovo to jointly address key development needs in cooperation with the government and other development partners and in line with the Sustainable Development Goals and aspirations for EU integration. The main priorities of UNSDCF are: 1) Responsible governance; 2) Inclusive and non-discriminatory social services and policies; 3) Broad, sustainable and comprehensive economic development; 4) Social Cohesion and 5) Cross-cutting themes for Increasing gender equality and rights-holders' participation, empowerment and civic engagement. The mentioned groups of results are the main implementation mechanisms that guide each of these five priority areas. The Joint Work Plans for each Result Teams were developed and approved at the first BDP meeting in June.

69 From this General Assessment, 62 recommendations were addressed to the responsible authorities, of which 27 are considered to have been implemented, among them the recommendation to the Assembly of the Republic of Kosovo to formally adopt the SDG. The recommendation for the amendment of the Constitution to include the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and the European Social Charter, in order to be directly applicable in the country, remains to be implemented.

socio-economic and cultural barriers in reproductive and sexual health in Kosovo, through human rights lenses, directly related to Objective 3 (targets: 3.7, 3.1, 3.3) and with Objective 5 (targets 5.6, 5.2, 5.3) of SDG.

The investigation that started in 2021 is also closely related, particularly to Objectives 3 and 5. This investigation will be inclusive, but with increased attention to vulnerable and marginalized groups, and will address issues that appear systematically in the above areas. The working methodology for conducting this investigation is in line with the Ombudsperson work principles, which means: good governance, transparency, inclusiveness, non-discrimination, gender sensitivity, confidentiality, and will follow the principle of not causing any harm. The investigation has a public dimension and the first focus group meetings have already been held in the seven regions of the country. This investigation, as well as the Assessment in 2016, was supported by UNFPA Office in Kosovo.

Another ex-officio investigation relating to access to health care services for people affected by HIV and TB during the COVID-19 pandemic in Kosovo has been addressed to the responsible authorities, also during 2021. The purpose of this report is related to Objective 3 (targets: 3.3; 3.8). This investigation is supported by the Community Development Fund (CDF), through a grant from the Global Fund to Fight AIDS, Tuberculosis and Malaria.

The Ombudsperson also addressed a special report on the impact of the pandemic on human rights in the country, which goes in the spirit of the Promise of Sustainable Recovery.<sup>70</sup> This Report of the Ombudsperson touches on a large number of topics, within the treatment of which, a link can be established with the SDG targets: public health and mental health (Objective 3); the right to education (Objective 4), the impact of the pandemic on social and economic rights and labor law in the public and private sector (Objectives 1 and 8), the environment (Objectives 13 and 15); domestic violence (Objective 5), etc.

Previously, in the first half of 2021, the OIK addressed the next ex officio Report, which focuses on restrictions in providing services to persons not infected with COVID-19. The issues investigated and addressed in this report are closely related to Objective 3, and in particular targets 3.8 and 3.c.

On the other hand, regarding legal measures and policies to eliminate discrimination and further substantial inequalities, the OIK can advise and raise issues that require immediate attention or special measures. The Ombudsperson has an advisory and advocacy role in relation to human rights obligations, hence the SDG and the gaps that affect particular and most vulnerable groups of rights holders.

An activity within this role of the Ombudsperson was visits to six centers that work with children with special needs, in four municipalities of the country. Also, in junction with children's rights and the recommendatory role that the Ombudsperson has towards the authorities, addressed to the Government, the Judicial Council and the Independent Media Commission a Report recommending adoption of 16 sub-legal acts provided by the Child Protection Law. Furthermore, in order for the children to fully enjoy the right to education, the OIK has published two reports with recommendations for amending and supplementing primary and secondary legislation.<sup>71</sup> These activities can be considered in view of complementing the structural indicators, mainly in terms of Objective 4.

70 This Declaration based on the 2030 Agenda, but initiated as action in the face of the situation created by the global pandemic COVID-19, was launched in July 2021, supported and signed by state and non-state actors of many United Nations states. The full document can be found at: <https://fn.unhcr.org/en/copy-of-human-rights/sustainable-recovery-pledge>

71 For more see this Report, section on child rights.

Another activity, which was focused on people with disabilities, was cooperation with the Independent Initiative of the Blind of Kosovo, on the occasion of marking the International Day of Persons with Disabilities, on 3 December 2021. The event brought together the blind people, which were present, also local and international institutional officials, civil society and representatives of international organizations operating in Kosovo. However, at this point, the Ombudsperson considers it important to draw the attention of the Assembly of the Republic of Kosovo that the inclusion in the Constitution of the country of the Convention on the Rights of Persons with Disabilities would create the possibility of challenging but necessary confrontation with obstacles that persons with disabilities have in accomplishing their rights.

However, the Ombudsperson, in the OIK Strategy 2021 - 2025, has set as a special strategic goal the Promotion of Sustainable Development Goals, while since 2019, the OIK, supported by the United Nations Development Program (UNDP) and with the financial support of the Norwegian Ministry of Foreign Affairs, has launched an electronic platform through the Ombudsperson Institution's website,<sup>72</sup> which serves as a guide for SDG and human rights interconnection, respectively linking the 169 goals within the 17 SDGs with international instruments directly applicable in the Republic of Kosovo and in the primary legislation implemented. The guideline facilitates the understanding of the SDGs' relationship with human rights and the instruments for their observance and protection, and aims to assist in the development of various projects, research and reporting towards the achievement of the 2030 Agenda.

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72 For more, see the OIK website: <https://oik-rks.org/> respectively the Platform: <https://humanrights.oik-rks.org/>

## III. Rights of the child

### Rights of the child

Rights of the child are an integral part of human rights. Children have the same general human rights as adults, but also specific rights that suit their special needs as children. Children are rights holders and active participants in their realization. The realization of rights enables them to develop to their full potential, recognizing their human dignity and urgency to ensure their well-being. Undoubtedly, the healthy development of children is essential for the future well-being of any society.

However, because children are dependent on adults, they are more susceptible to major social changes, such as the COVID-19 pandemic. Therefore, the actions or inactions of institutions, society and parents can affect children more than any other social group. It is therefore important that these actions take into account the best interests of the child when drafting policies and legislation. The analysis of the situation of children in Kosovo this year also shows that children still face difficulties for the full enjoyment of their rights. These difficulties are manifested in almost all areas of their lives, especially in the realization of the right to education and social and health protection. The situation created by the global pandemic COVID-19 has highlighted even more the shortcomings for the realization of these rights and has deepened the existing inequalities. In December 2021, the OIK published the Report *“Health emergency*





and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo”, where in a special chapter has elaborated the impact of the pandemic and the measures taken to preventing and combating it in the rights of children<sup>73</sup>. The Ombudsperson has concluded that the decisions of the Government and relevant institutions have not taken into account the required level of implementation of the principle of best interests of the child. The pandemic and the relevant decisions issued by the Government and other institutions have affected the realization of the rights of the child in the Republic of Kosovo. Although the report found it difficult to accurately conclude the extent of the violation of the rights of children, especially those with disabilities, violations by the action or inaction of the Government and other institutions have been identified throughout the investigation in many areas and aspects.

The Constitution of the Republic of Kosovo expressly protects the rights of children and imposes legal obligations on the state to respect, protect and fulfill these rights, through the direct implementation of the Convention on the Rights of the Child (CRC). The completion of the legal framework with the Law on Child Protection (LCP) and its entry into force in July 2020 marks an important step towards the realization of their rights. However, the adoption of laws remains only a symbolic step if not followed with concrete steps and successful implementation. Although the LCP has authorized the competent institutions to issue 18 bylaws within one year of its entry into force, to date only two have been issued. In this regard, the OIK, based on the authorization of the LCP and the Law on Ombudsperson, has issued Regulation (OIK) No. 01/2019 on special procedures for receiving, handling and addressing complaints filed by children or complaints related to children’s rights<sup>74</sup>. In order for this Regulation to be as understandable and accessible as possible for children, the OIK also held a workshop for the review of the Regulation Booklet, which was attended by children who gave their comments.

73 For more details, see: Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo, 2021, at:<https://oik-rks.org/2021/12/10/report-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-rajat-e-njeriut-ne-republiken-e-kosoves/> [last accessed on 3.1.2021].

74 OIK, Regulation No. 01/2019 on special procedures for receiving, handling and addressing complaints submitted by children or complaints related to children’s rights, 2019.

Throughout this report, the OIK has included concrete recommendations for each of the areas addressed. Of course it is essential that these processes involve the child's voice and point of view in accordance with the gradual development of his / her skills.

## Proposals for amending and supplementing the legislation in the field of children's rights

The pandemic has also had an impact on delays in implementing the Government and Assembly legislative agenda. Some of the laws that directly affect the interests of children, such as: the Law on Social Services and the Law on Local Government Finance, have not been submitted to the Assembly for approval, although they were drafted and sixteen of the bylaws provided by the LCP are still not approved.

Regarding the **implementation of the Law on Child Protection**, the OIK has published a Report with Recommendations to the Government of Kosovo, the Kosovo Judicial Council and the Independent Media Commission to adopt the relevant bylaws<sup>75</sup>. In 2020, the OIK had launched ex-officio investigations 381/2020 regarding the evaluation of the Law on Child Protection (LCP). The LCP has authorized the competent institutions to issue 18 bylaws within one year from its entry into force in July 2020. These acts are of particular importance for the protection and observance of the rights of the child and, among other things, enable: the coordination of the relevant authorities at central and local level; the functioning of the Council for the Rights of the Child; the establishment and operation of Child Rights Teams; the functioning of the establishment of multidisciplinary tables for assistance in case management; organization and scope of child protection homes; taking appropriate measures to protect the child from narcotic and psychotropic substances; taking appropriate preventive and protective measures to prohibit participation in nightclubs and games of chance; ways of protecting children in the mass media - with special emphasis on children who are under institutional care; taking appropriate measures to protect children from Internet cafes and video games, including specific measures against pornographic content, punishing child abusers online, reducing child access to materials harmful to their health and life, providing assistance to children at risk of all forms of online violence. By the end of 2021, only the Administrative Instruction (GK) -no 02/2021 on the implementation of child-friendly justice in criminal, civil and administrative proceedings has been approved, as well as Regulation (OIK) No.01/2019 on special procedures for admission, handling and addressing complaints filed by children or complaints related to children's rights.

During this year, **regarding the right to education**, the OIK has published two reports with recommendations for changing the legislation: Report with Recommendation regarding the lack of harmonization of Law No. 04 / 1-032 on Pre-University Education in the Republic of Kosovo with Law No. 05 / L-087 on Minor Offenses<sup>76</sup> and Report with Recommendation regarding the amendment and supplementation of the Administrative Instruction (MEST) No. 19/2016 on the Inclusion of Children in Preschool Institutions in Kosovo<sup>77</sup>.

75 For more details see, Ex-officio Recommendation Report No. 381/2020 regarding the implementation of the Law on Child Protection, 2021, in:<https://oik-rks.org/raportet/ex-officio-rapet/> [last accessed on 3.1.2021].

76 For more details see, Ex-officio Recommendation Report No. 69/2021 regarding the lack of harmonization of Law No. 04 / 1-032 on Pre-University Education in the Republic of Kosovo with Law No. 05 / L-087 on Minor Offenses, 2021, at:<https://oik-rks.org/raportet/ex-officio-rapet/> [last accessed on 3.1.2021].

77 For more details see, Ex-officio Recommendation Report nNo. 597-2020 regarding the amendment and supplementation of the Administrative Instruction (MEST) No. 19/2016 on the Inclusion of Children in Preschool Institutions in Kosovo, 2021, at:<https://oik-rks.org/raportet/ex-officio-rapet/> [last accessed on 3.1.2021].

The first report recommends to the Ministry of Education, Science, Technology and Innovation (MEST) to amend and supplement the relevant provisions of Law No. 04 / 1-032 on Pre-University Education in the Republic of Kosovo (LPUERK) and its harmonization with Law No. 05 / L-087 on Minor Offenses (LMO).

The LMO stipulates that no one can be punished for a minor offense for an offense which, after being committed, has not been defined as a minor offense by law or by acts of the municipal assembly, and for which no sanction has been determined. This law also obliges that all provisions for minor offenses, which are not in accordance with it, must be harmonized within one year from the entry into force of the law. On the other hand, LPUERK in Article 15 - *Attendance at school*, has determined that the continuation of compulsory schooling for the student is the main responsibility of the parent. In cases when the parent does not enroll the child in school or does not make alternative arrangements for him, without any reasonable and / or unavoidable reason, then that parent violates the law. This article further obliges MEST to prepare guidelines to assist municipalities and educational and training institutions to effectively address dropout. Article 47 - *Home schooling* has defined the responsibility of the municipality to assess whether the child is not receiving suitable education, either through regular attendance at school or otherwise, or if it is not the subject of permanent expulsion under the law. This article also defines the procedure to be followed by the municipality, where it initially sends a written notice to the parents requiring them to satisfy the municipality that the child is receiving education at home or elsewhere, within the set time limit. If the parents fail to respond to the municipality within the time limit specified in the notice the municipality proceeds with the case in the minor offense procedure. But, if the parents respond that the child is receiving education outside the formal education system, the arrangements made by the parents as well as those of the inspection, after consultation with the relevant municipality, are subject to the authorization of the MEST. The OIK has assessed that the above provisions of LPUERK have not been regulated by clear misdemeanor sanctions and has noted that these articles have not been implemented in any case. More than four years have passed since the entry into force of the LMO and the LPUERK is still not in compliance with the LMO, therefore the OIK has recommended the harmonization of these laws. The OIK has been notified by MEST that these legislative changes have been accepted by the Ministry and that they will be included in the legislative plan for next year.

The second report recommends MEST to amend and supplement the Administrative Instruction No. 19/2016 on the Inclusion of Children in Preschool Institutions in Kosovo, to harmonize the procedure and criteria for admission of children in preschool institutions with the basic principles and authorizations arising from Law No. 02 / L-52 on Preschool Education (LPE) and the LCP.

In October 2020, the OIK had opened ex-officio investigations based on the information provided by *Kallxo.com* that in the municipalities of Malisheva, Ferizaj, Fushë Kosovë, Istog, Rahovec, Skenderaj, Viti and Vushtrri, in addition to the legal criteria set out in the Administrative Instruction, the municipalities had established additional criteria for the admission of children to public kindergartens. The additional criterion reported was that both parents should be employed and referred to limited capacity. The OIK contacted these municipalities regarding the verification of this report. As of the date of publication of this report, the OIK did not receive a response from the Municipality of Malisheva, Fushë Kosovë and Rahovec. Also, in April 2020, the OIK opened an ex-officio investigation based on information provided by the television “Kanal 10” on how the kindergarten “Botanika” in Prishtina has refused to accept a six-year-old child with special needs. According to “Kanal 10”, among other things, it was said that “Botanika” was located only 10 minutes away from the house where the child in question lived. Although the priority to enrol in that kindergarten belongs to the children of the neighbourhood, the child in question was

denied this right on the grounds that there is no space for other children with special needs. Kindergarten “Botanika” has notified the OIK that in this institution classes are attended by twenty children, where three of them are disabled, applying paragraph 7 of article 5 of the Administrative Instruction. With this is also applied paragraph 9 of the same article, where it is determined that the maximum number of children with special educational needs can be 3 children. According to “Botanika”, in the interpretation of this provision, the kindergarten could not increase the number of children with special needs for the age group of children 5-6 years old who attend their activity, as this would exceed the set number and would be contrary to legal regulations.

After reviewing the responses of the municipalities and the legal analysis, the OIK has concluded that Administrative Instruction No. 19/2016 does not define the employment of both parents as a criterion for enrollment of children in preschool institutions. Therefore, the requirement for the employment contract of the parents decided by some municipalities during the publication of the competitions and their remark that the applications without these documents will not be reviewed, is in contradiction with the Administrative Instruction No. 19/2016. This criterion is not in accordance with the principle of legality and legal certainty. The OIK has noticed that this priority set by the municipalities has come from the lack of capacities and resources to accommodate the large number of applications despite their willingness to include all children without distinction.

The Ombudsman also found that due to legal uncertainties, the request for employment of the parents could be considered as a basis for discrimination based on the LOR and LCP through the category *“or any other condition of the child or his parents”* and that it is not in line with the principle of the best interests of the child. Finally, after reviewing “Botanika” kindergarten’s responses and legal analysis, the current Instruction does not provide legal certainty, clear and affordable alternatives for children with severe impairments, more specifically the right of children to education, to non-discrimination and to their best interests. Therefore, the OIK has recommended that the Instruction be clarified and amended to be in accordance with the basic principles and authorizations arising from the LPE, respectively with the principles set out in Article 4: *“a) Equality; b) Inclusion; c) Democracy; d) Staff autonomy; e) Professionalism and responsibility; f) Equal capacities for children and parents, taking into consideration differences between children; g) The right to be different; h) All-inclusive development of children’s personality”* and the LCP. The OIK has been notified by MEST that these legislative changes have been accepted by the Ministry and that they will be included in the legislative plan for next year.

**In order to prevent early marriages**, in 2020 the OIK published the Report with ex officio recommendations in order to amend and supplement Article 16, paragraphs 2 and 3, of the Family Law<sup>78</sup>. Article 16 of the Family Law stipulates that the marriage of a minor over 16 years of age may be allowed by the competent court if it is concluded that the minor person has reached the necessary physical and mental maturity for exercising his marital rights and to fulfill his marital obligations. In the report the OIK has noted that numerous studies show that early marriages have a negative impact on the development and well-being of children. Early marriage affects the decision-making power of girls within the family and makes them more susceptible to violence and sexual abuse. In Kosovo, this phenomenon disproportionately affects girls and the Roma, Egyptian and Ashkali communities, as more children from these communities marry earlier and more girls marry than boys. Following the publication of the report, the OIK participated in consultative meetings on the drafting of the Civil Code, where it advocated for the relevant changes. The Draft Civil Code was

<sup>78</sup> Ombudsperson institution, Report with ex officio recommendations, Case No. 206/2019 regarding the prevention of early marriages, 2020, at <https://www.oik-rks.org/2020/08/13/raport-me-rekomandime-ex-officio-case-no-2062019-in-connection-with-the-prevention-of-child-marriages/> [last accessed on 03.01.2021].

approved at the government meeting on December 30, 2021. This draft has included the recommendation of the OIK and the age for marriage is 18 years<sup>79</sup>.

## Complaints filed regarding children's rights

The Ombudsperson received 58 complaints during the reporting year, a number of which were filed mainly by parents of children. Of this number, 18 were declared inadmissible because the issues they dealt with were outside the Ombudsperson's jurisdiction, there were no human rights violations, or the complainants had access to them or were in use of legal remedies. Of the 40 complaints filed for investigation, ten of them were opened ex officio, while seven cases were opened ex-officio regarding systematic violations of children's rights.

During this year, the OIK addressed 27 recommendations to the relevant public authorities and sent 43 reminder letters to these authorities regarding the non-implementation of the recommendations.

## The right of children to education

Decisions taken by institutions to prevent and combat the pandemic have also affected the realization of the right to education. During 2021, distance learning continued in combination with physical presence in schools. Distance learning is realized through four platforms: the E-Learning platform (the main online platform broadcast by the public channel RTK); early childhood education platform (care, development and early childhood education for ages 0 - 6 years); distance learning platform for children with disabilities (inclusive education) and E-school learning platform (child learning platform for grades 1-9). It should be noted that a positive side of these platforms has been that teaching on the first three platforms is offered in four languages: Albanian, Serbian, Turkish and Bosnian. Anyway, this process has been accompanied by challenges where unequal access to the Internet and technological equipment, lack of suitable spaces for learning in students' homes and lack of teaching-related knowledge and application have been identified as challenges. This situation has been especially difficult for children with disabilities as well as children from the Egyptian, Ashkali and Roma communities<sup>80</sup>.

The OIK has emphasized that any restrictions on the right to education should not infringe on the right to education at its core or deprive it of its effectiveness. In accordance with the decisions of the ECHR, these restrictions must be provided for by law and pursue a just cause. Thus, the right to education is not an absolute right and can be restricted, however, the fundamental rights and freedoms guaranteed by the Constitution can be restricted only to the extent necessary in an open and democratic society and until the purpose for which the restriction is allowed is met. After the analysis of the legislation, the decisions taken and the situation in general, the OIK has concluded that the protection of the health of pupils, students and staff of educational institutions, as well as citizens in general, from the spread of communicable diseases, is a legitimate goal in the aim of which the right to education may be limited for the protection of health,<sup>81</sup>.

79 Republic of Kosovo, Government, Draft Civil Code of the Republic of Kosovo, Article 1140, in: <https://kryeministri.rks-gov.net/wp-content/uploads/2021/12/Projekt-Kodi-Civil-i-Republikes-se-Kosoves.pdf?fbclid=IwAR14nnFk9wUj9i6360PCq-jPbrMag9Y5yGt> [last accessed on 03.01.2021].

80 Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo, p. 147-160 as well as the Statement of the Ombudsperson on the Universal Children's Day, 19.11.2021, at: <https://oik-rks.org/2021/11/19/> [last accessed on 03.01.2021].

81 Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo, p. 156-157.

Cases related to the right to education, which have been investigated by the Ombudsperson, including cases initiated ex officio, have dealt with: the impossibility of enrolling in school due to the requirement of various tax documents<sup>82</sup>, hate speech in textbooks<sup>83</sup>, vaccination requirements for access to spaces<sup>84</sup>, lack of transport<sup>85</sup>, school violence<sup>86</sup>, not attending school as a result of fear of blood feuds<sup>87</sup> and unequal treatment<sup>88</sup>. Of the 11 cases submitted concerning the rights of children in education, five have been opened ex officio, one has been dismissed as inadmissible, four of them have been positively closed, while six are under investigation.

In one of the cases initiated ex-officio, the OIK investigated the article of the portal “Koha.net” with the title: “Municipality of Prishtina shuts-off the possibility for the students of the village Prapashtica to attend classes”. After the expiration of the municipality’s contract with the transport organizer, 12 students of the “Dëshmorët 1921” school could not attend classes. According to the Law on Pre-University Education, municipalities must organize free transportation for children living more than four kilometers away from school. In this case, the students were six kilometers away from the school. According to the school director, there have been delays for this tender for several years and most of the consequences are being borne by the students. Following their pressure on the MEST, transport was regulated.

On January 26, 2021, the OIK sent a letter of recommendation to the Gymnasium “Kuvendi i Lezhës” in the municipality of Viti regarding the response to the complainant on the evaluation of his child by the Gymnasium. In July and August 2019, the complainant had filed a complaint with the Education Inspectorate Sector in Gjilan and the Education Inspectorate in Prishtina, but had received no response. The OIK has recommended the gymnasium to send the complainant in writing the appropriate response regarding the review of the recommendation of the Education Inspectorate Sector.

On August 23, 2021, the OIK sent a letter of recommendation to the Municipality of Fushë Kosovë to provide transportation for children with disabilities in order to attend classes at the Learning and Counselling Resource Center “Xheladin Deda”. The parents of the children had complained to the OIK that the municipality had not provided transportation in accordance with legal obligations. The OIK has asked the municipality to take immediate measures for children to attend school and is monitoring the implementation of this recommendation.

On July 13, 2021, the OIK sent a letter of recommendation to the Municipality of Vushtrri regarding the non-attendance of education of both children. The OIK had investigated the case and although it had requested the Center for Social Work (CSW) to inform it in writing about the actions that had been taken or would be taken under the legal competencies they have to handle the case, this did not happen. The OIK has recommended to the Municipality of Vushtrri to take the necessary appropriate actions against the CSW in Vushtrri that the latter, within the legal competencies, to handle the case and in coordination with the Municipal Directorate of Education (MDE) to do the best for the children to attend the respective schools.

82 Case 531/2021, Case354/2021, Case 408/2021.

83 Case 147/2021.

84 Case 575/2021.

85 Case 679/2021.

86 Case 600/2021.

87 Case 641/2021.

88 Case 640/2021.

## Children with disabilities

Children with disabilities are still experiencing serious difficulties and face obstacles to the full enjoyment of the rights set by law. Children with disabilities belong to one of the most vulnerable groups of children. Their situation has been exacerbated by the pandemic. In its separate report on health emergency, the OIK found that there was no comprehensive support strategy for children with disabilities at the national level and in many cases the support and assistance was temporary, poorly organized and has not covered all children at once.<sup>89</sup>

The interruption and suspension of some health services has worsened the health status of children including children with disabilities. Thus, discontinuation and suspension of physical rehabilitation therapies, psycho-social counseling therapies, limited access to essential medicines, and daily support programs have deprived children with disabilities of basic therapeutic rehabilitation services. In some cases, this could have endangered the lives and development of the children themselves. Moreover, the burden of providing these services has fallen on the parents or their guardians. This burden, in addition to the financial aspect, has become very difficult in finding alternatives so that the planned services are not interrupted for the children.

Representatives of organizations of people with disabilities also stressed that the pandemic has directly affected people with disabilities and in particular their families. A significant proportion of parents have lost their jobs as a result of the pandemic and this has affected the ability of these children to access services.<sup>90</sup>

The OIK has recommended to the Government to draft and implement a comprehensive plan to support children in general, and those with disabilities in particular, for health services guaranteed by law, focusing on rehabilitation programs, of psycho-social therapies, immunization, quality nutrition, assistance to parents and MEST to increase the number of assistants for children with disabilities, always based on the requirements of municipalities.<sup>91</sup>

During this year, the Ombudsperson has received five cases related to children with disabilities, one opened ex-officio. The OIK has launched ex-officio investigations into the legal obligations of municipalities to establish and operate a professional assessment and support team for special educational needs for children with disabilities.<sup>92</sup> The Law on Pre-University Education obliges municipalities to establish, on their own or in cooperation with other municipalities, a professional evaluation and support team. This team should be specific to the special educational needs of children with disabilities and consist of specialists in education, social work, psychology and rehabilitation, as external support to educational and training institutions to provide counseling and guidance to teachers, students and parents.<sup>93</sup> According to OIK information, some municipalities have not yet established these teams.

While another case concerned the inadequate treatment of the child by the staff of the respective Resource Center. After taking legal action, the OIK was notified by MEST that

89 Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo, p. 146.

90 Ibid, p. 136.

91 Ibid, p. 162-163.

92 Case 411/2021.

93 Assembly of the Republic of Kosovo, Law No. 04 / L-032 on Pre-University Education in the Republic of Kosovo, 2011, article 41, in: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2770> [last accessed on 03.01.2021].

the case was handled where additional staff was hired to increase the quality of services.<sup>94</sup> Other cases concerned legal advice regarding the adjustment of working hours for the care of a child with disabilities, the exemption from payment for a child with disabilities and the provision of transportation as well as the registration of children without the consent of the parent.<sup>95</sup>

On March 18, 2021, the representatives of the OIK visited the Day Care Center “Pema” in Prishtina, where they were closely acquainted with the work of this center, especially during the pandemic. This center provides psycho-social and rehabilitation services for children with disabilities; psychological counseling for parents / guardians of children in need; continuous capacity building of the staff of the Day Care Centers, through training and clinical supervision; raising awareness and empowering parents to advocate for the rights of children with disabilities; monitoring the implementation of laws and policies addressing children’s rights; organizing seminars and conferences addressing the needs and rights of children from the most vulnerable categories. About 254 children with disabilities receive services in this center, organized through the Head Office in Prishtina and four other centers (Peja, Prizren, Ferizaj and Gjilan). Representatives of the Center informed the OIK that the pandemic had greatly affected the work of this Center for the provision of planned services. In addition to the difficulties during closure, one of its main challenges remains financial sustainability. Since most support for community-based organizations is 6-month, 8-month to 1-year, or 1-year contracts, this situation does not guarantee sustainability to social and family service providers for vulnerable groups. Representatives of the Center informed the OIK that the pandemic had greatly affected the work of this Center for the provision of planned services. In addition to the difficulties during lock down, one of its main challenges remains financial sustainability. Since most support for community-based organizations is 6-month, 8-month to 1-year, or 1-year contracts, this situation does not guarantee sustainability to social and family service providers for vulnerable groups of the population.

The OIK has also contacted the Association “Down Syndrome Kosova”, which provides therapeutic services for children with Down syndrome, including the services of psychologist, logopedist, ergotherapy and physiotherapy. The Association has informed the OIK that the main challenges they face are of a financial nature and the lack of sustainable institutional support for the services they provide. The difficulties identified on field for the children were the financial costs of the therapy that the children and adults with Down syndrome had to purchase (cases which were affected by COVID-19). Representatives have raised concerns about vaccinating people over the age of 16 with Down syndrome, who have been identified by international experts as a group with high-risk of complications in the event of COVID-19 infection. This is because they have much weaker immunity than the rest of the population and that in most cases the syndrome is associated with cardiovascular disease, respiratory disease, endocrine disease, obesity, etc. According to the association, most European countries have designated people with Down syndrome in the first group for vaccination.<sup>96</sup> Similarly, the OIK has contacted Handikos, and the Association “Autizmi”.

On June 1, 2021, OIK representatives visited the Learning and Counselling Resource Center “Xheladin Deda” in Peja. This center offers special education for blind students; rehabilitation and accommodation at the dormitory of the LCRC; integration and support in regular schools; support and counseling in the family and in preschool institutions; training for teachers, parents and staff working with blind children. While among the challenges that this center faces are mentioned: full identification of children categorized by the Medical-Social Commission of the age group 0-18 years, treatment of blind children with multiple

94 Case 545/2021.

95 Case 574/2021, Case 272/2021 and Case 438/2021.

96 Association “Down Syndrome Kosova”, Answers to OIK questions, April 21, 2021.



disabilities (their inclusion in the education system, building the professional capacities of the staff in LCRC, improving the infrastructure of their accommodation in the dormitory of the Resource Center), vocal synthesis that provides access to education for all blind people through information technology, organization of field services for integration support for pre-university students (Braille, orientation and mobility materials, training for regular school staff, typhlo - didactic tools, raising awareness of parents, etc.) Lack of cross-sectoral coordination between the relevant ministries to provide typhlo-technical and typhlo-pedagogical tools was also mentioned as a challenge.

On June 1, 2021, OIK representatives also visited the Resource Center “Nëna Terezë” and Resource Center “Lef Nosi” in Prizren, Resource Center “Nëna Terezë” in Mitrovica, where they were closely acquainted with their work, separately during the time of the pandemic.

## The rights of children in judicial proceedings

During this year, the OIK has received eleven complaints against courts and prosecutor’s offices. The complaints mainly concerned the custody of the minor child<sup>97</sup>, procrastination of court proceedings for damages<sup>98</sup>, postponement of the execution of the sentence<sup>99</sup>, not (realization) of contact with children<sup>100</sup> and the right to a fair and impartial trial<sup>101</sup>. Also, at the request of the parties, the OIK monitored court hearings regarding the entrusting of children.

## Social and health protection of children

The pandemic has undoubtedly affected the social and health protection of children, although the exact level of indirect impact is not known, which according to many experts in the field, will have many consequences and be present for a long time in the lives of children.<sup>102</sup> In particular, the economic situation of households is reported to have been further aggravated by the risk of increasing poverty.

A very worrying aspect that has had an impact on the lives and health of children, especially those with disabilities, has been the lack of essential medicines for certain periods. For many parents, provision of these drugs through illegal means has been a high-risk challenge. Also, the decisions of the Ministry of Health to suspend for a certain period the vaccination program, has affected the postponement and delays in the immunization of newborns. This process has since been accompanied by, and has also influenced the disruption of, the regular vaccination program.<sup>103</sup>

Social services, although much needed in pandemic times, have been limited and have been associated with numerous difficulties. The situation has been exacerbated by the late announcement of regular grants to support social service providers. Delays have also been identified in terms of the allocation of funds to service providers, and all this has affected a part of the beneficiaries (a large number are children, including those with disabilities) of these services to remain without services.

97 Case 274/2021.

98 Case 585/2021 and case 230/2021.

99 Case 540/2021.

100 Case 339/2021, case 624/2021 and case 213/2021.

101 Case 314/2021, case 725/2021, case 405/2021 and case 227/2021.

102 Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo, p. 146.

103 Ibid.

The OIK has also noted that the lack of adequate information about the virus, as well as information driven by conspiracy theories have greatly affected the reluctance of parents to seek help and health services for their children.

The pandemic has led to the Law on Social Services and the Law on Local Government Finance not being approved by the Assembly even though it was drafted. The adoption of these laws, especially the Law on Social and Family Services, which would fully regulate the mandate, role, competencies, responsibilities and structure of centers for social work, has been one of the recommendations of the OIK in the last two years in the Report with recommendations Ex officio No. 59/2019 - Regarding the evaluation of the social service delivery system in Kosovo.<sup>104</sup>

Regarding social and health protection, 6 cases have been submitted to the OIK where three have been rejected as inadmissible while three others are under investigation. These cases are related to: the impact of the pandemic health emergency on social and health protection<sup>105</sup>, violation of social and economic rights by the parent<sup>106</sup>, and non-response to the social assistance complaint.<sup>107</sup>

In order to monitor and assess the rights of children and the difficulties they face in accessing services during the pandemic, the OIK has visited several centers and contacted organizations operating in this field. On March 12, 2021, the representatives of the OIK visited the Day Care Center for Children in Prishtina, where they were more closely acquainted with the services provided to children at risk, especially for children in street situations. Representatives of the OIK were informed about the educational process of these children, the provision of psychological and health services, etc. They were also informed that in terms of health they have a very good cooperation with the Family Medicine Center (FMC), where they refer cases in terms of health. As children in street situations constitute a vulnerable group of children, the OIK last year asked the institutions that when approving support packages to include specific measures to support children in street situations, children with disabilities and children in difficult economic situation.<sup>108</sup> However, this recommendation is only addressed in a general way.

While the SOS organization has informed the OIK that the pandemic has affected the behaviors and thoughts of children, where the support of psycho-pedagogical staff is constantly needed to maintain psychological balance. Since last year, SOS has developed an internal response protocol where every month SOS families are supplied with adequate vitamins, masks, disinfectants and other preventive preparations to protect against the virus. Furthermore, the organization Terre des Hommes (TDH) informed the OIK that the frequent challenges faced by children have been due to the discriminatory and exclusionary approach of persons to day care center children (including access to health services). The organization stated that these persons changed their approach to these children when they were accompanied by the center's staff.

The good news to help the socio-economic situation of children during 2021 has been the issuance of decisions: Decision on setting the conditions and criteria for the partial implementation of measure 3.5- Payments for women after childbirth and allowances for children from the Economic Recovery Package and Decision on setting the conditions and

104 OIK, Annual Report 2020, pg. 59, at: <https://oik-rks.org/2021/04/14/raporti-vjetor-2020> [last accessed on 03.01.2021].

105 Case 183/2021.

106 Case 586/2021.

107 Case 364/2021.

108 Annual Report 2020, p.55.

criteria for the partial implementation of the measure 3.5- Allowances for Children from the Economic Recovery Package.<sup>109</sup>

With the first decision, the unemployed women after childbirth for the last twelve months before giving birth to the child were subsidized with one hundred and seventy euros per month for six months, while for those employed the support is one hundred and seventy euros per month for three months. However, point 9 of this decision stipulates that only young mothers over the age of eighteen and citizens of the Republic of Kosovo can benefit from the subsidy under this measure.

With the second decision, the government has set a support of 10 euros per month for children under the age of 16 and 20 euros per month for children aged 0-24 months. However, this decision excludes children aged 16-18 years and prioritizes younger children, while children born after 2012 can benefit from the allowance only from 2023. This can be seen as a small help, however the OIK raises the concern of how much other children from vulnerable groups, such as children in street situations, will actually be able to benefit from this measure. First, given the age constraints, it is difficult to assess how much this group of children can benefit from the allowance. Secondly, the application form through the submission of various documents, such as: birth certificate, testimony of the legal guardian, bank account and copy of ID card can be a challenge for this group considering the level of marginalization and the problems faced by these children and these families.

## Mental health of children during the pandemic

From the beginning of the pandemic, the OIK had warned the institutions about the impact of the pandemic on mental health and stressed the importance of mental health programs and access of all children to psycho-social services.<sup>110</sup>

Decisions to prevent and control the pandemic for closure, isolation at home, switching to the online education system, lack of interaction with society, sitting for long periods before television screens, obtaining various information about the risk of COVID-19, information with no censorship about death and many false news about the pandemic, all of these are reported to have directly or indirectly affected the mental health of children. In particular, it has been reported that the emotional state or mental health of children with disabilities during the pandemic has been severely aggravated and has had a direct impact on their health.<sup>111</sup> Globally similar reports were issued by the Organization for Economic Co-operation and Development (OECD) that the mental health of young people aged 15-24 has seriously deteriorated during the two years of the pandemic.<sup>112</sup>

While the impact of the pandemic on mental health is expected to be long-term and widespread, the OIK reiterates the need to design appropriate child mental health policies and to support programs that address this problem.

109 Government of Kosovo, Decision on setting the conditions and criteria for the partial implementation of measure 3.5- Allowances for Children from the Economic Recovery Package, in: <https://mf.rks-gov.net/desk/inc/media/173A6369-973C-4189-B158-5E4F9BC13650.pdf> and Decision on setting the conditions and criteria for the partial implementation of the measure 3.5- Payments for women after childbirth and allowances for children from the Economic Recovery Package in: <https://mf.rks-gov.net/desk/inc/media/4F250604-F09F-481F-B678-EB53F7BE9BEF.pdf> [last accessed on 03.01.2021].

110 OIK, Statement of the Ombudsperson on the occasion of the International Children's Day, 01.06.2020, at: <https://oik-rks.org/2020/06/01/deklarata-e-avokatit-te-popullit-me-rastin-e-dites-nderkombetare-te-femijeve/> and Annual Report 2020, pg. 55.

111 Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo, p.139.

112 Ibid.

## IV. Equality before the law

### **The Institution of the Ombudsperson as a mechanism of protection from discrimination**

European Union Directives<sup>113</sup> on non-discrimination require the establishment of an equality body that would have a minimum of mandatory powers in the field of combating discrimination. These directives provide the obligation to establish bodies whose responsibilities will include, inter alia, the provision of independent assistance to victims of discrimination, the conduct of independent research and the publication of independent reports and recommendations on discrimination.

Kosovo has built a legal framework for preventing and combating discrimination, respecting international standards and drawing on the experience of comparative law.

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113 EU Council Directive No. 2000/43 / EC of 29 June 2000 implementing the principle of equal treatment regardless of racial or ethnic origin, the EU Council Directive No. 2000/78 / EC of 27 November 2000 establishing the general framework for equal treatment in respect of employment and occupation, the EU Council Directive No. 2004/113 / EC, dated 13 December 2004, on the application of the principle of equal treatment between men and women in the supply of goods and services of the Council of the European Union and Directive No. 2006/54 / EC of the European Parliament and of the Council of 5 July 2006



The Law on Protection from Discrimination (LPD) defines the general framework for preventing and combating discrimination in the Republic of Kosovo. With it, a part of the *acquis* of the European Union has been included in the positive law of Kosovo.<sup>114</sup>

As Kosovo does not have a special institution specialized in the protection of equality, the Law on Gender Equality, as part of the package of human rights laws, entrusts this role to the OIK, as a body of equality and protection from discrimination.

In general, the legal competencies of the Ombudsperson in the field of protection against discrimination are harmonized with EU directives, international standards and relevant comparative practice and as such, partially exceed the traditional competencies of this institution, because LPD- envisages important innovations and assigns broader competencies to the Ombudsperson in matters related to discrimination and thus the Ombudsperson gains a central role in protection against discrimination.<sup>115</sup>

From the day the “legal package on human rights”<sup>116</sup> entered into force, the Ombudsperson makes efforts to implement the legal mandate equally and works on training its staff in capacity building in the field of protection against discrimination.

Also, since the directives on protection against discrimination of the European Union require the establishment of a body for the protection of equality, namely a special mechanism, the Ombudsperson has established a special department that deals with issues of protection against discrimination. The main task of this department is to ensure equal access to the exercise and protection of citizens’ rights throughout the Republic of Kosovo and to take measures to prevent various forms of discrimination against citizens in the exercise of rights guaranteed by the Constitution.

114 See Law on Protection from Discrimination, Article 1, paragraph 2.

115 See the Law on the Ombudsperson, Article 16, which specifies the competencies of the Ombudsperson, see the Law on Protection from Discrimination, Article 9, which specifies the competencies of the Ombudsperson in protection against discrimination.

116 “Package of human rights laws”, which is in force since July 2015, includes: Law No. 05 / L-019 on Ombudsperson, Law No. 05 / L-020 on Gender Equality and Law No. L-021 on Protection from Discrimination.

## **Implementation of the Law on Protection from Discrimination**

A period of almost seven years has passed since the implementation of the Law on Protection from Discrimination, but it is clear that Kosovo's institutional practice against discrimination is not nearly as rich as our social reality is "rich" with examples of discrimination.

The implementation of the Law on Protection from Discrimination has been hampered this year as well as last year, due to the global pandemic caused by the COVID-19 virus, which further deepens the difficulties related to the guarantee of human rights in Kosovo and creates new challenges for institutions in terms of fulfilling legal obligations. Some measures taken by the government to curb the pandemic have hit members of particularly vulnerable groups to a greater extent and have further deepened existing inequalities and caused new difficulties in their lives (people with disabilities, the elderly, LGBTI members, women, children, members of the Roma community).

It is evident that in the protection against discrimination, the Ombudsperson and the competent courts have an important role not only in providing effective legal protection against discrimination in the relevant procedures, but also in proposing in time to the legislative authorities to amend and supplement possible inadequate legal solutions.

However, discrimination cases in court proceedings from year to year continue to be few. And as noted in previous annual reports, Kosovo courts still lack a system for proper monitoring of discrimination cases. However, in this regard, there are also lacking cases initiated on the basis of discrimination in the courts.

During the reporting period, the Ombudsperson continued to monitor the implementation of his recommendations to the institutions of the system to protect themselves from discrimination. In this context, the readiness and commitment of the Government to improve the implementation of the issued recommendations is evident.

Also, the Ombudsperson with his full capacities is committed to developing relations and strengthening cooperation with civil society organizations, such as regional and international, which work in the field of protection and promotion of non-discrimination and that contribute to promoting equality.

One of the most important goals of the Ombudsperson is to contribute to the advancement and improvement of institutional policies, regulations, procedures and practices in respecting human rights in cooperation with central and local institutions of the system as well as with civil society.

## **People with disabilities**

The Ombudsperson considers issues with serious impact on unequal treatment, restriction of unimpeded movement, privacy, the right to a safe and healthy environment, non-involvement of the interests of all citizens, in particular the needs of persons with disabilities, non-compliance with the rules issued by Administrative Instruction No. 01/2018 on Basic Elements and Requirements for the Design, Implementation and Monitoring of Detailed Regulatory Plans.<sup>117</sup>

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<sup>117</sup> Administrative Instruction MESP No. 01/2018 on Basic Elements and Requirements for the Design, Implementation and Monitoring of Detailed Regulatory Plans.

Moreover, the unimpeded movement and the right to a safe and healthy environment for persons with disabilities is constantly being restricted by the lack of improvement of infrastructure for access to collective housing facilities, especially public facilities, as it is provided by Administrative Instruction No. 33/2007 on the Technical Conditions of Construction Facilities for Access of Persons with Disabilities.<sup>118</sup>

The Ombudsperson has found that failure to provide a reasonable accommodation for persons with disabilities, in accordance with their specific needs, constitutes discrimination on the basis of disability, defined according to Article 1 of Law No. 05 / L-021 on Protection from Discrimination, and is contrary to international practice, including the judgments of the European Court of Justice. The Ombudsperson points out that the Municipality of Prishtina, with a commitment and an affordable budget, can fix the ramps and create suitable conditions in Prishtina for physical access for people with disabilities, whose obligations arise from the LPD, from the Law on Local Self Government as well as from the Administrative Instruction No. 33/2017 on the Technical Conditions of Construction Facilities for Access of Persons with Disabilities.

In Kosovo, the exact number of people with disabilities is not yet known, but as an indicator in general the number of persons benefiting from pension schemes is taken, which does not reflect the exact number. According to these estimates, there are approximately 144,000-270,000 people with disabilities living in Kosovo. According to the 2011 census, about 77,730 persons with disabilities have been identified in Kosovo. However, only 26,247 persons have a recognized status of persons with disabilities and are covered by various social schemes.<sup>119</sup>

According to the World Health Organization, approximately 15% of the world's population are people with disabilities. It is estimated that 10-12% of the total population of Kosovo are persons with disabilities.<sup>120</sup>

Despite the existing legal framework, which clearly prohibits discrimination<sup>121</sup>, as well as special laws governing the status of persons with disabilities<sup>122</sup>, these persons remain one of the most vulnerable categories of the population in Kosovo.

The legislative process, which the relevant ministry has started towards drafting a comprehensive legal document that would cover all categories of persons with disabilities and harmonize them with international instruments in this field, has not yet been completed.

118 Administrative Instruction No. 33/2007 on the Technical Conditions of Construction Facilities for Access of Persons with Disabilities.

119 Meeting of the representative of the Ombudsperson with the director of the NGO "Hendikos", held on July 8, 2021, in order to gather information on the general situation of persons with disabilities in Kosovo, with special emphasis on the situation of persons with disabilities during the COVID-19 pandemic and the needs and challenges that these persons face, in general and during the time of the pandemic.

120 Ibid.

121 See Article 24 of the Constitution and Article 1 of the Law on Protection from Discrimination. Law No. 03 / L-019 on Training, Vocational Rehabilitation and Employment of Persons with Disabilities, clearly prohibits discrimination committed by employers and emphasizes the needs and equal treatment of persons with disabilities in employment, training and retraining and guarantees their legal protection.

122 Law No. 2003 / 23 on Persons with Disabilities; Law No. 03 / L-022 on Material Support to Families of Children with Permanent Disabilities; Law No. 03 / L-019 on Training, Vocational Rehabilitation and Employment of Persons with Disabilities, amended and supplemented by Law No. 05 / L-078 on amendments and supplements to Law No. 03 / L-019 on Training, Vocational Rehabilitation and Employment of Persons with Disabilities; Law No. 04 / L-092 on Blind Persons; Law No. 05 / L-067 on the Status and Rights of Paraplegic and Tetraplegic Persons.

In general, the COVID-19 pandemic continues to affect every aspect of the social and economic life of all citizens of Kosovo, including people with disabilities. Since the beginning of the pandemic, the Ombudsperson has monitored the impact of the COVID-19 pandemic on the rights of persons with disabilities in the Republic of Kosovo, with a focus on meeting their essential needs during this period.

In the context of health care, all measures have been taken to protect residents. These measures include restrictions and adherence to the recommendations of the National Institute of Public Health, the Ministry of Health and the World Health Organization.<sup>123</sup>

However, the government has done little to provide people with disabilities with the guidance and special support they need to protect themselves during COVID-19, as many of them belong to particularly vulnerable groups.

The Government Preventive Measures, launched last year (March 11, 2020), although necessary to prevent the spread of the virus, had a major impact and were difficult for people with disabilities as well as the elderly, especially for those who depend on the help and support of others, whether through formal support from service providers or informal support from family and friends, including personal assistants, who assist them with their basic daily needs.

In this case, people with disabilities faced double difficulties, as according to the movement schedule, families or assistants were not allowed to move at the same time and according to the same schedule, but this situation in the meantime was overcome.<sup>124</sup>

Additional support was lacking if a personal assistant providing day-to-day assistance and support to persons with disabilities was imposed the measure of confinement or self-isolation, or if those they assist due to fear of possible COVID 19 infection can not / do not want to offer them the necessary help.

It is important to note that the fact that a large number of people with disabilities can not take care of themselves, has required the state to establish a system of specialized support and assistance during the pandemic to protect themselves from potential danger of the disease, but also providing proper care and support to avoid the negative impact on their health, which has not happened so far.

No special protocol for people with disabilities has been applied to patients with COVID-19, but the need for specific accommodation has been taken into account depending on the special needs of these patients. Necessary measures have been taken in accordance with the available resources to meet the special needs patients of this category.<sup>125</sup>

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123 From the response of the Government of Kosovo, dated 9 July 2021, which sent the response to the Ministry of Finance, Labor and Transfers, to the Questionnaire of the Ombudsperson Institution, sent via e-mail, on 21.6.2021.

124 Meeting of the representative of the Ombudsperson with the director of the NGO "Hendikos", held on July 8, 2021, in order to gather information on the general situation of persons with disabilities in Kosovo, with special emphasis on the situation of persons with disabilities during the COVID-19 pandemic and the needs and challenges that these persons face, in general and during the time of the pandemic.

125 The response of the Clinic for Infectious Diseases, dated 06.07.2021, to the Questionnaire of the Ombudsperson regarding the impact of the COVID-19 pandemic on persons with disabilities, sent via e-mail on June 21, 2021.



From the collected information it can be concluded that neither the relevant state institutions nor the relevant civil society organizations have accurate data on the number of people with disabilities infected with COVID-19, or the number of deaths of people with disabilities from the consequences of this infection.

After the state purchased vaccines against the COVID-19 virus, people with disabilities are also facing a lack of priority vaccination.<sup>126</sup> The E-platform for the vaccination application does not have a special section for people with disabilities, but only states that the appointment is made, among other things, for chronic patients. Thus, people with disabilities do not have a direct priority, but indirectly as chronic patients, although their problems and needs are much more complex than those of chronic patients.

Regarding vaccination against COVID-19, the Ministry of Health announces that all vaccination centers / units in Kosovo have access for people with disabilities (except the municipality of Deçan, but health personnel in this municipality have vaccinated in appropriate facilities for people with disabilities). The Ministry of Health has marked the entrances and exits for people with disabilities. For all people with disabilities who have not been able to go to the vaccination centers, vaccination is provided at home.<sup>127</sup>

According to the World Health Organization, the pandemic has led to an increased need for mental health services.

The Ombudsperson notes that despite the growing demand for mental health support,<sup>128</sup> the Ministry of Health has not allocated additional funds for mental health services. It is known that in Kosovo only 2% of the health budget is spent on mental health services, which is again lower than the EU average of 4%.<sup>129</sup>

Also, the Ombudsperson notes that in terms of access to information, persons with disabilities during COVID-19 did not have any additional information from the relevant institutions of the system, except the general one.

The Ombudsman was informed by the Office for Good Governance regarding access to information that pursuant to Regulation GRK 15/2014 on the provision of sign language services, the Government has provided facilities for translators to assist deaf persons and in cooperation with the Association of the Deaf of Kosovo, during 2021, has provided sign language services in public institutions.

Regarding access to information for the blind and visually impaired, during the pandemic, there were serious violations of the rights of this category of persons. Brochures printed to

<sup>126</sup> Response of the Kosovo Forum of Persons with Disabilities, dated 14 July 2021, to the Ombudsperson's Questionnaire regarding the impact of the COVID-19 pandemic on persons with disabilities, sent via e-mail on 21.06.2021.

<sup>127</sup> From the response of the Government of the Republic of Kosovo, dated 9 July 2021, which sent the response of the Ministry of Health to the Questionnaire of the Ombudsperson Institution of Kosovo in Kosovo, sent via e-mail on 21 June 2021.

<sup>128</sup> See in more detail the special report of the OIK published: "Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo", published on December 10, 2021, pages 25-39. [https://oik-rks.org/wp-content/uploads/2021/12/Raport-i-Avokatit-te-Popullit\\_-Emergjenca-sh%c3%abndet%c3%absore-dhe-ndikimi-i-pandemis%c3%ab-n%20c3%ab-t%c3%ab-human-rights\\_\\_FINAL.pdf](https://oik-rks.org/wp-content/uploads/2021/12/Raport-i-Avokatit-te-Popullit_-Emergjenca-sh%c3%abndet%c3%absore-dhe-ndikimi-i-pandemis%c3%ab-n%20c3%ab-t%c3%ab-human-rights__FINAL.pdf)

<sup>129</sup> Report of the Ombudsperson: "Health emergency and the impact of the COVID 19 pandemic on human rights in the Republic of Kosovo".

inform citizens about COVID-19 protection were not printed in the Louise Braille alphabet, neglecting access to information for this category of people with disabilities.<sup>130</sup>

Based on the above, it is evident that public information on COVID-19 measures has not been systematically transmitted or disseminated sufficiently in the forms and tools available to reach all categories of persons with disabilities. It is also important that this information is accessible in Braille alphabet, but written in a way that is understandable to all people with disabilities.

The Ombudsperson estimates that during the crisis caused by COVID-19, the authorities did not provide any special support to people with disabilities, other than the general one, which they received like all citizens.

Regarding the lack of compliance of the bylaws with the laws in force, the Ombudsperson on March 19, 2021 published the report with recommendations<sup>131</sup>, which he sent to the Kosovo Customs and the Ministry of Finance, regarding discrimination in the implementation of the right to exemption from import duties on passenger vehicles for persons with paraplegia and tetraplegia and the blind. In the report, the Ombudsperson found that the current practice of Kosovo Customs, which by imposing the general condition "personal possession of a driver's license" for all categories of persons with special needs, is a violation of the rights of persons with disabilities according to Law No. 05 / L-067 on the Status and Rights of Persons with Paraplegia and Tetraplegia, Law No. 04 / Z - 092 for the Blind, Code No. 03 / L-109 on Customs and Excise in Kosovo and Law No. 05 / L-021 on Protection from Discrimination, because with this condition that is not in compliance with these laws it directly excludes paraplegics, tetraplegics and the blind from the enjoyment of the right granted by law for the customs privileges in question, an unjustified denial, preference or restriction of the rights of users based to the extent and category of their disability, is an act of direct discrimination and violation of mandatory anti-discrimination provisions, which are mandatory for all legal entities.

Referring to what was said above, Ombudsperson has sent the following recommendations:

That KC, without further delay, create conditions for the full implementation of the legally granted right of customs relief in relation to the import of passenger vehicles, adapted to the needs of persons with paraplegia and tetraplegia, as well as blind persons, with the possibility of indirect exercise of user rights through legal guardian or authorized persons, equipped with a driver's license (Article 10 Law No. 05 / L-067 on the Status and Rights of Persons with Paraplegia and Tetraplegia; and article 6 of Law No. 04 / Z - 092 on Blind Persons).

In the future, KC should take care to refrain from unjustified discrimination or unequal treatment and unequal action (exclusion, restriction or giving priority) in relation to persons or groups of persons, based on a personal characteristic and to harmonize its practice with positive legal regulations in the field of anti-discrimination legislation.

Also, the Ombudsperson, in his capacity as a friend of the court (*amicus curiae*), sent a legal opinion to the Basic Court in Prishtina, regarding an individual complaint regarding

130 The response of the Committee of Blind Women of Kosovo, dated 29 June 2021, to the Questionnaire of the Ombudsperson regarding the impact of the COVID-19 pandemic on persons with disabilities, sent via e-mail on 21 June 2021.

131 Available at <https://oik-rks.org/2021/04/29/raporti-i-avokatit-te-popullit-ankesat-nr-8222017-a-nr-8642018-a-nr-5712019-dhe-a-nr-5182020-against-kosovo-customs-regarding-discrimination-in-implementation-of-the-right-of-exemption/>

allegations of discrimination due to disability, i.e. non-compliance with legal provisions regarding the creation of adequate physical conditions for persons with disabilities in public and private spaces in the Municipality of Prishtina. In his opinion, the Ombudsperson stressed that persons with disabilities, regardless of their abilities, have rights and needs that society, the state, and especially local government, must meet in accordance with conventions, international standards and laws in force in the Republic of Kosovo. Equal treatment is essential for democracy, which is based on the principle that every individual has equal value.

In his opinion, the Ombudsperson has concluded that the failure to provide reasonable accommodation for persons with disabilities, in accordance with their specific needs, constitutes discrimination on the basis of disability, defined in Article 1 of Law No. 05 / L-021 on Protection from Discrimination and is contrary to international practice, including decisions of the European Court of Human Rights.

### **Protection of the right to non-discrimination at work**

The Ombudsperson finds that Kosovo has a basic legal framework that regulates labor relations issues. However, in order to advance protection against discrimination at work, given Kosovo's clear aspirations to join the European Union, it is important to continue the reform of the Law on Labour in Kosovo.

The basic Law on Labour, approved in 2010, as Law No. 03 / L-212 on Labor, regulates the protection of workers' rights, but is not fully compliant with all relevant European directives. From December 2020, a new law on labour is being prepared, which will be harmonized with 17 European directives in the field of relations of the right to work, social protection, wages, working hours and modern protection of workers. The Ombudsperson also notes that there are shortcomings in the implementation of the Law on Labour mainly due to the delay of proceedings by the competent courts.

Law No. 04 / L-161 on Safety and Health at Work, adopted in 2013, has brought major changes to the safety and health at work system in Kosovo and is in line with most of the requirements of the EU Framework Directive 89/391 / EEC. It applies to all sectors except security forces, police, fire and rescue services. This law covers a wide range of workers (including interns and students in internships), but not the self-employed or family workers. To ensure full compliance with EU Framework Directive 89/391 / EEC, the line ministry reviewed this law in 2019 and prepared a concept paper identifying all necessary legislative changes. In 2020, the process of amending the Law on Safety and Health at Work has started.

In the positive development of events, the Government has proposed the Draft Law No. 07 / L-028 on the Labour Inspectorate, with the main goals of resolving informal employment and increasing the capacity for inspection activities in order to prevent violations of workers' rights. However, the draft law, which would replace the existing Law No. 2002/9 on the Labour Inspectorate, since September 2020 is awaiting review and approval by the functional committee of the Assembly of Kosovo.<sup>132</sup>

The Ombudsperson ascertains the lack of supervision over the proper implementation of this Law, due to the lack of capacities of the Labour Inspectorate.

<sup>132</sup> Draft Law No. 07 / L-028 on the Labor Inspectorate, 14 September 2020.

## Protecting workers' rights during the COVID-19 pandemic

The Ombudsperson monitored the implementation of labour rights, received information from relevant institutions and collected information from the field regarding the impact of the COVID-19 pandemic on the exercise of labour rights in Kosovo.

The Ombudsperson notes that economic and social rights have been directly influenced by government decisions to impose measures to protect against the COVID-19 pandemic. Due to the restrictive measures of the Government of Kosovo in combating the pandemic, the private sector in Kosovo continues to be particularly affected. Many enterprises have been closed. This has left a large number of people without jobs.

In relation to what was said above, on 29.03.2021, MFLT approved the Decision No. 40/2021 on determining the conditions and criteria regarding the functioning of measure 1.2 - Support for persons formally employed from the economic recovery package. Through measure 1.2, each new employee will be paid pension contributions at the rate of 10% (ten percent) of gross salary, starting from July 2021 to June 2022. The subsidy according to this decision is made only for those employees who in June 2021 have been unemployed and / or unregistered for tax purposes in the system of Tax Administration of Kosovo, but who are employed and registered for tax purposes in the Tax Administration of Kosovo since July 2021.<sup>133</sup>

Also, on August 5, 2021, MFLT has approved Decision No. 43/2021 on determining the criteria and conditions related to the functioning of measure 1.3 of the Economic Recovery Package - Support for the employment of women. Through measure 1.3, each of the employed women will receive a salary subsidy of up to 50% (fifty percent) of the gross monthly salary for a period of 3 months, starting from the tax period of July 2021 onwards. At the end of the quarterly period, the pension contributions for the remaining months will be subsidized, in accordance with the criteria and limits set out in the decision for the implementation of measure 1.2 of the Economic Recovery Package. Subsidy according to this decision is made only: for employees who in June 2021 were unemployed and / or unregistered for tax purposes in the system of the Tax Administration of Kosovo; for employees and registered for tax purposes in the Tax Administration of Kosovo from July 2021 onwards and within the legal deadline.<sup>134</sup>

Also, on August 6, 2021, MFLT has approved Decision No. 44/2021 on determining the criteria and conditions related to the functioning of measure 1.1 of the Economic Recovery Package - Return to work of those who lost their jobs during the pandemic. Through measure 1.1, every worker who has been employed in the period December 2019 - February 2020 and has lost his job, will be subsidized gross salary up to 50% for 3 months, starting from the tax period of July 2021. Subsidy according to this decision is made only for those employees who meet these conditions: the employee who has been employed and registered for tax purposes in the period December 2019 - February 2020 (without interruption); and employees who have not been employed and registered for tax purposes for the period April 2021 - June 2021 (without interruption). Loss of job and / or unemployment is evidenced through the Kosovo Tax Administration system<sup>135</sup>

In order to monitor and implement measures 1.1, 1.2 and 1.3 of the Economic Recovery Package, on 13 August 2021, with Decision No. 48/2021 has established a three-member

133 <https://mf.rks-gov.net/desk/inc/media/EB376412-5F55-4576-B5A9-25BDD29664AB.pdf>,

134 <https://mf.rks-gov.net/desk/inc/media/3AC5B91A-D01D-4D98-9282-656FC2470FEB.pdf>

135 <https://mf.rks-gov.net/desk/inc/media/E6EBDAA1-8FF6-4D7A-A46C-FFBEA215D595.pdf>

commission, which has the mandate to ensure that the responsible institutions implement the measures in the spirit of the Economic Recovery Package and in accordance with the criteria and restrictions set out in the decisions of the Minister: No. 40/2021, No.43 / 2021 and No. 44/2021.<sup>136</sup>

The Ombudsman finds that despite the measures taken to support employees affected by the pandemic in the private sector, they were insufficient. Based on this, it is necessary to continue the support of the private sector to enable citizens to exercise their employment rights.

On the other hand, workers in Kosovo public institutions have remained on duty throughout the pandemic, although the Government of Kosovo has taken some decisions requiring institutions to work with reduced staff.

Workers in key public functions<sup>137</sup> still continue to carry a disproportionate burden, trying to stop the spread of the virus, protect people's health and lives, and ensure that basic living needs are met.

Workers in health facilities, respectively medical and non-medical staff in workplaces exposed to infected patients<sup>138</sup> continue to be exposed to the higher risk of infection as well as make greater efforts, often working overtime due to lack of health workers and uninterrupted working hours.

The Ombudsperson notes that during the pandemic, in order to overcome the shortage of health personnel and to further strengthen the capacity of public health institutions, the Government continued to employ more health professionals to respond to existing challenges and provide adequate treatment for all patients equally. However this was not sufficient.

The government has, under the package of measures, also continued to provide wage allowances for workers who are directly exposed to the risk of infection at work.

## **Social rights, pensions, social and special benefits**

The Ombudsperson emphasizes that the Government of the Republic of Kosovo has supported pensioners and beneficiaries of all social schemes during this reporting period, due to the situation created by COVID-19. He also notes that there have been no delays or difficulties in paying pensions and all additional benefits have been realized based on government decisions to combat COVID-19.

Regarding pension schemes, based on Decision No. 06/58 of the Government of the Republic of Kosovo, dated 14.01.2021, measure 16, point 1.16.1 - Support of pension schemes for individuals with incomes less than 100 euros per month, and based on the

<sup>136</sup> <https://mf.rks-gov.net/desk/inc/media/69389938-6893-4406-9EF2-02DC51E50D11.pdf>

<sup>137</sup> Health, medical and non-medical personnel, police officers. Kosovo Police; inspectors of the Labor Inspectorate, the Tax Administration of Kosovo, as well as inspectors of other relevant inspectorates; social workers; Kosovo Customs officers; social workers; public transport drivers, taxi and truck drivers; workers in food processing and production, workers in grocery stores and catering etc.

<sup>138</sup> Includes doctors and nurses, but also respiratory therapists and all other health professionals, who must enter the room where infected patients stay, as well as basic non-medical staff, who daily maintain the hygiene of the premises where infected patients stay, maintenance workers, food preparation facilities, patient care assistants, patient care technicians, and administration; all those who come regularly to work in institutions with infected patients to perform vital services.

proposal - decision of the former Ministry of Labour and Social Welfare for the approval of an increase in the amount of 30 € for the months January-March 2021, which has been realized and from April 2021 until now, the amount of benefits in the following schemes has been equalized for all in amount of 100 €, additions equalizing the amount specified in the scheme are highlighted as follows:

1. Basic pension - is 90 € +10 = 100 €,
2. Family pension - is 90 € +10 = 100 €
3. Pension for people with disabilities - is 75 € +25 = 100 €
4. Disability work pension - is 90+ 10 € = 100 €

Also on October 27, 2021, in the 42nd session, the Government of Kosovo approved the decision within the Economic Recovery Package, measure 3.2 - Support to pensioners and families under social assistance, whereof the beneficiaries of pension schemes, in November of this year, have received a one-time allowance of an additional 100 euros for the regular pension and the current supplement. On the other hand, the beneficiaries of social schemes in November and December have received regular double payments and the following supplement. The assistance is duly paid to all beneficiaries. About 330,000 families are involved with this decision of the Government.

Regarding the reform of the pension legislation, the Government in the past period has planned and has already taken some steps in the reform of the pension and benefits system, to harmonize this issue with the European practice, but it is not yet known when this reform will be fully implemented.

Beneficiaries of pension schemes during this reporting period are released from the obligation to report regularly for purposes of recording or appear to the relevant offices of the pension administration.

The Ombudsperson, although appreciating the measures taken by the Government, finds that the level of support and its amount does not enable the fulfillment of the basic needs for a dignified life for these categories.

## **Gender equality**

Gender equality means equal opportunities for all women and men, as well as people of different gender identities in society. The Ombudsperson states that despite the efforts and measures for the advancement of the position of women, there is still gender inequality in our society. This inequality is expressed in the participation of women in the division of wealth in inheritance, their participation in the labor market, in political life and decision-making, in the field of education, health and in the division of responsibilities in the family. The barriers and challenges that existed in the area of gender equality came to the fore over the past year during the pandemic caused by the Covid-19 virus.

Based on the complaints filed with the Ombudsperson, women are in a more unfavorable position than men in the field of employment and career development. Gender discrimination is present in both the public and private sectors. Cases of gender discrimination are rarely reported, due to lack of recognition of rights and lack of case law in cases of discrimination.

The Ombudsperson finds that it is important for public authorities to fulfill the positive obligations deriving from the right to gender equality.

## Gender equality in the right to property and inheritance

One of the fundamental rights guaranteed by the Constitution of the Republic of Kosovo is the right to property. Although according to applicable laws, women and men have equal property rights, most properties in our society are registered in the name of men. Also, men and women have equal rights to inherit property, but in practice, women are more discriminated than men, as it continues that in some cases the husband is considered the sole heir of his family property.

The Ombudsperson emphasizes as a positive step the amendment and supplementation of the Administrative Instruction 03/2016, on April 19, 2021, as an affirmative measure of the registration of joint immovable property on behalf of both spouses, which extended the time period of its implementation for another six years from the day of entry into force. The purpose of this affirmative action was to increase women's access to property, to register property in their name, and to accelerate the attainment of equality between men and women in terms of property rights.

The Ombudsperson notes that the renunciation by female heirs in favor of male heir is still a concern. The current legislative framework for inheritance is insufficient to deal with this practice, therefore, given this, there is a need for clearer legislation and procedural rules on the one hand, while on the other hand more work needs to be done to raise public awareness about women's rights to inheritance.

## LGBTI persons' rights

The Ombudsperson considers that the legal framework of the Republic of Kosovo ensures the promotion and protection of all marginalized groups, including the LGBTI community.

Consequently, promoting and protecting the rights of persons belonging to the LGBTI community is an integral responsibility of all institutions in the country. Existing legislation, which regulates the rights of LGBTI persons, should be supplemented and amended in terms of more effective protection and rights of this community and these changes should be reflected in the drafting of the Civil Code, which has provided for legal changes regarding the protection of the rights of LGBTI persons. The Ombudsperson considers it necessary for the Draft Civil Code to be in line with the requirements of the constitutional right to respect for family life and with the ECHR standards for the recognition of the relations of homosexual couples.

## Responsibility of public authorities for protection against domestic violence

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) defines violence against women as a violation of human rights and a form of discrimination against women and implies all acts of violence based on gender that result or may result in physical, sexual, psychological or economic harm or suffering to women, including threats to commit such acts, coercion or arbitrary deprivation of liberty, whether in public or private life.<sup>139</sup>

<sup>139</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Article 3, available at: <https://rm.coe.int/168046246b>

The Assembly of the Republic of Kosovo, on September 20, 2020, through the amendment of the Constitution, has included the Istanbul Convention as a legally binding instrument for the prevention of violence against women and domestic violence, an action which completes the legal framework with the most advanced international standards for protection from domestic violence. However, the Ombudsperson considers that very slow steps are being taken to harmonize and approximate state legislation and policies with the standards set out in this Convention.

On November 9, 2020, at the initiative of the Parliamentary Committee on Human Rights, Gender Equality, Missing Persons, Victims of Sexual Violence and Petitions, the Draft Law No. 07 / L-044 was drafted and published for prevention and protection from domestic violence and violence against women<sup>140</sup>, which has not yet been approved by the Assembly of the Republic of Kosovo. The Ombudsperson considers that the published text of this draft law is not in full compliance with the Istanbul Convention and does not include a large number of obligations deriving from it, therefore recommends to the Assembly that based on the standards of the Convention, ensure that the draft law includes all provisions relating to the responsibilities of institutional mechanisms, gender-sensitive policies, prevention, protection and compensation of victims of gender-based violence and domestic violence.

The Ombudsperson notes that the Ministry of Justice has been late in drafting and approving the National Strategy for the Prevention of Domestic Violence (because it had expired) and has recommended to this ministry to urgently draft and approve this document, which enables the functioning of institutional mechanisms in drafting preventive policies and coordinating measures to protect victims of domestic violence. This recommendation is in the process of being completed.

The Ombudsperson finds that even in this reporting year, the phenomenon of domestic violence in Kosovo is expressed in worrying proportions through the increase in the number of reported cases and the presence of domestic violence in our society.

Despite the measures taken by the public authorities, they have failed to meet the positive obligations for protection against domestic violence, and in the period of the outbreak of the COVID-19 pandemic, the number of reported cases of domestic violence has increased more. The Ombudsperson plays an important role in monitoring the state's actions in protecting victims of domestic violence. In this context, it has carefully monitored the measures taken during the pandemic period, therefore on December 10, 2021 published a special report: "Health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo."<sup>141</sup>, which also addressed domestic violence during the Covid-19 pandemic in 2021 in Kosovo. According to this report, it turns out that cases of domestic violence during the pandemic have increased. According to the information provided by the Kosovo Police, it turns out that 1915 cases were registered during 2019, 2069 cases were registered in 2020, and this number has increased further in 2021, marking 2456 cases.

In this regard, the Ombudsperson has contacted the organizations that shelter victims to see the state of their functioning, where he has received information about women sheltered in these centers during 2021, as follows:

140 Assembly of the Republic of Kosovo, Draft Law No. 07 / L-044 on prevention and protection against domestic violence and violence against women, accessible at: <https://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=236#info-div>

141 OIK, "Health emergency and the impact of the COVID19 pandemic on human rights in the Republic of Kosovo", available at: <https://oik-rks.org/2021/12/10/report-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-rajat-e-njeriut-ne-republiken-e-kosoves/>



In the municipality of Prishtina, according to data from the Center for the Protection of Women and Children (CPWC) in Prishtina, it appears that this center is under renovation, while services for victims were provided in an inadequate facility for shelter. According to them, from January 1 to December 31, 2021, 132 people were sheltered in this shelter, of which 63 children.

In the municipality of Peja, from January 1 to December 31, 2021, 76 people were accommodated in CPW in Peja, of which 27 children. Also, the financial difficulties during the COVID-19 pandemic were numerous. Contracts with the Ministry of Labour and Social Welfare (MLSW) were not signed for one year, but for eight or nine months. During 2021, CPW has signed a contract with MLSW for financing the shelter, which has a duration until January 15, 2022. Financial uncertainty affects the provision of services and the psychological state of women and children as victims of domestic violence. Another challenge has been the lack of regular coordination of the shelter with other institutions, such as: CSW, victim advocate and courts, due to reduced working hours during the pandemic.

In the municipality of Prizren, according to data from CPW in Prizren, in 2021 were sheltered a total of 53 victims of domestic violence, while compared to 2020, when 37 cases were sheltered, it turns out that in 2021 there was an increase in the number of victims sheltered in this center.

In the municipality of Ferizaj, according to the data of the Center for Protection of Women and Children (CPWC) it turns out that in this center the number of cases of domestic violence treated, from January 1 to December 31, 2021, were sheltered 62 cases; 25 adult females and 37 children.

In the Municipality of South Mitrovica, according to data, in 2021 there were 61 cases of victims of domestic violence sheltered in the Mitrovica shelter, of which 34 children.

Whereas in the municipality of Gjakova, according to data from the Safe House, there were sheltered 114 victims of domestic violence, of which 56 children.

During this reporting period, the Ombudsperson received 21 cases related to domestic violence. Some of the cases received were requests for case monitoring in the courts, based on which the ombudsman's representatives monitored court proceedings for victims of domestic violence.

On April 27, 2021, the Ombudsperson published the Ex officio Report No. 150/2021 regarding the positive obligations of the state for the right to life and protection against domestic violence.<sup>142</sup> In this report, the Ombudsperson found that there was a lack of coordination of actions between the authorities, which requires the need to improve the quality and security of services for cases of domestic violence and strengthen the control mechanisms of each institution, from the moment of submission of case of domestic violence until its end. The Ombudsperson has issued concrete recommendations to the relevant authorities regarding the improvement of the situation from a human rights perspective, in order to build a system in accordance with the principles of the rule of law and international standards.

<sup>142</sup> OIK, Report with Recommendations Ex officio No.150 / 2021, regarding the positive obligations of the state for the right to life and protection against violence, accessible at: <https://oik-rks.org/2021/04/27/raport-me-rekomandime-ex-officio-nr-1502021-ne-lidhje-me-detyrimet-pozitive-te-shtetit-per-te-straighten-in-water-and-protection-from-domestic-violence/>

Even this year, the Law on Supervision of Persons whose Movement is Restricted by a Court Decision remains non-implemented. For the implementation of this law in the implementation of electronic surveillance and reporting by the Kosovo Police to persons whose movement is restricted, the Ministry of Internal Affairs has issued an administrative instruction. However, this law continues to be unenforceable. Regarding this issue, the Ombudsperson has published the Report with Recommendations Ex. Officio No. 621/2018, regarding the operative preventive measures for the protection of victims of domestic violence, according to Law No. 05 / L-003 on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision<sup>143</sup>, which addressed some recommendations to the responsible authorities, which relate to their obligations to implement this law, which would directly affect the protection of victims of domestic violence.

## The right to health care

The COVID-19 pandemic, even this year has continued to challenge the normal course of life in Kosovo and around the world. Poor investment in the health system and redirection of health resources in combating this pandemic, has reduced the ability to respond to it and at the same time has affected the non-provision of other health services. COVID-19 is showing that the application of Universal Health Coverage (UHC)<sup>144</sup> should be imperative of the future.<sup>145</sup> This will only be achieved when states have established sustainable health systems that are able to respond to the basic needs of their citizens, equally, fairly and without discrimination, without leaving anyone behind. In this regard, National Institutions for Human Rights, such as the Ombudsperson Institution in Kosovo (OIK), play an important role in monitoring the actions of the state, in achieving universal access for these groups.

The Ombudsperson notes that the International Convention on Economic, Social and Cultural Rights is still outside the list of legal instruments included in the Constitution of the Republic of Kosovo, which are directly applicable in the Republic of Kosovo. Even in the preliminary annual reports, the Ombudsperson has raised this issue, which is of particular importance, because it would affect the advancement of the protection of economic and social rights in our country.

The Ombudsperson reiterates the fact that Law No. 04 / L-249 on Health Insurance, adopted in 2014, is still not being implemented. The purpose of this law is to provide citizens with universal access to quality basic health care services, in order to provide financial protection for health care, through the establishment and regulation of the public health insurance system.

Health protection is not at the right level and this situation is aggravated even more as a result of the global Covid-19 pandemic, therefore the Ombudsman in the special report on "Health emergency and the impact of the COVID-19 pandemic on human rights in the

143 OIK, Report with Recommendations Ex. Officio No. 621/2018, regarding the operative preventive measures for the protection of victims of domestic violence, according to Law No. 05 / L-003 on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision, accessible at: <https://oik-rks.org/2021/03/09/raport-me-rekomandime-ex-officion-rasti-nr-6212018-ne-lidhje-memasat-operative-parandaluese-per-mbrojtjen-e-victims-of-domestic-violence-according-to-law-no-05-003-for-electronic-surveillance/>

144 According to the World Health Organization, Universal Health Coverage (UHC) means that all people and communities can access the health, promotional, preventive, curative, rehabilitative and palliative care services they need, of sufficient quality to be effective, ensuring also that the use of these services does not expose the user to financial difficulties.

145 United Nations Secretary-General, Summary of Human Rights Policy and Covid-19, available at: [https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_human\\_rights\\_and\\_covid\\_23\\_april\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf)

Republic of Kosovo<sup>146</sup> has also addressed the right to health protection and has made relevant recommendations to the authorities responsible for improving the situation.

The Law on Prevention and Combating the COVID-19 Pandemic in the territory of the Republic of Kosovo has defined the responsibilities and role of institutions in taking measures to prevent, control, treat, monitor, secure funding and share responsibilities during the COVID-19 pandemic. However, despite the fact that the MoH had drafted a plan for preparedness and response against COVID-19 and the government had allocated additional funds, difficulties and delays were observed in the supply of protective equipment, tests, drugs, respirators and other relevant means.

Based on information from health institutions, syndicate organisations and citizens, the Ombudsperson estimates that there are shortcomings in the health system due to low budget contributions to health, non-implementation of laws and policies, lack of coordination between sectors, insufficient monitoring and lack of accountability.

The Ombudsperson considers that it is necessary to draft a special strategy and policies by the government for the provision of health services and treatment of persons with disabilities and the elderly in emergency situations, due to the fact that this category is more vulnerable and has specific difficulties in obtaining health services.

The focus on the prevention and treatment of patients with COVID-19, among others, has left aside many citizens who had health needs of other natures, including chronic ones, which brought many challenges to health institutions, staff health and affected the budget of those infected with COVID-19 and their families. Regarding this issue, the Ombudsperson has published the Report with Recommendations Ex. Officio No. 698/2020, regarding access to health care services for persons affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB), during the period of the COVID 19 pandemic in Kosovo<sup>147</sup> and Report with Recommendations Ex. Officio No. 434/2020 regarding restrictions on the provision of health services during the COVID 19 pandemic in Kosovo.<sup>148</sup>

Based on the complaints received, the Ombudsperson considers that among the main factors that are affecting the aggravated health situation in Kosovo, in addition to the pandemic, are unemployment and lack of implementation of health insurance legislation, which is making it difficult to access adequate medical services for citizens. Based on the cases the OIK received, even during this reporting year, health protection remains a challenge and concern for the Ombudsperson, therefore reiterates the request to urgently take all measures to start implementing Law No. 04 / L-249 on Health Insurance, as a fundamental right to access health care services.

146 OIK, Health Emergency and the Impact of the COVID19 Pandemic on Human Rights in the Republic of Kosovo, accessible at: <https://oik-rks.org/2021/12/10/report-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-rajat-e-njeriut-ne-republiken-e-kosoves/>

147 OIK, Report with Recommendations Ex. Officio No. 698/2020, regarding access to health care services for persons affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB), during the period of the COVID-19 pandemic in Kosovo, available at: <https://www.oik-rks.org/wp-content/uploads/2021/01/Raport-me-rekomandime-Ex-Officio-698-2020.pdf>

148 OIK, Report with Recommendations Ex. Officio Nr. 434/2020 regarding restrictions on the provision of health services during the COVID-19 pandemic in Kosovo, available at: <https://oik-rks.org/2021/03/12/raport-me-rekomandime-ex-officio-rasti-nr-4342020-ne-lidhje-me-kufizimet-e-ofrimin-te-sherbimeshendetesore-during-pandemic-covid-19-in-kosovo/>

## The rights of non-majority communities

Various non-majority communities live in the Republic of Kosovo: Serbs, Bosniaks, Gorani, Turks, Montenegrins, Croats, Roma, Ashkali and Egyptians. The rights of non-majority communities are guaranteed by the Constitution and laws, as well as by the Framework Convention for the Protection of National Minorities, which aims to promote the rights of minorities and the effective equality of minority communities in all areas of economic, social, political and cultural life.

The Ombudsperson considers that during the reporting period there have been no changes in terms of significant improvements in the implementation of laws which are relevant to the protection of the rights of communities in the Republic of Kosovo.<sup>149</sup> Out of the total number of complaints received by the institution during this reporting year, 151 individual complaints come from members of non-majority communities. During 2021, as well as during 2020, there is a decrease in the number of complaints filed by members of communities, which can be explained by the difficulties that may be faced by citizens and institutions with the consequences caused by the pandemic of the COVID-19 virus.<sup>150</sup> Problems affecting members of minority communities continue to be related to return, property rights, education, problems with full implementation of language use regulations, and personal documents.

## The right to return and security

The Ombudsperson ascertains that according to the data collected during 2021, the downward trend of the number of returnees, who were displaced from Kosovo due to the war, has continued. According to data from the United Nations High Commissioner for Refugees (UNHCR), 306 members of non-majority communities have returned to Kosovo during 2021<sup>151</sup>. that if compared to the same period last year it is seen that there are 55 less returnees than during the previous year. Despite the fact that most of the collective centers where the displaced persons were sheltered have been closed and their housing has been solved, there are still 139 other persons who still live in collective centers.<sup>152</sup>

According to information received from the UNHCR, during 2022 it is planned to close the remaining collective centers and permanent care for displaced persons according to the plan of the Ministry of Communities and Returns (MCR). The municipalities of Zveçan and Leposaviq have allocated space for the construction of housing units for persons residing in collective centers. The problems and challenges still faced by displaced persons and returnees during this reporting period are related to property problems, infrastructural problems, poor economic and social situation and the sustainability of the return of persons unprepared for the labour market, obtaining personal documents etc. All of the above, as in previous years, continue to affect the further process of return of displaced persons, quality of life and their perception of its sustainability after the decision to return to Kosovo.

149 To prepare this part of the report, OIK representatives gathered information throughout Kosovo and spoke with a number of local interlocutors (community representatives, citizens, local NGOs, etc.) as well as with international organizations: OSCE and UNHCR.

150 Complaints submitted by members of minority communities in the OIK: 54 Serbs, 26 Turks, 11 Gorani, 18 Ashkali, 11 Roma, 14 Egyptians, 15 Bosniaks and 2 others, which is 13% of the total number of complaints received by the OIK- during 2021, while the total number of complaints received in 2021 was 673 out of 1612 complaints submitted, and 45 ex officio cases were opened until 31.12.2021.

151 According to UNHCR statistics, from January to the end of November 2021, 244 Serbs, 27 Ashkali and Egyptians and 35 Roma returned.

152 According to UNHCR statistics, by the end of November 2021, 139 people remained in collective centers in northern Kosovo: 21 in northern Mitrovica, 71 in Leposaviq, 20 in Zubin Potok and 27 in Zveçan;

Competent mechanisms dealing with return at the local level do not seem to properly comply with return policies and there is a lack of sufficient budget to create adequate housing conditions for returnees. Returned persons to Kosovo also face other problems, including high unemployment, lack of education and lack of professional skills making it impossible for them to find regular employment.

Some Roma, Ashkali and Egyptian returnee families from North Macedonia to Plemetin of the municipality of Obiliq continue to face numerous problems. During this year, the Ombudsperson met with the mayor of Obiliq, who promised a lasting solution to the returned families, and on this issue the Ombudsperson, with the mayor met the representatives of the village Plemetin of the three communities: Albanians, Serbs and Roma, who have expressed their concerns. These concerns are mainly related to the fact that the return process is not being followed by investments in improving the difficult social situation, minimum living conditions, sustainable housing, employment, security and other problems that the host community is facing. It was a conclusion of the residents that the return of the displaced without being followed by investments from the public authorities, is aggravating the situation and is making living in this location unendurable.

The Ombudsman notes that returnees are not aware of grievance mechanisms and procedures in case of discrimination in the provision of public services. Representatives of the Ombudsperson during the field work, in some cases have informed the returned families about the possibilities of filing such complaints such as in Ferizaj, Fushë Kosovë, South Mitrovica, etc.

During the reporting period there were several incidents, damage to monuments was recorded in the Orthodox cemetery in Kishnica, graffiti inscriptions with inappropriate content, verbal harassment on national grounds. In this case we should appreciate the quick response of the police in resolving certain incidents, but it is still necessary to increase the police presence in places where incidents are frequent to increase the confidence of the affected community in the work of the police, security and protection of the property and physical integrity of these persons. Also, the Ombudsperson, as in previous reports, encourages the Kosovo Police to increase capacity in its ranks in order to increase trust and create a safer environment.

Based on the data that the Ombudsperson has received from the Kosovo Police, during 2021 21 incidents have been registered which as such can be considered as incidents that may fall within the scope of Article 141 of the CPC.<sup>153</sup> According to the OSCE Mission in Kosovo, 148 incidents related to minority communities have been registered, mainly in returnee towns and rural areas inhabited mainly by Serbs.<sup>154</sup> Although the security situation in Kosovo is stable, incidents that occur from time to time in returnee sites and rural areas inhabited by minorities negatively affect the perception of potential returnees in Kosovo, primarily members of the Serb and Roma communities, which is reflected in the return process itself.

The Ombudsperson appreciates the commitment of the Kosovo Police, which in 2021, according to their information, has held various workshops and trainings by the Sector for Cooperation with Security Forums. At the national level it has held 156 meetings with the local community on Public Safety, where the volunteers of these forums are of all ethnic groups living in Kosovo and these meetings were held by police stations at the local level and the topic of these meetings were: prevention, initiation of problem solving,

153 The information was submitted by the Kosovo Police to the OIK electronically on December 23, 2021.

154 Information Received from the OSCE, 30 December 2021.

cooperation, awareness etc. Also, according to the Kosovo Police, meetings were held with representatives of NGOs dealing with the Roma, Ashkali and Egyptian communities, information meetings were held on the competition for the admission of police officers in order to encourage candidates to apply from the Roma, Ashkali and Egyptian communities. Furthermore, according to the Kosovo Police, seven workshops were held on the topic: *“Prevention of Extremism and Violent Radicalism that leads to Terrorism through preventive activities of community policing”*, with members of the Security Forums. The Ombudsperson also appreciates the fact that the Kosovo Police in June 2021 has published the guide for dealing with hate crimes.<sup>155</sup>

The Ombudsperson has received a complaint from some young people from the Ashkali community from Fushë Kosova, for disproportionate use of force by the police. The police response states that there is no evidence of eventual use of force by police officers and the case has been sent to the Kosovo Police Inspectorate for further investigation.<sup>156</sup>

### **Measures of public authorities to improve observance of the fundamental rights and freedoms of non-majority communities**

The Ombudsperson appreciates the decision of the Government to approve the Action Plan for the implementation of the second phase of the political priorities agreed between the EU and the Republic of Kosovo - European Reform Agenda (ERA II AP).<sup>157</sup> In the framework of the action plan mentioned in the part related to fundamental rights and freedoms, the Strategy for protection and promotion of the rights of communities and their members 2021-2025 has been approved, the Inter-Ministerial Coordination Group for sustainable solutions for displaced persons, the data management system related to displaced persons and returnees has been established and it is operational, the Central Complaints Commission has been established, which is provided by Regulation No. 1/2018 on the return of displaced persons and durable solutions, while it is envisaged to provide business support to women belonging to minority communities for the implementation of which the MCR is responsible and supported by the UNHCR.

The Ministry of Communities and Returns (MCR) continues to provide support to all returnees in Kosovo, so with its local and international partners, by the end of 2021 a total of 22 houses have been built, 4 have been renovated, and homes are on their final phase for returnees returning from displacement places to relevant municipalities for return and families in need of assistance due to social vulnerability.<sup>158</sup> In addition to the implementation of projects related to return, the MCR has implemented 31 projects in the field of education, culture, sports, health and religious events important to citizens.<sup>159</sup> It is important to note that since 2020, the MCR, in cooperation with the International Organization for Migration (IOM) and under the EU-funded community stabilization program, has allocated funds for the needs of minority communities for income generation and improvement of living conditions. From 2020 to the end of 2021, 156 projects have been implemented. Based on the available information, these projects are provided in order to ensure the provision of sustainable jobs where the direct beneficiaries in 40% of the projects were women, youth, people with disabilities and returnees from minority communities that during 2021 can be considered as a positive development and be upheld as a good practice for 2022.

<sup>155</sup> Information received from the Kosovo Police via e-mail, on December 23, 2021.

<sup>156</sup> Case A.No.400 / 2021.

<sup>157</sup> Decision No. 03/24 of the Government of the Republic of Kosovo, dated 08.11.2021.

<sup>158</sup> Information received from the MCR on December 23, 2021.

<sup>159</sup> Ibid.

The Ombudsperson emphasizes the commitment of the Inter-Institutional initiative for displaced persons and refugees from Kosovo, better known as the “Skopje Initiative”.<sup>160</sup> The Ombudsperson supports this initiative and in accordance with his mandate, has participated in two meetings where the working groups on personal documents and property issues reviewed the work done so far and gave instructions on how to overcome the challenges faced by returnees and displaced persons in the next period.<sup>161</sup>

The Ombudsperson on this occasion emphasizes the ongoing issue of obtaining personal documents, which is still faced by IDPs from Kosovo. Displaced persons, although within the framework of the “Skopje Initiative” the possibility of easier access to administrative procedures and obtaining personal documents for displaced persons has been created, in some municipalities of Kosovo the Administrative Instruction in force on the recognition of citizenship of the Republic of Kosovo for persons who lived in Kosovo until January 1, 1998 and had citizenship of the former SFRY and resided in the territory of Kosovo, is still not implemented. In some municipalities there is still the issue of selective interpretation of the instruction in question and it is not possible for returnees and / or displaced persons to freely exercise their right to citizenship and obtain personal identification documents<sup>162</sup> In some municipalities it is noticed that there are administrative difficulties in exercising the rights to issuance of personal documents, especially citizenship ones.

The Ombudsperson has handled individual complaints filed against the Directorate of Citizenship, Asylum and Migration of the Ministry of Internal Affairs of Kosovo, as well as against the Civil Registration Agency and the relevant civil status service in the municipalities where these persons reside or were born. These complaints are under review and investigation by the competent authorities.

### **Protection of property rights of communities**

The right to property is one of the basic human rights and as such is regulated by the Constitution and the laws of the Republic of Kosovo. The right to immovable property gives the holder the right to freely use his property, to alienate it and to exclude others from any interference, to have it freely and of his / her own free will.<sup>163</sup> However, a number of citizens belonging to communities can not enjoy this right without hindrance or freely dispose of their immovable property because they either do not have access to it or are in litigation that usually takes a long time. It is a fact that in recent years there has been progress in resolving property rights issues. Authorities must, however, ensure that all persons dispose their property in full compliance with the law and enjoy their rights by guaranteeing them judicial and institutional protection.

The same situation is for Albanian citizens who own property in municipalities in northern Kosovo.

The Kosovo Property Comparison and Verification Agency, which replaced the former Kosovo Property Agency, dealt with a number of unresolved property issues and ambiguities of the Basic Law and open issues related to the mandate of the Property Comparison

<sup>160</sup> The “Skopje Initiative” operates in 5 working groups for implementation, respectively on: 1. property issues, 2. security, dialogue and integration, 3. personal documents, 4. data management and 5. planning and durable solutions.

<sup>161</sup> The meeting of the Working Group on Personal Documents was held on November 4, 2021, while the meeting of the Working Group on Property Issues was held on November 16, 2021 (representatives of the OIK also participated in the meeting of the Working group on personal documents, while for the next meeting the OIK received information from the MCR, as minutes of this meeting).

<sup>162</sup> Statement emerged from the meeting of December 15, 2021.

<sup>163</sup> Law No. 03 / L-154 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2643>

and Verification Agency (PCVA). The Ombudsperson has given his recommendations for amendments to the Law on the Kosovo Property Comparison and Verification Agency and expects these recommendations to be implemented. According to information from the MCR, there are still 500 unresolved property cases, of which about 350 cases have a final decision, while 143 decisions for compensation are in the process of execution (50 cases have been closed and funds have been provided for other resolved cases).

This shows that the problem of execution of final court decisions continues to exist, including Decision KI 132/15 of the Constitutional Court of the Republic of Kosovo.

### **The right to education**

The Ombudsperson deems that, as in all previous years, the polarization of the education system is still present in Kosovo. The education system is managed by the Government of the Republic of Kosovo in Albanian, Turkish and Bosnian languages, while education in Serbian language for the Serb community, as well as for some citizens of the Montenegrin community, partly for members of the Bosniak community (in Northern Kosovo)), for a certain part of the members of the Gorani community and mainly members of the Roma community, still takes place outside the education system.

The establishment of the Department of Balkan Studies, in Albanian and Serbian, at the Faculty of Philology in Prishtina can be assessed as positive. According to the information held by the OIK, so far only 1 student from the Serb community has been registered. A temporary compromise solution, at least when it comes to the conditions for registration in the Department of Balkan Studies and for application and registration in the Police Academy, was for those who complete secondary education in another system to have the opportunity to pass again the matura exam according to the education system of Kosovo for their secondary education to be accepted and to be enabled to enroll. It is not yet known whether the competent ministry has taken any initiative to resolve this issue permanently, because this practice can not be considered sustainable and permanent, because it is not implemented in all faculties of the state university.

As in previous years, the issue of improving the quality of textbooks and supportive manuals for primary and secondary education in the languages of the Turkish and Bosniak communities remains problematic. Based on the information received from the group of authors selected in the competition for new textbooks in Turkish and Bosnian, for both primary and secondary schools, the publication and presentation of new textbooks did not occur until the end of 2021..<sup>164</sup>

The Gorani community also mentions as a problem the polarization in education, respectively the attendance of a number of children in schools with the parallel system of the Republic of Serbia, while the rest of the children from the Gorani community attend education according to the system of the Republic of Kosovo, according to the curriculum in Bosnian language. As in all previous years, the problem of lack of space for students remains unresolved, as well as the lack of sanitary facilities in some schools (in the village of Mlike there is no toilet at all), which according to teachers are dilapidated and dysfunctional, but the teaching still takes place in these spaces.

The Roma, Ashkali and Egyptian communities still face difficulties in attending school. There is a lack of awareness of these communities regarding the role and importance of

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<sup>164</sup> Complaint submitted to the OIK by a group of textbook authors in Bosnian and Turkish on 15.09.2021, A.nr. 532/2021



their children's education, and on the other hand, the poverty that these communities face often makes it difficult for them to regularly attend school.

The Ministry of Education, Science, Technology and Innovation has continued with the distribution of scholarships for high school students of Roma, Ashkali and Egyptian communities for the school year 2021/22. In this call, a total of 543 students have applied, while the MEST Evaluation Commission has found that 500 of them have met the required criteria of the call and are beneficiaries of this financial support in the amount of 300 euros per school year. Of the total number of beneficiaries 247 of them are girls, and 253 are boys.<sup>165</sup> This does not include students from these communities who attend primary school under the parallel system.

### The right to use of language

The Constitution of the Republic of Kosovo recognizes the Albanian language and Serbian language as official languages, which is further regulated by the Law on the Use of Languages.<sup>166</sup> The Ombudsperson finds that in general the public authorities in the Republic of Kosovo respect the right to bilingualism in their individual relations with members of non-majority communities, but problems continue to be identified in the application of this norm by both local and central authorities, especially in the information published on their official portals.

Despite the fact that the Office of the Language Commissioner has the primary mandate for filing complaints in the field of language rights, even this year the OIK has received a number of complaints regarding non-compliance with the right to use languages in the Republic of Kosovo.<sup>167</sup> One of the complaints referred to the inequality in informing pupils and students studying in the Bosnian language when it comes to providing scholarships from the central level, as there was a lack of translation into the language of this community. The Ombudsperson also received a complaint about the lack of a translation of the Ministry of Finance application form into Serbian to assist families who have lost one of their members due to COVID-19. After receiving complaints regarding such allegations, the Ombudsperson also notified the Commissioner for Languages, who in parallel registered the complaints and worked on resolving the mentioned issues.<sup>168</sup>

### Roma, Ashkali and Egyptian communities

The Ombudsperson notes that the Roma, Ashkali and Egyptian communities continue to face economic and social difficulties. The situation of the Roma, Ashkali and Egyptian communities has been exacerbated by the Covid-19 pandemic, as members of these communities face limited access to clean water and sanitation, protective equipment and health care, while access to formal education and employment remains difficult. Moreover, employment opportunities within Kosovo institutions are mainly in low-level job positions.<sup>169</sup>

The Ombudsperson has continued to receive complaints from citizens of these communities and out of the total number of complaints received, 11 (eleven) are complaints from the

165 Official information on the website of the Ministry of Education, Science, Technology and Innovation: <https://masht.rks-gov.net/article/500-nxenes-te-shkollave-te-mesme-te-larta-te-komuniteti-rom-ashkali-dhe-egjiptian-kane-perfituar-bursa-nga-MEST>

166 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440>

167 A.No.570 / 2021 A.No. 593/2021, A.No.698 / 2021, and other complaints which, in addition to other allegations of human rights violations, also referred to non-compliance with language rights by institutions when submitting court files, rulings of some public institutions, decisions, etc.

168 Meeting with the Commissioner for Languages at the OIK Office in Graçanica, on October 29, 2021.

169 Progress Report on Kosovo 2021, page 37, English language version: [https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en)

Roma community, 18 (eighteen) complaints from the Ashkali community, and 14 (fourteen) complaints from the Egyptian community.

Also, the employment of Roma, Ashkali and Egyptian communities continues to be among the biggest problems faced by these communities. Although the legislation in Kosovo guarantees the possibility of equal representation in public institutions, such a thing does not happen in practice. Furthermore, Law No. 06 / L-114 on Public Officials stipulates: *“In central public institutions, at least ten percent (10%) of job positions in all categories of public officials should be filled in by members of non-majority communities in Kosovo and who meet admission criteria, while at the municipal level, fulfillment of number of job positions for members of communities will be in accordance with percentage of population in that municipality.”*<sup>170</sup>, in some institutions this quota has not been reached.

From the information received on January 24, 2022 from the representative of the Ministry of Internal Affairs and Administration, it is known that the report on the representation of non-majority communities in the civil service of Kosovo for 2021 is in the process of drafting, but field information does not speak of a positive change in this regard.

In this regard, the data received from the Kosovo Police show that this institution employs 18 officials belonging to the Ashkali community, 13 are Roma and 7 Egyptians, while as a civilian staff only 1 official is from the Ashkali community and 1 is from the Roma community.<sup>171</sup>

As already mentioned, members of the Roma, Ashkali and Egyptian communities are mainly self-employed by collecting things and with seasonal work, a large number do heavy physical work for a small monetary compensation. The financial income and in general the material situation in the Roma, Ashkali and Egyptian communities deteriorated even more during 2021, due to the COVID-19 pandemic, which according to the Ombudsperson informed that many members of these communities lost their jobs in the informal sector.

### **Strategy and Action Plan for the Inclusion of Roma and Ashkali Communities (2017-2021)**

Strategy for the Inclusion of Roma and Ashkali Communities in Kosovo Society 2017-2021 is primarily a guide to public policies and programs related to education, employment and social welfare, health and housing. The Ombudsperson notes that despite some achievements regarding the implementation of this strategic document, this document has not been implemented as envisaged. Such a finding has emerged from the reactions of civil society, which deals with the Roma, Ashkali and Egyptian communities, which have criticized the Government of the Republic of Kosovo for non-implementation of this document.

The Ombudsperson considers that it is important to issue and draft the Strategy and Action Plan for the Roma and Ashkali Communities in Kosovo society, a process which is led by the Office for Good Governance / Office of the Prime Minister according to its mandate.<sup>172</sup>, in which strategy should be taken into account all the needs and requirements

<sup>170</sup> Law No.06 / L-114 on Public Officials, article 9.

<sup>171</sup> Information received by the Kosovo Police via e-mail on December 23, 2021.

<sup>172</sup> Information received from the Office on Good Governance / Office of the Prime Minister of the Republic of Kosovo, via e-mail, dated 21 December 2021.

of the communities in question and which objective should be to improve the situation of this community.

### **Technical group for protection against discrimination of Roma, Ashkali and Egyptian communities**

The Government of Kosovo, showing great commitment to the Poznan Declaration, by decision of the Prime Minister of the Republic of Kosovo has established a technical group for protection against discrimination of the Roma, Ashkali and Egyptian communities.

The purpose of establishing the technical working group is that it is responsible for implementing the responsibilities arising from the Western Balkans Partnership Declaration on Roma Integration in the framework of the European Union enlargement process. For this purpose, it exercises the following competencies: cooperates with the responsible institutions to address complaints from members of the Roma, Ashkali and Egyptian communities for discrimination against them, as well as processes these cases to the competent institutions; cooperate with institutions responsible for providing legal support to alleged victims and identify discrimination schemes, including institutional and covert discrimination, under applicable law in Kosovo; carries out public awareness activities for the prevention of discrimination against members of the Roma, Ashkali and Egyptian communities.

According to the information received from the Office of Good Governance, within the Office of the Prime Minister of the Republic of Kosovo, during 2021 a total of 3 meetings were organized with the Technical Group, the first meeting was organized on 18 May 2021, the second meeting on 4 August 2021, and the third meeting was organized on November 25, 2021.

In order to functionalize and strengthen this Technical Group, documents have been drafted, such as: working rules of the Technical Working Group on Protection against Discrimination for Roma, Ashkali and Egyptian Communities, the guide for identifying and reporting cases of discrimination against the Roma, Ashkali and Egyptian communities and the procedures for placing data within the database of the Office of Good Governance / Office of the Prime Minister.

On April 14, 2021, representatives of non-governmental organizations, such as the NGO Voice of Roma, Ashkali and Egyptians, Balkan Sunflowers Kosovo, Roma and Ashkali Documentation Center, Advancing Together, Bethany Christian Services, Syri i Vizionit, Kosovo Education Center, the Ideas Partnership and Terre des Hommes, sent a letter to the Deputy Prime Minister for Human Rights and Communities, of the Office of the Prime Minister of the Republic of Kosovo, stating that Roma, Ashkali and Egyptians are generally excluded from society; they do not have access to services and economic opportunities compared to the majority of the population, even compared to non-Roma, Ashkali and Egyptians living in their vicinity; they face large gaps in access to services, economic opportunities and welfare compared not only to the general population in the Western Balkans, but to the non-Roma, Ashkali and Egyptians living near them; they are much less likely to attend school (including compulsory education), have access to health care, drinking water or sanitation, and most live in substandard settlements; the likelihood of participating in the labour market is much lower and, if they participate in the labour market, the chances of being employed are small, also given the large gender inequality; those who are employed earn much less and face lower returns on education and a greater opportunity to have an informal job with which they can not cover social insurance.

Representatives of several non-governmental organizations also noted that according to the Balkan Barometer, citizens of the Western Balkans (including Kosovo) believe that discrimination against Roma and other ethnic communities stigmatized as ‘maxhup-gypsy’ is widespread in the region, while deep-rooted anti-gypsyism, which is continuous and structural and often institutional and governmental continues to exist at all levels of Western Balkan society and is manifested every day and is recognized as a major obstacle to achieving the full potential of Roma and others who are stigmatized as “maxhup - gypsy” being citizens of the Western Balkans and especially as citizens of Kosovo to fully enjoy fundamental rights, social inclusion and equality, social justice in all spheres of life, including housing, education, health care and employment.

They call on the Government of the Republic of Kosovo to submit a legislative proposal and a strategic document on equality, inclusion and participation of the Roma, Ashkali and Egyptians, including the fight against anti-gypsyism, on the basis of a comprehensive impact assessment and systematic consultations with civil society organizations and political representatives of the aforementioned communities.

Taking into account the situation of non-majority communities in the country and in general the language used in public communication, the Ombudsperson has initiated an ex-officio research on hate speech in electronic media, television, radio, social networks, in order to have a clear picture of the language used and its impact on a democratic society.



## V. National Preventive Mechanism against Torture (NPM)

The General Assembly of the United Nations, at its fifty-seventh (57) session, by Resolution A / RES / 57/199 of 18 December 2002, adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This Protocol entered into force on 22 June 2006.<sup>173</sup> The main purpose of the protocol is to establish a system of regular visits, which are undertaken by independent international and national bodies, to places where persons deprived of their liberty are held, in order to prevent torture and other cruel, inhuman and degrading treatment and punishment.<sup>174</sup> In accordance with this Law No. 05 / L-019 on Ombudsperson, which was published in the Official Gazette on June 26, 2015, Article 17, paragraph 1, stipulates that the Ombudsperson acts as a National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, NPM).<sup>175</sup>

Regular and unannounced visits to all places where persons deprived of their liberty are held, including police detention, detention on remand, stay in health institutions, customs detention, detention in immigration centers and any other place where there are

173 Office of the United Nations High Commissioner for Human Rights, at: <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>.

174 Article 1 of the Optional Protocol to the Convention against Torture.

175 Law No. 05 / L-019 on Ombudsperson, article 17, paragraph 2.2.



suspected violations of human rights and human freedoms, are tasks that the NPM is obliged to fulfill.<sup>176</sup>

The Law on Ombudsperson stipulates that during the performance of the function as NPM, Ombudsperson and his representatives have the right to access information on the health condition of persons deprived of their liberty, including access to their medical records, with their consent, as well as in the personal data of these persons.<sup>177</sup> The NPM was officially established by the decision of the Ombudsperson on January 16, 2016.

## **Methodology of NPM visits**

The methodology of NPM visits consists in monitoring, documenting and interviewing persons deprived of their liberty, correctional officers and police officers, as well as health officials. Article 17 of the Law on the Ombudsperson stipulates that the NPM conducts visits, without warning, to places where persons deprived of their liberty are held. This methodology envisages the preparation of the visit, the determination of the type of visit, as well as the actions that are implemented upon arrival at the institution being visited.

During the visits the monitoring team focuses mainly on the most important concerns, such as: relations between staff and prisoners, incidents between prisoners, accommodation conditions, if health care is adequate, non-implementation of procedural guarantees (access to a lawyer, right to medical services, family contacts, etc.).

<sup>176</sup> Law No. 05 / L-019 on Ombudsperson, article 17, paragraph 2.

<sup>177</sup> Law No. 05 / L-019 on Ombudsperson, article 17, paragraph 4.

## Composition of NPM during 2021

The current composition of NPM is multi-disciplinary and in accordance with the provisions of Law No. 05 / L-019 on Ombudsperson, which provides that the NPM should consist of staff of different professions, including lawyers, doctors, psychologists and social workers with experience in this field. The current composition of the NPM is as follows:

- Deputy Ombudsperson, responsible for the NPM
- Director of NPM
- Senior legal adviser for the prevention of torture
- Legal advisor for the prevention of torture
- Medical advisor
- Adviser-psychologist
- Adviser- social worker

## Visits made during 2021

During the reporting period, due to the outbreak of the COVID-19 pandemic worldwide, the NPM was occasionally forced to change the methodology of visits to suit the situation with COVID-19 in the country, based on the principle of not causing a greater damage.

Thus, during the reporting period, the NPM has conducted 62 visits to all places where persons deprived of their liberty are held. Of these, 42 are general visits, 15 ad hoc visits, 3 follow-up visits and 1 visit to Prishtina International Airport in the framework of monitoring forced return operations from Switzerland, in cooperation with the Swiss National Commission for the Prevention of Torture.

The NPM has been in constant contact with the prisoners through telephone numbers which are located in all places of deprivation of liberty (80 telephone calls have been made with prisoners), through the complaint boxes placed by the Ombudsperson (in which only personnel authorized by the Ombudsperson have access), through the families of detainees as well as through other sources. Also, the NPM was in constant communication with the competent authorities via official e-mail, by telephone, as well as through direct contacts in certain cases.

During the reporting period, in addition to the NPM team, visits to places of deprivation of liberty were carried out by officials from the regional offices of the Ombudsperson in Mitrovica North and South, Peja, Gjilan, Ferizaj, Prizren and police stations of the Gjakova region. During 2021, the officials of the regional offices, every month, regularly opened the complaint boxes, interviewed the deprived persons, in order to handle individual complaints.

## Reports with recommendations published during 2021

During the reporting period, the NPM has published 15 reports with recommendations after visits to places of deprivation of liberty. Through these reports, the NPM has addressed 46 (forty six) recommendations to the competent institutions in order to advance the fundamental rights of persons deprived of their liberty.<sup>178</sup>

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<sup>178</sup> All reports with recommendations published in 2021 can be found at :<https://oik-rks.org/raportet/raporte-MKP-1/>.



So far, the competent authorities have implemented 9 recommendations, 2 recommendations have been partially implemented, while 35 are pending implementation. All responses of the competent authorities were positive and in the spirit of mutual cooperation, recognizing the need to implement the recommendations and the will to improve respect for the fundamental rights of those deprived of their liberty.

Regarding the visits made to places of deprivation of liberty which are managed by the Kosovo Police, during the reporting period, the NPM has published a report with recommendations for visits to police stations in the Peja region,<sup>179</sup> and the report with recommendations for visits to the following police stations: Gjilan, Lipjan, Prizren, Ferizaj, Shtime, Shtërpçë, Rahovec, Kamenica, Viti, Suharekë, Malishevë, Mitrovicë and Vushtrri.

Regarding visits to correctional and detention centers, detention centers for foreigners and centers for asylum seekers, the NPM has published the following reports with recommendations, for the Correctional Center in Dubrava, the Correctional Center Smrekonica, the Correctional Center for Juveniles and Women in Lipjan, Detention Centers in Peja, Mitrovica, Gjilan, Prishtina, Prizren, High Security Prison, Detention Center for Foreigners in Vranidoll and Asylum Seekers Centers.<sup>180</sup>

## Cooperation with NPM of visited institutions

During the NPM visits to the institutions where persons deprived of their liberty are held, to the mental health and social care institutions, the officials of the visited institutions provided the monitoring team with full cooperation and immediate access. The team, without delay, had access to all the spaces visited. The team was provided with all the information necessary to carry out the task and was able to conduct interviews with arrested, detained and convicted persons, without the presence of correctional officers, police officers, or medical staff, nor staff of psychiatric institutions and social care.

## Kosovo Police

### Physical mistreatment

During visits to places of deprivation of liberty managed by the Kosovo Police, the NPM did not receive any complaints from arrested persons or from those who were in custody at the time of the visit, for physical mistreatment or disrespect of fundamental rights, which are guaranteed by the Constitution of the Republic of Kosovo, by Law No. 04 / L-076 on the Police, the Criminal Procedure Code and international standards for the protection of the fundamental rights of persons deprived of their liberty.

Also, during the reporting period, during visits to detention and correctional facilities, the NPM did not receive credible complaints from detainees about mistreatment or disrespect of fundamental rights during the period they were arrested or detained by the Kosovo Police.

<sup>179</sup> Report with recommendations for visits to police stations in the region of Peja (police stations: Peja, Klina, Istog, Deçan), conducted on 24 and 26 May 2021, published on 27 August 2021. During these visits were visited the Police Station in Peja, in Deçan, Istog and Klina. For more see at: <https://oik-rks.org/2021/09/03/raport-me-rekomandime-i-MKP-se-per-vizitat-ne-stacionet-policore-ne-peje-istog-klina-dhe-decan/>

<sup>180</sup> All reports with recommendations published in 2021 can be found at :<https://oik-rks.org/raportet/raporte-MKP-1/>

In 2021, the Institution of the Ombudsperson has registered 5 cases for investigation against the Kosovo Police based on the claims of citizens that they have been physically mistreated.<sup>181</sup>

In general, the NPM, based on the visits made during this year and previous visits, the review of received complaints, as well as ex-officio investigations, assesses that there is no systematic or widespread physical mistreatment by the Kosovo Police, but these are isolated cases.

The rights of persons arrested by the Kosovo Police are defined and guaranteed in the Constitution of the Republic of Kosovo, the Criminal Procedure Code, the Law on Police and international instruments incorporated in the Constitution of the Republic of Kosovo.

Article 13 of the Criminal Procedure Code stipulates that every person deprived of liberty must be notified immediately, in a language he / she understands, of the right to legal aid of his or her choice, of the right to notify members of the family or any other person of the fact that he has been arrested and that these rights apply throughout the time of deprivation of liberty.

### **Physical conditions in visited police stations**

The Standard Operating Procedure (SOP), which was adopted by the Kosovo Police in October 2020, stipulates that detention centers must comply with the European Convention for the Protection of Human Rights and Freedoms (hereinafter, the ECHR) and the CPT's recommendations based on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>182</sup>

Regarding the physical conditions in the detention centers in police stations, the NPM, during the visits made in 2021, has noticed that most of the visited police stations, in terms of space, natural, artificial lighting and hygiene meet the conditions necessary for the accommodation of detained persons.

However, the NPM, during the visits has noticed that in some police stations, there are no changes even after the recommendations from previous visits, so the NPM repeats the recommendations for the Police Station in Deçan, and has notified the competent authorities on Findings from visits to Police Stations in Malishevë, Prizren, Shtërpcë and Gjakova<sup>183</sup>

<sup>181</sup> Case 495/2021, the complainant complained for mistreatment by the Kosovo Police, after the investigation, it was found that the complainant's complaint is unfounded and closed according to Article 22, par. 1, to the Law on Ombudsperson. Case 311/2021, the complainant complained for mistreatment by the Kosovo Police. The NPM was informed by the Kosovo Police Inspectorate (KPI) that the case was referred to the Directorate for Internal Investigation and Background Verification of the Kosovo Police for disciplinary treatment, as the KPI during the investigation did not find elements of a criminal offense. Case 196/2021, the complainant complained for mistreatment by the Kosovo Police. KPI informed the NPM that the case was processed with a criminal report to the Basic Prosecution. Case 100/21, the complainant complains for mistreatment by the Kosovo Police. KPI informed the NPM that the complainant's case was processed with a special report to the Basic Prosecution in Prizren. Case 24/21 OIK / KP, case ex officio, related to the arrest of members of the Social Democratic Party, who were arrested during a protest. The NPM was informed by the KPI that this case is still under investigation. Also, according to the KPI, regarding this case, an official was suspended, who managed the police actions, against whom at the same time the administrative procedure for command responsibility was initiated.

<sup>182</sup> Kosovo Police, Standard Operating Procedures for Detention Centers, DDO-04/0121/2016, point 1.6, page 4.

<sup>183</sup> All reports with recommendations published in 2021 can be found at: <https://oik-rks.org/raportet/raporte-MKP-1/>

At all visited stations, the NPM noted that detainees were not provided with personal hygiene items. Also, not all detention centers provide sheets for beds. The NPM, based on these findings, recommended to the Kosovo Police that detainees be provided with hygienic items and sheets. On September 27, 2021, the Kosovo Police informed the NPM that in September the detainees were supplied with hygienic items and sheets.

In terms of medical services, as a fundamental right, to persons who are arrested or detained by the police, these services are provided by public institutions, such as: Family Medicine Centers and University Clinical Center, depending on the needs for treatment. NPM did not receive any complaints from interviewees for non-compliance with this right. Also, from the reviewed documentation it was noticed that the police has recorded in their personal files the notification for the right to have medical services.

Through visits during the reporting period, but also during previous visits, the NPM has noticed that in none of the police detention center detainees were offered access to the fresh air if they were detained for more than 24 hours. In this regard, the NPM notes that the basic domestic legislation does not contain provisions which guarantee detainees access to fresh air if they remain in detention for more than 24 hours.

Whereas, the SOP, point 1.13 (PROCEDURES) stipulates that detainees who stay in detention for more than 24 hours must be provided with fresh air for at least one hour if the infrastructural conditions of the Detention Center allow this. Through official letters sent earlier after receiving the recommendation, the Kosovo Police has informed the NPM that due to the infrastructure it is currently not able to offer detainees access to fresh air.

Also, the CPT, in the published standards for police detention, emphasizes the importance of going out into the fresh air for persons who stay in police detention for more than 24 hours, whenever possible.<sup>184</sup>

Regarding the right to file a complaint regarding their treatment by the Kosovo Police, detainees have the right to file a complaint at the police station where they are being held, as well as at the Kosovo Police Inspectorate (hereinafter, KPI). In addition, detainees may file a complaint with the Ombudsperson. In order to provide easier access to the services of this institution and to enable the arrested and detainees to file complaints in a confidential manner, the Ombudsperson has installed complaint boxes in police stations where there are cells for holding detainees.

Also, the Ombudsperson has regional offices in every city of Kosovo and regional officials visit police stations regularly and without notice, open complaint boxes and handle individual complaints. In addition, all police stations can be visited without notification by non-governmental organizations, which sign agreement with the Kosovo Police to monitor compliance with the fundamental rights of persons arrested or detained by police.

## Correctional and detention centers

### Restriction of certain rights of prisoners during the COVID-19 pandemic

Even during the reporting period, due to the COVID-19 pandemic, some rights of prisoners which are guaranteed by the Constitution of the Republic of Kosovo, Law No. -04 / L-149 on the Execution of Criminal Sanctions (hereinafter, LECS), with other relevant laws

<sup>184</sup> European Committee for the Prevention of Torture, Standards relating to Police Detention, General Report 12, paragraph 47, Strasbourg, 2002. See :<https://rm.coe.int/16806cd1ed>.

and international standards for the rights of prisoners, depending on the situation with COVID-19, were restricted and restored after improvement of condition with COVID-19. These rights are generally the right to contact with the outside world, the realization of family visits and free visits, conducting of various activities within prisons such as: the rights to sports activities, work, training and education.

Regarding the restrictions on the fundamental rights of persons deprived of their freedom, the Ombudsperson, on December 10, 2021, published the report with recommendations, 185 in which he stated that the outbreak of the pandemic and the declaration of the same by the WHO as a pandemic of global proportions, raised the need to take concrete measures by the Government of the Republic of Kosovo in order to combat and prevent COVID-19.

The protection of public health is the obligation of all competent authorities and citizens of a country. Through this report, the Ombudsperson concluded that the restriction of certain rights and freedoms of persons deprived of their freedom was necessary, proportionate, based on local laws, the recommendations of the competent health institutions of the country and the recommendations of the WHO, as well as other international organizations, which monitor the observance of the rights of persons deprived of their liberty.

Through the report in question, the Ombudsperson recommended to the competent institutions the following:

- Decisions on restrictions on the rights of prisoners should have legal support and basis in the provisions of the LECS and in the Administrative Instruction on House Order in Correctional Institutions.
- Communication of prisoners through SKYPE and other *online* means should be regulated by concrete legal acts.
- Contact and communication with defense counsel should be guaranteed even in pandemic times and ensure that this contact is maintained in a secure and confidential manner.

## **Treatment**

During visits to correctional facilities and detention centers in 2021, the NPM did not receive reliable complaints of physical ill-treatment or excessive use of physical force by correctional officers. Overall, the NPM noted good communication and relations between prisoners and correctional officers. However, the OIK through family members and other forms of filing complaints, during the reporting period has reviewed 98 complaints. Out of these, 39 complaints after evaluation by the responsible officials were considered as complaints "within the jurisdiction and competence", while 59 complaints were declared inadmissible. Whereas Ex.Officio-6 cases opened ex officio by NPM.

## **Complaints of corruption and favoritism**

During a visit to the Dubrava Correctional Center (hereinafter: DCC), the NPM received allegations of corruption and favoritism from prisoners, involving not only correctional staff but also healthcare staff. According to these allegations, based on a payment of certain sum of money or in any other way, prisoners can benefit from favorable treatment in terms of opportunities to work, to have family visits, temporary leave from the institution, medical

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185 Report with recommendations of the Ombudsperson, Health Emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo, published on December 10, 2021, The rights of persons deprived of freedom and the impact of the COVID-19 pandemic, from NPM perspective, Chapter VII, p. 57. See at :<https://oik-rks.org/2021/12/10/report-i-vecante-emergjenca-shendetesore-dhe-ndikimi-i-pandemise-covid-19-ne-te-rajat-e-njeriut-ne-republiken-e-kosoves/>.

treatment, etc. The NPM also received a number of allegations from prisoners that certain prisoners in certain categories were treated favorably compared to other prisoners.

Regarding these allegations, the NPM has noticed efforts of the Ministry of Justice and the Correctional Service to combat these phenomena. There were also cases of arrests and convictions of correctional officers who were found to have committed disciplinary violations or to have committed criminal offenses related to corrupt practices.

Even through this report, the NPM, without prejudice to whether such allegations are true or not, considers that the directorate of the DCC and the competent bodies of the Kosovo Correctional Service (hereinafter: KCS) should conduct comprehensive and independent investigations whenever there are allegations of corruption and favoritism. The authorities in question need to step up their efforts to combat these phenomena through preventive measures, education and the application of adequate sanctions.

### **Incidents between prisoners**

During the reporting period, there were generally no serious incidents between detainees reported. NPM during the visits and through official communication with the competent authorities has noticed that these incidents are evidenced in the relevant forms, other administrative documents, as well as in the adequate protocols of the healthcare units. Furthermore, based on official notifications and documentation that the Ombudsperson Institution (hereinafter, OIK) has received from the authorities, internal investigations have been conducted and investigations by the Kosovo Police in certain cases, disciplinary measures were taken based on the findings of disciplinary commissions, and measures were taken to ensure the physical safety of prisoners.

### **Accommodation conditions in correctional centers and detention centers**

Article 3 of Law No. 05 / L-129 on Amending and Supplementing Law No. 04 / L-149 on the Execution of Criminal Sanctions expressly states: *“The premises in which a convicted person lives and works must be of sufficient space for each convicted person to have at a minimum eight (8) square meters of space for single cells and four (4) square meters for the convicted persons in joint cells, and an adequate amount of natural and artificial lighting for work and reading, heating and ventilation.”*

During the visit to the Correctional Center for Women (hereinafter: CCW) and the Correctional Center for Juveniles (hereinafter, CCJ) in Lipjan, the NPM noticed that the cells where the prisoners in the CCW and the juvenile detainees in the CCJ are accommodated have sufficient natural and artificial lighting, as well as have no moisture. Regarding the living space for prisoners, the NPM noted that the available space is in accordance with the provisions of the LECS and the standards set by the CPT. Also, the NPM during the visit did not notice overcrowding in these two centers.

During the visit to the Correctional Center in Dubrava<sup>186</sup>, the NPM has noticed that the number of prisoners was significantly reduced due to the COVID-19 pandemic. Thus, 572 prisoners were present during the visit, while the official capacity of the DCC is 1030. The NPM has noticed that the conditions of accommodation in general can be considered in accordance with the LECS and international standards for prisoners' rights, except in

<sup>186</sup> NPM, Report with recommendations on the visit to the Correctional Center in Dubrava, published on April 22, 2021. See at: <https://oik-rks.org/2021/04/29/raport-me-rekomandime-i-MKP-se-per-viziten-ne-qendre-korrektuese-ne-dubrave/>.

wards 2, 3 and 5, where the NPM has noticed that certain renovations are needed, while in some cells humidity had penetrated.

The NPM has paid special attention to the conditions of accommodation of prisoners who have been imposed the disciplinary measure of solitary confinement due to disciplinary violations. NPM has noticed that the conditions of accommodation in these cells are in accordance with the standards set by the LECS and the standards set by the CPT.

In the report on the visit to the Detention Center in Peja,<sup>187</sup> the NPM, regarding the accommodation conditions in this center has noticed that the cells, in terms of lighting and ventilation are not in accordance with LECS<sup>188</sup> nor with the standards set by the CPT.<sup>189</sup>

Even through this report, the NPM has reiterated the recommendation that the conditions of accommodation in the DCP, while this center is in use, be in accordance with the standards set out in the LECS; with the standards of the CPT and other international standards for the protection of the rights of prisoners.

Regarding this recommendation, the Ministry of Justice on September 16, 2021, informed the NPM that it plans to build a new facility for this institution in the not too distant future and that this ministry intends to guarantee the minimum standards provided by the legislation applicable in the Republic of Kosovo, CPT standards and other international instruments applicable in the Republic of Kosovo.

In the report with recommendations on the visit to the High Security Prison<sup>190</sup> (hereinafter, HSP), the NPM has emphasized that, in general, the accommodation conditions are at a satisfactory level in most of the wards and other spaces, in terms of space, cleanliness, as well as access to natural and artificial lighting. All cells have TVs, separate toilets and prisoners can take showers whenever they want. In addition, the cells are equipped with beds, sheets, desks, chairs and a call system.

In the report with recommendations on the visit to the Correctional Center in Smrekonica (hereinafter, CCS)<sup>191</sup>, the NPM noted that in general the cells where the convicts were accommodated, in terms of size and natural and artificial lighting, in most of the cells where the convicts were accommodated, complied with the standards set by the CPT<sup>192</sup> and LECS.<sup>193</sup> In addition, the ward which was hitherto used as quarantine following the outbreak of the COVID-19 pandemic is now available to prisoners for habitation and will provide even more living space for prisoners.

In the report on the visit to the Detention Center in Prishtina,<sup>194</sup> in terms of the conditions of accommodation, the NPM has noticed that the cells where the prisoners are accommodated have sufficient natural light, living space, which goes beyond the standard set by the LECS

187 NPM, Report with recommendations on the visit to the Detention Center in Peja, published on September 3, 2021. For more see: <https://oik-rks.org/2021/09/04/raport-i-MKP-se-per-viziten-ne-qendren-e-paraburgimit-ne-peje/>.

188 Law No. 05 / L0-129, article 3 of the Law on Amending and Supplementing Law No. 04 / L-149 on the Execution of Criminal Sanctions.

189 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, see : <https://rm.coe.int/16806cc449>.

190 NPM, Report with recommendations on the visit to the High Security Prison, published on July 14, 2021. See at: <https://oik-rks.org/2021/07/28/raport-i-MKP-per-viziten-ne-burgun-e-sigurise-se-larte/>.

191 <https://oik-rks.org/2021/10/18/raporti-i-MKP-se-per-viziten-ne-qendren-korrektuese-ne-smrekonice/>

192 <https://rm.coe.int/16806cc449>

193 Law No. 04 / L-149 on the Execution of Criminal Sanctions, Article 36, paragraph 2.

194 <https://oik-rks.org/2021/12/06/raporti-i-MKP-se-per-viziten-ne-qendren-e-paraburgimit-ne-prishtine/>

and the standards set by the CPT. The NPM also noticed that there were adequate cells available to prisoners with disabilities. However, some cells lack adequate furniture to store things. Through the aforementioned report, the NPM recommended to the Ministry of Justice that the cells of the prisoners be provided with the necessary furniture to store their belongings. The Ministry of Justice responded that the KCS in December 2021, has started the procedures for the supply of necessary furniture and inventory and that such a recommendation is in the report of the CPT for the visit to the Republic of Kosovo in 2020.

In the report on the visit to the Detention Center in Prizren,<sup>195</sup> the NPM noticed that the cells where the detainees were staying had sufficient natural and artificial lighting and had no humidity. In terms of the living space for prisoners, the NPM, as in the previous report with recommendations, finds that the living space, in some cells, is not in accordance with the provisions of the LECS nor with the standards set by the CPT. The NPM noticed that not all cells were supplied with new mattresses. Thus, in some cells the mattresses are old and have not been replaced for a long time and as a result, in some beds humidity has penetrated. Through the report with recommendations after the visit, the NPM recommended to the Ministry of Justice that this center should be fully supplied with new and quality mattresses. The Ministry of Justice, regarding this recommendation, through an official letter has informed the NPM that at the end of November 2021, the center was supplied with 70 mattresses, 70 pillows, 140 fire blankets and that procedures have been initiated for another 20 mattresses for the needs of this center.

During the visit to the Detention Center in Gjilan,<sup>196</sup> NPM has noticed that the cells where the prisoners are accommodated are in accordance with LECS and the standards of the CPT, they have sufficient lighting, they do not have humidity and they also have adequate heating and cleanliness. There are one or two prisoners per cell. The NPM received complaints from prisoners about unsuitable beds, as they were designed as bunk beds and the persons placed on top had no side rails (no protection) and the beds were high, some of them were placing the mattress on the floor. From the prisoners accommodated on the upper floors, the NPM received complaints about the lack of water and hot water pressure.

In the Detention Center in Mitrovica<sup>197</sup>, the conditions of accommodation were generally acceptable, except in certain cases, in terms of living space for a prisoner, where the conditions of accommodation are not in accordance with the LECS, with international standards for the protection of the rights of prisoners and with CPT standards.

Through the report with recommendations for the visit to this center, the NPM recommended to the Ministry of Justice that while this center is in use the prisoners should be guaranteed accommodation conditions, while the Ministry of Justice in the response sent regarding this recommendation emphasized that the air conditioning project is being prepared together with donors organized by NGOs for 2022.

## Overcrowding

No overcrowding was observed in any detention or correctional facilities. The NPM welcomes the significant reduction in the number of prisoners in the DCC.

<sup>195</sup> <https://oik-rks.org/2021/12/06/raporti-MKP-es-per-viziten-ne-qendren-e-paraburgimit-ne-prizren/>.

<sup>196</sup> <https://oik-rks.org/2021/12/16/raporti-i-MKP-se-per-viziten-ne-qendren-e-paraburgimit-ne-gjilan/>

<sup>197</sup> NPM, Report with recommendations on the visit to the Detention Center in Mitrovica, published on October 18, 2021. See at: <https://oik-rks.org/2021/10/18/raport-i-MKP-se-per-viziten-ne-qendren-e-paraburgimit-ne-mitrovice/>.

## Regime

In order to re-socialize prisoners, the LECS and the Code of Criminal Procedure<sup>198</sup>, as well as international standards for the rights of prisoners, explicitly define the obligation of the competent authorities to engage prisoners in work, cultural, educational and sports activities.<sup>199</sup>

During the visit to the DCC, the NPM, based on the relevant documentation, noticed that there are about 262 prisoners engaged in work. Engagement at work is greater during the summer season. Convicts are usually engaged in the kitchen, cleaning and DCC farms. Within the DCC, there is also a high school, in which 35 students attend classes in three classrooms. Convicts could move freely inside the wards where they were placed and were entitled to 3 hours of walking per day during the summer season and up to 2 hours per day during the winter.

Regarding the regime, in the Detention Center in Mitrovica, during the visit it was noticed that about 16 convicts are engaged in work. Within this center there were five workshops, in which convicts can be engaged in work and various trainings. Convicts are entitled to at least 2 hours of walking per day. The library, promenades and fitness room are also available to prisoners. The detainees are not engaged in work as engagement in work and other activities is subject to permission from the competent court. The NPM received complaints from detainees, who, according to them and the director, spend most of their time in their cells (about 22 hours).

Regarding the regime in the High Security Prison, during the visits conducted in 2021, the NPM noticed that about 70% of the prisoners are engaged in various jobs, such as maintenance, cleaning of wards, work in the kitchen, in the workshop for the production of toilet paper and bags, from where other KCS institutions are supplied.

During the visit to the Correctional Center for Women, the NPM noticed that most of the convicts are engaged in work in cooking, kitchen, cleaning, while during the summer season in the gardens and greenhouse of the center. Whereas, the detainees are very little engaged in work and other activities as their engagement is subject to the permission of the competent court.

In this regard, the NPM notes that the CPT, in the report on the visit to the Republic of Kosovo in 2015, in paragraph 45 of the report, among other things, recommends to the competent authorities of the Republic of Kosovo to take priority actions to provide and implement a comprehensive regime of out-of-cell activities for all convicts (work, education, sports, recreation, etc.). Further, this report emphasizes that special attention should be paid to prisoners with long sentences.<sup>200</sup>

Regarding the regime for juveniles in CCJ, the NPM has noticed that in addition to daily ventilation, they are offered a comprehensive regime including education, training in various fields, work, as well as sports and recreational activities. There were four juveniles in CCJ

<sup>198</sup> Criminal Procedure Code, Article 199, paragraph 2, and Article 200.

<sup>199</sup> Law on Execution of Criminal Sanctions, Article 55, and Article 200, paragraph 1.

<sup>200</sup> European Committee for the Prevention of Torture, Report on the visit to the Republic of Kosovo in 2015, published in 2016.



who had to attend primary school, while two of them did not even complete the first grade of primary school and could not read or write.

### **Regime for detainees**

However, for the NPM, even for this reporting period, the regime offered to detainees in all detention centers remains a concern. NPM has noticed that most of the detainees, despite the efforts of the authorities of the detention centers, spend most of their time locked in their cells, due to the infrastructure (Detention Center in Prizren and that in Peja and partly in Mitrovica) and because their engagement in out-of-cell activities is subject to the permission of the competent court.

During the reporting period, the NPM, in all reports with recommendations after visits to detention centers, has considered that based on the legislation in force, the competent authorities should make efforts to increase out-of-cell engagements for the detainees in other detention centers, as far as possible and to the extent that criminal proceedings are not obstructed.

In terms of the right to open air, in general in all correctional centers and detention centers, this right was exercised without restrictions, in accordance with the LECS,<sup>201</sup> except in cases where there was suspicion that the prisoner might be infected with COVID-19, where going out for fresh air was reduced to one hour.

### **Contacts with the outside world**

Legislation in force,<sup>202</sup> in the case of convicted persons, stipulates that convicted prisoners have an unlimited right to correspondence (subject to certain exemptions), are entitled to one visit per month, which lasts a minimum of one hour, as well as a visit 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.

In terms of the phone calls, Administrative Instruction on Home Order in Correctional Institutions<sup>203</sup> determines that the convicted has the right to telephone conversations with close family members and other persons. During visits to correctional facilities and detention facilities, the NPM did not receive any complaints from detainees or convicts regarding

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

In the case of foreign nationals, they are offered the opportunity to contact in writing or orally the diplomatic mission or the relevant office of the state of which he is a national.<sup>204</sup> During the reporting period, due to the COVID-19 pandemic, the KCS from time to time was forced to suspend family visits, free visits, meetings with defense lawyers and other contacts with the outside world. While the restriction of the right to contacts with the outside world was

201 Official Gazette of the Republic of Kosovo, Law No. 04 / L-149 on the Execution of Criminal Sanctions, Article 37.

202 Law on Execution of Criminal Sanctions, Articles 62-65.

203 Administrative Instruction on House Order in Correctional Institutions, Article 54.

204 Law on Execution of Criminal Sanctions, Article 33, paragraph 1.

compensated through the provision of other types of communication (SKYPE, increase of telephone calls). After the situation improved, these rights were restored and the prisoners enjoyed them in full or in part.

In this regard, the NPM reiterates that the right to contact a defense lawyer is a fundamental right of a person deprived of his freedom, guaranteed by the Constitution of the country, the Criminal Procedure Code and international standards on fundamental human rights. Therefore the competent authorities even in times of pandemic must ensure that this contact is continued in a safe and confidential manner.

### **Health care in correctional centers and detention centers**

Article 4 of Law No. 05 / L-129 on Amending and Supplementing Law No. 04 / L-149 on the Execution of Criminal Sanctions establishes the right of the convicted person to enjoy the same standards of health care, which are available in the community. The convicted person has access to the necessary free healthcare services.

The number of medical staff at all levels was generally adequate in all correctional and detention centers. Prisoners are also sent to other public health institutions on the recommendation of a competent doctor.

The facilities in which medical services are provided are generally at a satisfactory level, except in the Detention Center in Peja and the Detention Center in Mitrovica. During the visit to the Detention Center in Mitrovica, the NPM noticed that the space where medical services are provided is not adequate for the provision of medical services and does not protect the confidentiality of medical services. The Ministry of Justice informed the NPM through an official letter that it is aware of the apparent lack of space in this center and that it is planning large-scale renovations to avoid these shortcomings.

### **Complaints regarding medical treatment**

During the reporting period, the NPM received complaints from prisoners regarding medical treatment in correctional and detention centers. Some of these complaints were registered for further investigation. The NPM, in all cases except for visits, requested from the Health Directorate of Prisons (HDP), detailed reports on the health treatment of the complainants in question. In no case did the NPM find any serious violations of the right to health care, except in some cases when due to transportation the prisoner was not immediately sent for medical treatment on the doctor's recommendation. NPM during the reporting year has been continuously notified by the HDP for cases of injuries and self-injuries, whether cases that had injuries upon reception, cases of injuries they have caused to each other or injuries caused by correctional officers. All these cases have been analyzed by the NPM doctor and based on the facts provided and the files reviewed has given recommendations for 17 cases.

### **Presence of mentally ill prisoners in correctional and detention centers**

The presence of prisoners with mental illness continues to be a challenge for detention and correctional centers, due to the lack of capacity to accommodate prisoners of this category in relevant health institutions. Even during the visits conducted in 2021, the NPM has noticed that due to the impossibility to accommodate them in the relevant institutions according to the recommendation of the competent doctor, prisoners with serious mental problems continue to be held in detention and correctional centers.

In this regard, the NPM notes that Article 43 of Law No. 05 / I-129 on Amending and Supplementing Law No. 04 / L-149 on the Execution of Criminal Sanctions stipulates: *“The convicted person who cannot be offered appropriate medical treatment in the correctional institution shall be sent to the hospital of correctional institution, to the adequate psychiatric institution, or to any other health care institution.”*

The NPM regrettably notes that on August 19, 2021, a prisoner with mental health problems committed suicide in the DCP. On July 3, 2021, the Basic Court in Prishtina decided that the prisoner (now deceased) be remanded in custody and that detention be served at the Institute of Forensic Psychiatry. Due to the lack of vacancies in the IFPK, the prisoner was accommodated in the DCP, where he underwent a psychological evaluation and was given psychiatric therapy as recommended.

The NPM considers that any death of prisoners should be subject to a thorough investigation by the authorities to ascertain, inter alia, the cause of death, including contributing factors, and whether the death could have been avoided. The NPM welcomes the fact that during the visit to the CPC after the news of the death of the prisoner, he noticed that all the competent authorities immediately initiated investigations based on their mandate.

The NPM, in cooperation with the Council of Europe, organized roundtables and conferences where, together with the competent authorities, the challenges of treating prisoners with mental health problems were discussed, as well as other challenges regarding compulsory psychiatric treatment.

During these meetings, the participants agreed that the competent authorities should take adequate action to treat prisoners of this category in accordance with domestic legislation and international standards for the fundamental rights of prisoners. The competent ministries, during these meetings, presented their plans to find adequate solutions for this category of prisoners.

## Medical examinations for newcomers

The CPT, in its report on the visit to Kosovo in 2015, stressed the essential importance of medical examinations, especially in the case of newly admitted prisoners or detainees not only for the identification of infectious diseases and the prevention of suicide, but also through the contribution which is given in terms of prevention of torture through proper identification of injuries.<sup>205</sup>

LECS<sup>206</sup> and Standard Operating Procedures (hereinafter SOP)<sup>207</sup> of the HDP stipulate the obligation for the newly admitted prisoner to undergo a medical examination within 24 hours from the moment of admission. Such obligations are also defined by international acts for the protection of the rights of prisoners, such as: Mandela Rules,<sup>208</sup> European Prison Rules, etc.<sup>209</sup> The NPM, during the reporting period, based on the visits conducted and the

205 CPT, Report on the visit to Kosovo in 2015, published in 2016, paragraph 62. See in: <https://rm.coe.int/16806a1efc>

206 Law No. 04 / L-149 on the Execution of Criminal Sanctions, Article 31.

207 Standard Operating Procedures, item 1. See: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Vepimin-n%C3%AB-DShB.pdf>

208 Mandela Rules, Rule 34. See: [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf)

209 Council of Europe, Recommendation (2006) 2 of the Council of Ministers to the Member States on European Prison Rules, paragraph 42.1. See at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c221d>

reports sent by the HDP, has noticed that all newly admitted prisoners undergo medical examinations within 24 hours from the moment of admission.

### **Confidentiality of medical services**

Confidentiality of medical services is provided by the SOP210 approved by the Ministry of Health, with LECS211 and with the Administrative Instruction on House Order in Correctional Centers,<sup>212</sup> as well as with relevant international acts on the rights of prisoners.<sup>213</sup> Even during this reporting period, the NPM, based on interviews conducted with prisoners and health personnel, noticed that in general these health services are provided under conditions that respect confidentiality, respectively provided without the presence of correctional officers, except in cases when their presence is required by the doctor. While only the medical staff has access to the medical file of the prisoner.

### **Staff of correctional and detention centers**

Even during the reporting period, the NPM notes that in some correctional and detention centers there is a lack of correctional staff and social workers. The average age and various illnesses of some correctional officers are also reported as an issue for the KCS. Despite the announcement of vacancies for the recruitment of correctional staff, no concrete changes have been noticed in this regard so far.

Also, the NPM during the visits, noticed the growing frustrations of correctional officers due to working conditions, presence in detention centers and those of correctional prisoners with mental problems (who based on the doctor's recommendations should be treated in adequate health institutions), low salaries, as well as the lack of uniforms and other equipment which, according to them, have not been supplied for several years.

NPM considers that the way staff perceives the quality of life at work and the way they are treated by management staff and their colleagues has a significant impact on the prison atmosphere and the treatment of prisoners. Correctional officers, who feel valued, trusted and respected in their workplace, are more likely to apply these values to the treatment of prisoners too. Favorable prison working conditions are also important in attracting and retaining appropriate prison staff.

International standards in this regard are clear and stipulate that prison staff must be appointed full-time, have civil status, have adequate wages and favorable employment benefits, and adequate conditions to perform their service. Low wages, inadequate working conditions and lack of other benefits which are necessary to stimulate adequate work in facilities such as prisons can have a negative impact on the motivation and performance of duties by staff engaged in prisons. In addition such a situation can foster corruption in prisons.

Even in 2021, correctional facilities and prisons faced additional workloads because some correctional officers were infected with COVID-19, but also due to additional commitments caused by this pandemic.

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<sup>210</sup> Standard Operating Procedures, point 11. See: <https://msh.rks-gov.net/wp-content/uploads/2013/11/1.-Praktikat-Standard-te-Vepri-min-n%C3%AB-DShB.pdf/>

<sup>211</sup> Law on Execution of Criminal Sanctions, Article 49

<sup>212</sup> Administrative Instruction on House Order in Correctional Institutions, Article 25, paragraph 3.

<sup>213</sup> Mandela Rules, European Prison Rules, CPT Standards, and the United Nations Rules for the Protection of Juveniles Deprived of their Freedom.

## Centers for Asylum Seekers

During the reporting period, the NPM visited the Centers for Asylum Seekers in Magura, Vranidoll and Mitrovica.<sup>214</sup> The purpose of the visits to the above-mentioned accommodation centers for asylum seekers was to assess the observance of the fundamental rights of asylum seekers by the authorities of the Republic of Kosovo in accordance with the applicable legislation of the Republic of Kosovo and international human rights standards embodied in the Constitution of the Republic of Kosovo. The Center for Asylum Seekers in Mitrovica was closed after a fire broke out in a part of it, while the asylum seekers were transferred to the Center for Asylum Seekers in Vranidoll.

During the visits conducted, NPM has identified that in the Center for Asylum Seekers in Magura there were 57 asylum seekers, in the Center for Asylum Seekers in Mitrovica there were 55 asylum seekers, while in the Center for Asylum Seekers in Vranidoll there were 61 of them.

All asylum seekers have stated that they are treated well and humanely by officials of the Ministry of Internal Affairs and the Kosovo Police. In addition, the NPM noticed very friendly and interactive communication between asylum seekers and police officers and those of the Ministry of Internal Affairs.

The NPM, during group and individual interviews, did not receive any complaints from asylum seekers regarding the right to practice religious rites at the center individually or in groups. However, it has received and investigated two complaints from persons seeking international protection.<sup>215</sup>

In terms of medical services, they are offered by the nearest Family Medicine Center and the University Clinical Center of Kosovo. NPM has not received complaints from asylum seekers regarding medical services, on the contrary, asylum seekers have stated that the necessary services are provided as soon as possible.

## Detention Center for Foreigners

During the reporting period, the NPM conducted a general visit to the Detention Center for Foreigners (hereinafter, DCF) in Vranidoll.<sup>216</sup> In terms of international human rights standards, detention (sending a foreigner into custody) should be the last resort implemented by the authorities of a state to remove a foreigner from the territory which is subject to forcible return. NPM notes that Law 04 / L-219 on Foreigners of the Republic of Kosovo provides that other alternative measures have priority over sending a foreigner into custody.

Also, the CPT, in the standards set in 2017, stipulates that the detention of a foreigner according to the law on foreigners should be a last resort and that other alternative measures should be given priority.

214 Report with recommendations on visits to the Asylum Seekers Centers in Magure, Mitrovica and Vranidoll, published on 23 February 2021. See at: <https://oik-rks.org/2021/02/23/raport-i-mekanizm-kombetar-per-parandalimin-e-tortures-per-vizitat-ne-qendrat-e-azilkerkîrên/>.

215 Case A no.141 / 2021 U.Y vs. the Basic Court in Prishtina and. Case Ano.733 / 2020 M.K vs the Ministry of Internal Affairs, which cases have been completed and the Ombudsperson has terminated the investigation after the cases were resolved in accordance with the request of the complainant.

216 NPM, Report with recommendations on the visit to the Detention Center for Foreigners in Vranidoll, published on April 14, 2021. See at: <https://oik-rks.org/2021/04/29/raport-i-MKP-per-viziten-ne-qendren-e-mbajtjes-per-te-hruar-ne-vranidoll/>.

In terms of treatment, the NPM did not receive any complaints from the interviewees about physical ill-treatment, excessive use of physical force or conduct by security officials and DCF officials, which would not be in line with respect for their dignity.

During the visit by the NPM, the registers and files of foreign persons accommodated in this Center were checked. In January 2021, 1 case of suicide attempt was identified. Based on the health files, 8 foreigners were under psychiatric therapy and with difficulties to be managed, therefore NPM encourages the competent institutions that in addition to increasing the number of staff in DCF, to hire at least one nurse, as recommended by the NPM in the Report with recommendations during 2018, 2019.<sup>217</sup>

Based on the above findings, the NPM again recommended to the Ministry of Internal Affairs that the DCF should have at its disposal at least one nurse, who would provide the therapy and take care of medical records of the foreigners in the center.

NPM notes that DCF also faces serious shortages of staff other than health staff. During the NPM visit, DCF had at its disposal only the director of the Center, who performed all the work. In this regard, the NPM, on February 3, 2021, met with the director of the DCAM, to whom it has expressed this concern that is considered to be serious in terms of the functioning of the center in question.

On December 21, 2021, the NPM requested the Department of Citizenship and Asylum (MIA) to notify whether staff recruitment was organized in the asylum and detention centers during the reporting period. The Department for Citizenship and Asylum, on December 21, 2021 informed the NPM that an official was hired at DCF, while there was no new recruitment in the centers for asylum seekers.

During visits of the NPM, it was noticed that security tasks at the center were performed by the Kosovo Police Security Unit who are not trained to work with foreign persons deprived of their freedom. In this regard, the NPM notes that the CPT standards stipulate that security personnel in detention centers for foreigners should be carefully selected and have appropriate training to work with this category.

## Monitoring forced return operations through airlines

During the reporting period, the NPM monitored at the Prishtina International Airport an operation for the forcible 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.<sup>218</sup> During the monitoring of the operations in question, the NPM noted that the forcibly returned were treated in a humane and correct manner by the police authorities of the Republic of Kosovo. In addition, the NPM has received full cooperation from the Kosovo Police during the implementation of these operations.

<sup>217</sup> Ibid.

<sup>218</sup> Memorandum of Understanding between the Ombudsperson's Institution and the Swiss National Commission for the Prevention of Torture to Monitor Forced Return Operations, signed on 24 April 2019. For more see at: <https://www.oik-rks.org/2019/04/25/nenshkruhet-memorandumi-i-mirekuptimit-ne-mes-te-zvices-dhe-kosoves-per-parandalim-te-tortures-dhe-monitorim-forced-joint-return-operations-by-force/>

## Mental health and social care institutions

During the reporting period,, the NPM visited the Kosovo Institute of Forensic Psychiatry (hereinafter, KIFP), the Department of Emergency and Intensive Psychiatric Care (hereinafter, EIPC) of the Psychiatric Clinic, the Community Integration Home in Prizren and Peja (CIH) the Community Based Home in Deçan (CIH), and the Home for the Elderly and without Family Care in Gurrakoc.

Also, during the research on the impact of COVID 19 on mental health, questionnaires were conducted in all Mental Health Centers, and residents of Community Integration Homes (CIH) were directly interviewed, where information was received about their treatment and life in residential institutions.

The purpose of the visits was to assess the situation of the institutions in question, management of the situation during the pandemic, the progress of the competent authorities in implementing the recommendations of the NPM, sent through previous reports with recommendations.

### Kosovo Institute of Forensic Psychiatry

The Kosovo Institute of Forensic Psychiatry (KIFP) was opened in August 2014. It is currently under the management of the University Clinical Hospital Service of Kosovo (UCHSK). Pursuant to the Law on Mental Health, the KIFP is an organizational unit of the UCHSK. According to the law in force, KIFP provides tertiary level services for the whole country (the only one in Kosovo).<sup>219</sup> The relevant legal basis is found in the Criminal Code of the Republic of Kosovo, in the Criminal Procedure Code, in the Law on Execution of Criminal Sanctions and in the Law on Mental Health.

The KIFP accommodates persons who have committed a criminal offense in a state of mental incapacity or essentially reduced mental capacity, who are subject to the order of the competent court for compulsory psychiatric treatment, as well as persons who are subject to the court order for psychiatric assessment with detention in a health institution.

During the reporting period, the NPM visited the Kosovo Institute of Forensic Psychiatry (KIFP) on June 17, 2021. During the visit to the KIFP and the Department of Emergency and Intensive Psychiatric Care (EIPC) of the Psychiatric Clinic, with support of the Council of Europe (CE), a psychiatrist has joined the NPM team.

The capacity of this institution is 36 beds (from 12 beds in each ward). KIFP consists of Ward A (Admission / Outpatients); Ward B (Compulsory psychiatric treatment); Ward C (Psychiatric Expertise); and Ward D of re-socialization. In Ward C are placed patients who are brought by the KCS, who are detained, when the court requires an assessment of mental condition (psychiatric expertise), or convicts, who are brought for treatment by prisons. In Ward B are placed the patients to whom the court has imposed the measure of compulsory psychiatric treatment with detention in the institution.

### Treatment

NPM during the visit has interviewed the patients present and did not receive any complaints of ill-treatment. Also, the NPM did not notice any signs of physical violence in the patients.

<sup>219</sup> Law No. 05 / L-025 on Mental Health, Article 13, paragraph 1.2.

Furthermore, the NPM noted good and interactive relationships between patients and KIFP staff.

### **Incidents between patients**

During the visit, the NPM noted that in the last three months in Ward B, there was an incident (fight between two patients), which was managed by staff. During the pandemic there were large numbers of patients and one of the patients (now deceased) was deemed more problematic with inappropriate behavior often harassing other patients. During the period for which it is being reported, from January until the time of the NPM visit (June 2021), 3 incidents occurred. Even through this report, the NPM reiterates the obligation of the institution to provide adequate care and protection for persons under treatment. NPM considers it very necessary to organize trainings for all staff, on ways to manage the issue of violence between patients.

### **Accommodation conditions**

Material and hygienic conditions in KIFP are generally good. Patient rooms have two beds each, have adequate ventilation and patients have access to natural light, patient rooms have lockers but they are damaged and can not be closed. The NPM considers that the competent authorities should take adequate action to avoid this shortcoming. There is also space for daily stay, equipped with chairs, TV, games (chess) and suitable space for the kitchen.

Privacy in showers and toilets was adequate as toilet doors were covered with curtains. During the visit, the NPM noted that the KIFP does not have a separate ward for female and juvenile patients. NPM, also through this report, reiterates that the competent authorities should take concrete steps to avoid this shortcoming.

According to the last announcement of the director of KIFP (in September 2021), the capacity of KIFP with a total of 24 beds for compulsory treatment with detention, was at full capacity 100%. 12 beds are available for psychiatric examination.

Also, the challenge for the proper functioning of the institution is the treatment of persons who are users of narcotic substances.

An additional problem is the failure of the competent court to change the measure, despite the achievement of objectives for handling those cases. According to the director of KIFP, they have requested to change the measure for 7 patients, but have not received a response from the courts.

One of the problems that was pointed out is the legal guardian, as it is often not clear who is the legal guardian of a person who is accepted by a court decision and the decision does not specify a legal guardian, this is posing a problem to doctors during treatment and that the institution does not know with whom to keep in touch about the patient's condition.

### **Treatment and activities**

In KIFP, in addition to assessment and treatment with medication, psycho-social activities are also offered. Psycho-social treatment consists of activities such as: games, watching TV, drawings, daily outings within the institution (on the KIFP walking track), individual sessions with a psychologist, etc. The schedule of daily activities was set in conspicuous places, but this schedule is uniform.



During the visit, the NPM noticed that the treatment was essentially pharmacotherapy and lacked structured therapeutic activities. Furthermore, the NPM noticed that some patients had individual treatment plans but were not systematically designed. This finding is also highlighted in the CPT's latest Report on Kosovo.<sup>220</sup>

### **KIFP staff**

There are currently 43 employees in KIFP, in addition to the director (neuropsychiatrist), there are also 6 psychiatrists, 2 psychologists, 22 nurses, 2 social workers, and administrative staff, kitchen staff and security staff. The staff initially had a basic training - control for difficult case management, but no continuity of training of this nature was maintained so that the staff would be able to fulfill the tasks.

Regarding the security personnel in KIFP, and in the Department of Emergency and Intensive Psychiatric Care (hereinafter, EIPC), the situation remains the same, since the findings of the latest NPM report, sent in 2018.<sup>221</sup> The report highlights the findings that security personnel assist medical staff in managing crisis situations and have not conducted adequate training to work with this category of patients.

### **Progress in implementing NPM recommendations**

NPM, through the conducted visits and official communication with the competent authorities, has noticed that so far no significant progress has been made in implementing the recommendations sent through the report with recommendations on the visit to KIFP, published on August 8, 2018.

However, the NPM, at the end of 2021, based on official information published by the Kosovo Correctional Service and information submitted by the Prisons Health Department, has noticed that certain actions have been taken to avoid certain shortcomings in treatment of prisoners with mental disorders, aiming at capacity building in existing institutions and the adaptation of a ward in the DCC, as well as the engagement of adequate staff.

## **Department of Emergency and Intensive Psychiatric Care**

During the reporting period, the NPM, on June 16, 2021, visited the Department of Emergency and Intensive Psychiatric Care (EIPC), which operates within the Psychiatric Clinic of the University Clinical Center of Kosovo.

Pursuant to the Law on Health, Article 13 of the Law on Mental Health of the Republic of Kosovo and Article 6 of the Statute of the HUCSK, the Psychiatric Clinic is an organizational unit of the HUCSK. According to the law in force, EIPC provides tertiary level services for the whole country (the sole clinic in Kosovo), but is obliged to provide secondary level services for the Prishtina region, in lack of a general hospital.

EIPC is a closed unit and operates within the Psychiatric Clinic. The age of inpatients is usually 16-65 years. In this ward are treated cases of various psychotic disorders, bipolar disorders and personality disorders, which cannot be treated in other wards. This ward is the only one in the entire territory of Kosovo. In other regional hospitals, in the psychiatric

<sup>220</sup> CPT, Report on the visit to Kosovo in 2020, published in October 2021, paragraph 154. See at :[https://www.coe.int/en/web/cpt/kosovo/-/asset\\_publisher/WsovygSd8qFK/content/council-of-europe-anti-torture-committee-publishes-report-on-kosovo](https://www.coe.int/en/web/cpt/kosovo/-/asset_publisher/WsovygSd8qFK/content/council-of-europe-anti-torture-committee-publishes-report-on-kosovo)

<sup>221</sup> See report, <https://oik-rks.org/2018/08/28/raporti-nga-vizita-ne-institutin-e-psikiatrize-forenzike/>

wards, the special rooms where emergencies are treated are not functional. Such cases from all over Kosovo are brought to the EIPC ward of the Psychiatric Clinic in Prishtina.

NPM even through this report, considers that psychiatric wards in other regional hospitals should activate special rooms for the treatment of emergencies. NPM, through the report with recommendations in 2018<sup>222</sup> has recommended to the competent authorities the activation of these special rooms for handling emergencies, but the situation remains the same and this recommendation has not been implemented yet.

### **Accommodation conditions and treatment at the Department of Emergency and Intensive Psychiatric Care**

The capacity of this ward is 14 beds, while the ward is split into two wings: 7 beds for men and 7 beds for women. NPM has noticed that the accommodation conditions do not meet the standards for accommodation of patients of this category, no renovation has been made based on the recommendations given since 2018.

During the NPM visit, in June 2021, 4 patients were present. The NPM interviewed two of them and did not receive any complaints of physical ill-treatment or misconduct of staff, while the other two were in solitary confinement rooms, with whom interviews could not be conducted due to their condition.

The NPM also notes that the CPT, in its report on the visit to Kosovo, published in October 2021, recommended to the competent authorities to take concrete steps to avoid the shortcomings identified in terms of accommodation conditions.<sup>223</sup>

During the visits to this ward, the NPM has noticed that the main treatment is with medication. The supply of medications was satisfactory. However, the NPM noticed that psycho-social activities were not sufficient. NPM has noticed that a multi-disciplinary team is missing, such as: psychologist, social worker, occupational therapist and individual treatment plan is missing. The NPM considers that the authorities and institutions should ensure the necessary diversity of psycho-social professionals as a precondition for an adequate treatment of patients.

Patients are generally brought here by family members or the police and are patients who are accommodated against their will. The NPM noticed that the competent court is not notified of the patient's admission for involuntary treatment.

NPM, during the reporting period, but also during previous visits, has noticed that this legal criterion is not being applied, therefore, the competent court is not notified as defined by law. Moreover, this non-implementation of the law continues for years and in addition to the NPM, this situation was also worrisomely noticed by the CPT in the report on the visit to Kosovo in 2007, 2010, 2015 and most recently the report on the visit to Kosovo published in

<sup>222</sup> NPM, Report with recommendations on the visit to the Psychiatric Clinic in Prishtina, published on October 26, 2018. See at: <https://www.oik-rks.org/2018/10/29/raport-me-rekomandime-lidhur-me-viziten-ne-kliniken-pskiatrike-ne-qkuk/>.

<sup>223</sup> CPT, Report on the visit to the Republic of Kosovo, published in October 2021, paragraphs 124 and 125. See at: [https://www.coe.int/en/web/cpt/kosovo/-/asset\\_publisher/WsovygSd8qFK/content/council-of-europe-anti-torture-committee-publishes-report-on-kosovo-](https://www.coe.int/en/web/cpt/kosovo/-/asset_publisher/WsovygSd8qFK/content/council-of-europe-anti-torture-committee-publishes-report-on-kosovo-)

October 2021.<sup>224</sup> In all these reports, this Committee had expressed serious concern over the non-implementation of the relevant law at this point.

### Means of restraint

EIPC does not use mechanical restraint, but only the measure of isolation and chemical restraint. During the visit, the NPM noticed that the patients' files contained the evaluation of the three doctors, the anamnesis, the history of the disease, the form for placement in solitary confinement rooms, the request for hospitalization, but there is no consent for treatment and no informed approval.

The NPM considers that as long as the ward uses the isolation measure, this restriction tool should be subject to a detailed policy for patients who are placed in solitary confinement rooms, which should contain information on situations where confinement may be used, the intended objectives, the duration and the need for regular review of the confinement decision, the existence of genuine human contacts, the need for staff to be particularly vigilant.

NPM has noticed that the ward does not have a separate register for persons who are placed in confinement. Therefore, the NPM finds that the recommendation to establish such a register has not been implemented yet, which was sent to the competent authorities through the report with recommendations published on October 26, 2018.<sup>225</sup>

Even the CPT, in the report on the visit to Kosovo in 2020, published in October 2021, has noted that the confinement of patients was a common practice combined with the forced administration of medications. The CPT emphasized that the use of restraint measures should be subject to a comprehensive policy and has sent a number of specific recommendations in this regard.

### Contact with the outside world

Due to the outbreak of the COVID-19 pandemic and based on the decisions of the authorities which provide measures to prevent COVID-19, family visits have been suspended, except in very specific cases, where the 5 minutes visit took place, but at a distance, but this has happened very rarely. During the pandemic the number of phone calls increased. The CPT standards regarding involuntary treatment emphasize that the patient's contact with the outside world is essential not only in terms of preventing ill-treatment, but also from a therapeutic point of view.

Patients should be able to send and receive correspondence, to access the telephone, and receive visits from family and friends. The director of the clinic should restrict going out and other psycho-social activities, in accordance with the situation with COVID-19 and the recommendations of the competent authorities. This restriction should not be a principle in any way and should be subject to occasional review.

224 European Committee for the Prevention of Torture (CPT), Report on the Visit to Kosovo in 2007, paragraph 131, published in 2009. See at: <https://rm.coe.int/168069727c>. CPT Report on the Visit to Kosovo in 2010, paragraph 88, published in 2011. See at: <https://rm.coe.int/16806972c7>. CPT Report on the Visit to Kosovo in 2015, paragraph 111, published in 2016. See at: <https://rm.coe.int/16806a1efc>. CPT Report on the Last Visit to Kosovo in 2020, published in October 2021, paragraphs 142, 143. See at: [https://www.coe.int/en/web/cpt/kosovo/-/asset\\_publisher/WsovygSd8qFK/content/council-of-europe-anti-torture-committee-publishes-report-on-kosovo-](https://www.coe.int/en/web/cpt/kosovo/-/asset_publisher/WsovygSd8qFK/content/council-of-europe-anti-torture-committee-publishes-report-on-kosovo-)

225 Ibid. <https://www.oik-rks.org/2018/10/29/raport-me-rekomandime-lidhur-me-viziten-ne-kliniken-pskiatrike-ne-qkuk/>.

## Mental Health Centers and Community Integration Homes

Relevant legislation for these institutions is found in Law No. 05 / L-025 on Mental Health and in the Administrative Instruction (in Health) No. 07/2009 on the Professional Mental Health Service in the Republic of Kosovo.

Based on the provisions of the above-mentioned legal acts, the Community Integration Homes (CIH) provides health care for the purpose of rehabilitation and social reintegration of clients with chronic diseases and mental health disorders.<sup>226</sup>

There are Mental Health Centers (MHC) in different cities such as Prishtina, Gjakova, Podujeva, Prizren, Peja, Gjilan, Ferizaj, Mitrovica. In MHC the work is organized in two ways: in-house, where psychosocial activities take place inside the Center, free drug therapy is provided, and in the field by the mobile team of the Center, which covers the regions of the city where the MHC is located. These visits of the mobile team are conducted for the purpose of psychosocial support, giving regular therapy, at the same time providing support for the family.

Within the Mental Health Centers are also the Community Integration Homes (CIH), in every city of Kosovo. These homes are residential and each with a capacity for 10 residents, except the CIH Mitrovica which has a capacity for 20 residents. Community Integration Homes provide long-term health care for the rehabilitation and social reintegration of clients with chronic psychiatric illnesses and disorders.

As part of the Ombudsperson's research on the impact of Covid 19 on mental health, the NPM representative visited all Mental Health Centers and Community Integration Homes in Kosovo, interviews were conducted with residents and health personnel related to the treatment of patients during the pandemic. The interviews were conducted during the months of June and July 2021.

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<sup>226</sup> Administrative Instruction (in Health) No. 07/2009 on the Professional Mental Health Service in the Republic of Kosovo, Article 9 paragraph 1.



# VI. The positions of the Ombudsperson on the fundamental rights and freedoms expressed in the reports on the cases investigated during 2021

## HUMAN DIGNITY, RIGHT TO LIFE, HEALTH AND SOCIAL PROTECTION AND EQUALITY BEFORE THE LAW

### Impact of the COVID-19 pandemic on public health

The report also analyzes the impact of the pandemic on public health and the operation of health care institutions during this period. Despite the fact that the MoH had drafted a plan for preparedness and response against COVID-19 and the Government had allocated additional funds, there were difficulties and delays in the supply of protective equipment, tests, medications, respirators and other necessary materials.

Based on information from health institutions, trade unions and citizens, the Ombudsperson assesses that there are shortcomings in the health system due to low budget contribution to health, non-implementation of laws and policies, lack of coordination between sectors, insufficient monitoring and lack of accountability.

The focus on prevention and treatment of patients with COVID-19, among others, has left aside many citizens who had health needs of other natures, including chronic ones, which brought many challenges to



health institutions, health personnel as well as affected the budget of COVID-19 infected people and their family members.

### **Mental health and the impact of the COVID-19 pandemic**

In terms of mental health, the first effects of the pandemic were observed in many countries around the world, including Kosovo. Social isolation, lack of free movement, loss of jobs, economic problems, loss of family members, number of deaths in general, fear of infection, etc., all of these have directly affected mental health in general. Since the beginning of the pandemic, experts from all over the world have presented views on the possible negative effects of the pandemic on mental health services and have raised awareness regarding the need to address mental health issues and thus the issue of increased possibility of violating / ignoring the rights of persons with mental disorders.

It has been noticed from media reports that the pandemic has disrupted the provision of mental health services by depriving many people of the necessary support. It was also noticed that despite the growing demand for mental health support, the Ministry has not allocated any additional funds for mental health services, because according to the spokesman in this ministry, the budget for mental health exists. It is known that in Kosovo only 2% of the health budget was spent on mental health services, which is again lower than the EU average of 4%.

### **Domestic violence during the COVID-19 pandemic in Kosovo**

With the undertaking of measures for the prevention of COVID-19, the cases of domestic violence have increased. These measures have hampered institutional work in preventing, treating and caring for vulnerable groups, such as victims of domestic violence. According to the information provided by the Police, it turns out that cases of domestic violence during the pandemic have increased, it is clear that in 2020 there was an increase in the number of cases of domestic violence compared to 2019. During 2019, according to information 1915 cases are registered, while in 2020 2069 cases of domestic violence were registered with the Police. Whereas, until May 2021, 897 cases of domestic violence were registered with the Kosovo Police. These statistics show that in 2020, during the pandemic, 154 cases of domestic violence were reported more than in 2019.

It is evident that the shelter does not regularly coordinate with other institutions, such as the CSW, the Victim's Advocate and the courts, due to the reduced working hours during the pandemic.

The Ombudsperson assesses that among the main challenges during the pandemic period March-September 2020, were: increase in the number of cases of domestic violence, staff infection, lack of financial management for cases of domestic violence, small number of staff, isolation during the pandemic, which has made impossible the movement and filing of cases of domestic violence during the COVID-19 pandemic, and the lack of cooperation between institutions operating during the reporting of cases of domestic violence by victims.

## **The rights of non-majority communities and the impact of the COVID-19 pandemic**

### **Informing of the non-majority communities about the COVID-19 pandemic**

Accurate, reliable and timely dissemination of information on the epidemiological situation and on the measures taken to prevent the spread of the COVID-19 pandemic virus by public authorities, in official languages and in official languages at the municipal level, has a direct impact on preventing the spread of the pandemic to the citizens of the country, without distinction. Getting information on time is a factor in enabling citizens and officials to organize their behavior in accordance with the public interest and legal rules regarding the pandemic. In this regard, and in a pandemic situation, the key role and special responsibility for providing timely, accurate and reliable information to the public rests with the public authorities, in particular those whose functions are related to public health, media and professional journalists. With the announcement of the three-month state of public health emergency, in mid-March 2020, the Government of the Republic of Kosovo approved immediate measures aimed at preventing the spread of the virus.

In the communications of the Ombudsperson's representatives with representatives of Kosovo's non-majority communities: Serbs, Bosniaks, Gorani, Croats, Turks and Roma, it has shown that the main issue they faced during the public health emergency was the inability to timely obtain information. Emphasizing that issues of translation into the languages of non-majority communities are a general and ongoing issue and are not an isolated phenomenon of the pandemic period.

Regarding the complaint related to the failure of the Ministry of Health (MoH) and the National Institute of Public Health in Kosovo (NIPHK) to inform the citizens in Serbian about the pandemic, through their official website,<sup>227</sup> the Ombudsperson, in accordance with Article 5 (paragraph 1) of the Constitution and Law No. 02 / L-37 on the Use of Languages, recommended to the MoH and NIPHK to inform citizens and the public through their websites in the two official languages of the Republic of Kosovo.<sup>228</sup> In the response received from NIPHK and MoH, on April 15, 2020, respectively on April 17, 2020, the OIK was notified of the following: their communications are made in the two official languages; in media communication they answer in Serbian whenever questions are asked in this language; their social networks / Facebook profile contains information in Albanian, Serbian and English and they make efforts for information about COVID-19 to be in the official

<sup>227</sup> Complaint No.250 / 2020, Deputy Minister vs. the Ministry of Health and the Institute of Public Health of Kosovo, dated 15 April 2020.

<sup>228</sup> Ibid.



languages.<sup>229</sup> It was understood from the response that due to the urgent situation of the pandemic, the authorities are facing a lack of sufficient translation capacity. However, after the OIK recommendation, there has been noticed an improvement in translations.

### **Economic assistance - procedures for access to the Emergency Fiscal Package**

The Government of the Republic of Kosovo, aiming at mitigating the economic consequences of COVID-19, on April 3, 2020 approved the Operational Plan for the Emergency Fiscal Package (EFP), measure which would benefit beneficiaries according to strict criteria and procedures.<sup>230</sup> Members of non-majority communities, who do not speak and / or do not understand official languages, received the information late. The publication of information on the official websites of the Ministry of Finance and Transfers (MFT) and the Employment Agency was a poor quality translation. Furthermore, applications for assistance were expected to be completed and submitted in person or through an electronic online format, but due to problems with partial translation, lack of electronic equipment or lack of e-education, citizens often applied in person at Centers for Social Work (CSW)<sup>231</sup> thus creating unnecessary crowds and queues that also constituted a potential environment for virus infection.

Ministry of Finance and Transfers, in its response to the Ombudsperson clarified the 15 general measures of the EFP: Measure 1 - which aims to double the income for social assistance beneficiaries up to 80 EUR for two (2) months;<sup>232</sup> Measure 2 - which aims to provide an additional contribution of 30 EUR for social assistance beneficiaries up to 100 EUR for three (3) months; and Measure 15 - which aims to help the categories of citizens / families without financial income, who are also not beneficiaries of the social scheme and live in a difficult social situation.<sup>233</sup> For concerns raised that poor dissemination of information to non-majority communities and inadequate translation of information may have affected the desired impact of the EFP, the MFT explained that minority communities were beneficiaries of the EFP and financial assistance achieved its effects. They further explained that *"... of a total amount of measure 15 the Municipality of Leposavic benefited 2.5% although it accommodates 0.9% of families in the regular social assistance scheme"* and *"The Municipality of Kllokot benefited 0.5% of the total amount of measure 15, while for families in the social assistance scheme is exactly the same, 0.5% of the total social scheme."*<sup>234</sup>

The Ombudsperson positively assesses the approach of the Government, which through Measure 9 of the EFP allocated EUR 2,000,000 for special funds for initiatives and projects aimed at improving the lives of non-majority communities affected by the public health emergency situation. The measure was implemented through the Office for Communities,

<sup>229</sup> Public Communication Division, Ministry of Health of the Republic of Kosovo, Ref. Nr. 280/2020, dated 17.04.2020, and the response to Complaint No. 250/2021, Kosovo Institute of Public Health, dated 15.4.2021.

<sup>230</sup> Decision 31/2020 of the Ministry of Finance and Transfers, dated 3.4.2020, which approved the Operational Plan of the Emergency Fiscal Package.

<sup>231</sup> On the application procedure, the role and tasks of the CSW in the execution of Measure 15 of the Emergency Fiscal Package, see Decision No. 35/2020 of the Ministry of Finance and Transfers, dated 16.4.2020.

<sup>232</sup> Referring to the beneficiaries of the social scheme, as regulated by Law No. 2003/15 on the Social Assistance Scheme and by Law No.04 / L-096 on Amending and Supplementing Law No. 2003/15 on the Social Assistance Scheme. See point 11 of the MFT submission to the OIK, as mentioned in the footnote above.

<sup>233</sup> Ministry of Finance and Transfers: *"Explanatory Memorandum regarding the complaints received from the OIK regarding the Emergency Fiscal Package"*, No. 373/20120, dated 26.6.2020. In particular see points 10 to 16.

<sup>234</sup> Items 17 to 18 of the Explanatory Memorandum, above.

within the Office of the Prime Minister.<sup>235</sup> This assistance was distributed in three arrangements: EUR 900,000 was allocated to civil society sector (NGO) organizations through food and hygiene package distribution projects for vulnerable social families throughout Kosovo; EUR 800,000 was allocated as assistance to small businesses; and EUR 300,000 were allocated as assistance to persons with special needs. According to information of the OIK, received directly from the Office for Communities within the OPM, this assistance has been fully implemented.<sup>236</sup>

Difficulties in following the application procedures for the EFP package assistance mainly affect members of the Roma, Ashkali and Egyptian communities, due to low levels of e-education, lack of electronic equipment (smart phones, computers, etc.), lack of identification documentation, as well as poor access to information and services for disadvantaged persons and families in society.

The Ombudsperson praises the actions of the Ministry of Communities and Returns regarding the distribution of aid packages to the most vulnerable returnees and members of the non-majority community.<sup>237</sup> Thus, from March 31 to April 10, 2020, in 22 municipalities throughout Kosovo, the MCR distributed over 606 packages containing food and hygiene items for returnees and vulnerable families, from all communities. Furthermore, the MCR, in cooperation with the EU Office in Kosovo, as part of the “Return and Reintegration” program, co-financed the distribution of 253 additional food and hygiene packages, mainly for returnees from Roma, Ashkali and Egyptian communities.<sup>238</sup>

### **Access to education and community health services**

The right to education, protected by the Constitution of the Republic of Kosovo, laws and relevant human rights instruments, is in principle guaranteed, even during periods of public health emergencies. Since mid-March 2020, the education system in Kosovo has been continuously developing to adapt to the needs imposed for the protection of public health. An important feature of such an adaptation is to provide special attention to ensure that all, including members of vulnerable groups, continue to benefit from the right to education and have equal access to educational tools and materials during a health emergency.

From mid-March to September 2020, the education system of the 2019/2020 school year functioned through online learning (distance learning). In addition to the general problems encountered especially at the beginning of organizing the distance learning process, students coming from the most sensitive part of the non-majority communities: Roma, Ashkali and Egyptian were mostly exposed to difficulties in pursuing education due to many interrelated factors.

The Ombudsman notes that children from the Serb community and part of the Roma community still do not attend classes according to the curriculum of the Republic of Kosovo, while children from non-majority communities, who are integrated in the curricula of the Republic of Kosovo, have attended classes remotely broadcasted by Kosovo Public

<sup>235</sup> Measure 9, Operational Plan of the Fiscal Emergency Package. This measure focuses specifically on the aggravated socio-economic situation of Roma, Ashkali and Egyptians without excluding other non-majority communities (paragraph 2).

<sup>236</sup> The OI received this information by e-mail from an employee of the Office of Communities in the Office of the Prime Minister on June 29, 2021; it should be noted that it was not specified what kind of assistance was provided to persons with special needs.

<sup>237</sup> See: Report on the distribution of food and winter packages in 16 vulnerable municipalities (Report of the Ministry of Communities and Returns (MCR); Phase II (MCR Report).

<sup>238</sup> Report of the Ministry of Communities and Returns on aid packages delivered to victims of the COVID-19 virus pandemic in Kosovo, first and second phase, April 2020. “Report submitted to the OIK on June 16, 2021 via e-mail.

Broadcaster - RTK, but encountered delays and difficulties in attending classes. Like everyone else, Bosnian and Turkish students, as well as teachers, had encountered difficulty in accessing the lesson through the internet; lack or poor internet connection in rural areas; lack of electronic equipment to attend classes; delays in starting the recording of lessons; and at first a very small number of teachers agreed to participate in the recorded teaching. The Kosovo Bosniak community received a number of laptops and tablets, but not enough for all students who needed these tools to attend and actively engage in distance learning. Children from the Ashkali, Egyptian and Roma communities, to a large extent, did not attend distance learning, entirely due to the lack of information technology tools.

MESTI informed the Ombudsperson about the measures taken by this ministry to create conditions for students from non-majority communities during the pandemic as follows:

- Due to the situation with the pandemic, MESTI has organized and conducted the recording of lessons for distance learning in both Turkish and Bosnian since the beginning of the pandemic in March, when the online learning process took place, but the recording then continued to be realized from September 2020 until the end of February 2021 when they have been completed, also the recording for distance learning of the Roma language which is taught as a supplementary lesson (in January 2021). All were broadcast on the RTK television channel. Now students can follow them on YouTube..
- The OSCE and MESTI have distributed donations to compulsory education students, 215 tablets have been distributed and 60% of the tablets have been distributed to community students.
- Due to the situation with the pandemic in early education MESTI in cooperation with Save the Children and UNICEF have launched the online platform: "Distance Education - Care Development and Early Childhood Education for ages 0-6 years." This platform is also available in Turkish, Serbian and Roma.

Regarding the provision of health services to members of non-majority communities, data from the Ministry of Health show that measures have been taken to enable them to take appropriate measures according to the circumstances and needs that have arisen as a result of the pandemic:

- Non-majority communities have been part of the activities, starting with information through information materials since the onset of the pandemic in several languages: Albanian, Serbian, English, Turkish and Romani (materials prepared in cooperation with the WHO Office and UNKT), up to their inclusion in vaccination, where each municipality in Kosovo has been offered the same opportunities for vaccination against COVID 19.
- In order to include the Roma, Ashkali, and Egyptian communities in a higher rate of vaccination, they were also offered vaccination through the mobile teams of the MoH and MFMCs (municipalities), with the support of UNICEF, a door-to-door campaign has been and is being conducted these days through volunteers and members of civil society organizations, to persuade vulnerable groups of the population to get vaccinated..
- The MoH has not received any complaints from non-majority communities for not providing any services related to COVID 19, except for the requests of the Language Commissioner to comply with the implementation of the Law on Official Languages in the Republic of Kosovo.

The Ombudsperson considers that it is important for the Ministry to continue with the application of comprehensive measures for the provision of health services to all members of non-majority communities in all municipalities of the Republic of Kosovo.

**Ex-officio report No. 621/2018 regarding the preventive operative measures for the protection of victims of domestic violence, according to Law No. 05 / L-003 on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision**

European Court of Human Rights assessed that the state has an obligation to take preventive operative measures to protect one or more individuals previously identified as a possible target of violent acts even in the context of domestic violence. This includes the obligation of the state to ensure that the legal framework should protect people who are potentially victims of domestic violence. In summary of these cases, it is concluded that states are obliged, in addition to the adoption of relevant legislation, to take preventive operational measures to protect one or more individuals, previously identified as potential targets of violent acts within the family.

The report aims to draw the attention of institutions responsible on the positive obligations of the state arising from Article 25, paragraph 1, of the Constitution of the Republic of Kosovo, by not implementing the Law on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision in the context of protecting victims of domestic violence. So far, victims of violence have generally been protected through the provisions of the Criminal Code of Kosovo, while victims of domestic violence through the provisions of the Law on Protection of Victims of Domestic Violence, but the provisions of Law No. 05 / L-003 on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision have not been applied so far.

The Ombudsperson assesses that the implementation of this law that is in force would be a guarantee that the state would provide effective protection to victims of domestic violence. Concrete actions that would be taken by the institutions responsible for the protection of victims of domestic violence, in accordance with this law, would directly affect the observance of the protection order issued by the court against perpetrators of domestic violence, in preventing the actions of further violence, as well as in preventing the fatal outcome of domestic violence cases.

Based on the findings of the report, the Ombudsperson has recommended that the prosecution and the courts implement the provisions of the Law on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision. Whereas Ministry of Internal Affairs and Kosovo Police to implement the provisions of the Law on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision; in accordance with Article 10 of the Law on Electronic Surveillance of Persons whose Movement is Restricted by Court Decision, to carry out electronic surveillance, to collect, process and report the data coming from the device; to apply the provisions of the Administrative Instruction for the implementation of electronic surveillance and reporting by the Kosovo Police, for persons whose movement is restricted.

**Ex-officio report No. 434/2020 regarding restrictions on the provision of health services during the COVID-19 pandemic in Kosovo**

The report aims to assess the effective realization of health rights during the COVID-19 pandemic period in Kosovo, in relation to access to health care and treatment, mainly in secondary and tertiary level institutions, focusing in particular on restrictions on providing health services (specialist visits and elective surgeries) to persons who were not infected with COVID-19.

The protection of fundamental human rights and freedoms is essential and very important for an effective response in the prevention and treatment of cases of COVID-19, but without neglecting any citizen who seeks services in health institutions with a special focus on sensitive groups<sup>239</sup> and other persons who need continuous health care. Moreover, this is in order to meet the Agenda of Sustainable Development Goals (Agenda 2030)<sup>240</sup>, with a focus on meeting Goal 3 - to ensure healthy lives and promote well-being for all at all ages.

The report, however, takes into account the stratified and inherited problems over the years in the health system in Kosovo and aims to focus on the difficulties highlighted by the COVID-19 pandemic, to recommend to the authorities responsible the steps to be taken, aiming gradual elimination of problems in the health sector and progress in the provision of health services. In this regard, National Institutions for Human Rights, such as the Ombudsperson in Kosovo, play an important role in monitoring the actions of the state, in achieving the application of universal health coverage.

The Ombudsperson with this report finds that the relevant state institutions have not fulfilled their constitutional and legal obligations towards citizens and this had direct negative implications for the health and lives of persons who potentially needed health services. The action of the health authorities regarding the cessation of elective surgeries and specialist ambulances, apart from having no legal basis, had left no alternative as to where they could be treated.

Based on the findings of the report, the Ombudsperson recommended the Government of the Republic of Kosovo to increase the budget for the needs of the HUCSK and the MoH, so that financial shortages do not reflect on the provision of services, at all levels of the health system; until the implementation of Health Insurance begins, in situations when health services cannot be provided by the public sector, to enable citizens to receive these services from the private sector and the government should bear the costs.

It recommended to the Ministry of Health to functionalize the Unique and Integrated Health Information System, in accordance with paragraph 1 of Article 49 of the Law on Health; to take all legal measures to compel private health institutions to collect, store and report health data to the Health Information System, in accordance with Administrative Instruction (MoH) No. 11/2013, Health Information System and Reporting of Health Statistical Data.

While to the Hospital and University Clinical Service of Kosovo it recommended to take all necessary actions and create all the prerequisites for specialist visits in the specialist ambulances and electrical surgeries in operating rooms to be performed without obstacles in the relevant units of HUCSK- so that situations of deviation from these rights without a legal basis do not recur in the future; to proceed with the placement of oxygen tanks in general hospitals where necessary, to avoid recurrence of situations of lack of oxygen for patients.

239 Law No. 02 / L-78 on Public Health defines sensitive groups: *“Single-parent families, orphans, the extremely poor, victims of trafficking, the chronically ill persons, the elderly, prisoners, the homeless, injecting drug users, the mentally ill, especially PTSD (persons with post-traumatic stress disorders).”*

240 Agenda 2030 includes 17 Sustainable Development Goals (SDG). They are urgent calls for action for all developed and developing countries for a global partnership in their implementation. The objectives are primarily aimed at ending poverty and other deprivations, through developments and taking strategic actions that improve health, education, reduce inequality and promote economic growth. The Assembly of the Republic of Kosovo, on January 25, 2018, unanimously adopted the resolution on SDG.

**Report A.No.645 / 2020 and A.No.650 / 2020, regarding the discrimination in the admission of candidates in doctoral studies for the academic year 2020/2021 at the University of Prishtina “Hasan Prishtina”**

The report draws the attention of the University of Prishtina “Hasan Prishtina” (hereinafter: UP) regarding the criteria provided by the UP in the Competition for admission of candidates in doctoral studies for the academic year 2020/2021, dated 9 September 2020, with Prot. No.2 / 262, specifically in point 13, which stipulates: *“Candidates are subject to the principle of prohibition of conflict of interest according to legislation in force, the Code of Ethics and the Guide for the Prevention of Conflict of Interest of the Ethics Council at UP. In particular, it will be established that there is a conflict of interest if the candidate has a blood relationship with one or more members of the academic staff of the respective academic unit.”* The complainants claim to have been discriminated in the public competition, announced on October 23, 2020, with Prot. No. 2 / 262.

The report states that the competition for doctoral studies, dated 23 October 2020, with Prot. No.2 / 262, constitutes discrimination. The report further states that the complainants in this case are candidates for doctoral studies, who are children and relatives of professors at the Faculty of Economics and the Faculty of Medicine at UP, however they should be treated equally in relation to other candidates. Unequal treatment is a practice contrary to the concept of equality before the law, defined by Article 24 of the Constitution.

Based on the findings of the report, the Ombudsperson has recommended the University of Prishtina “Hasan Prishtina” to create appropriate policies to urgently prevent any practice that presents unequal treatment in the case of publications of such public competitions, as well as to cancel the discriminatory criteria set out in point 13 of the Competition for the doctorate studies of UP, dated 23 October 2020, with Prot. No.2 / 262, that: *“Candidates are subject to the principle of prohibition of conflict of interest according to the legislation in force, the Code of Ethics and the Guide for the Prevention of Conflict of Interest of the Ethics Council at UP. In particular, it will be established that there is a conflict of interest if the candidate has a blood relationship with one or more members of the academic staff of the respective academic unit.”* The report also recommends that UP in the future to address such dilemmas for the assessment of conflict of interest without delay to the institution responsible for the assessment of conflict of interest - the Anti-Corruption Agency, as the responsible body.

**Ex officio report No. 150/2021 regarding the positive obligations of the state for the right to life and protection from domestic violence**

The investigation of this case was initiated ex officio based on the print and electronic media reporting, which reported that on March 14, 2021, in the Emshir neighborhood in Prishtina, a woman was found killed with a firearm (with the initials: SS ) and a man (with initials: LS). In this regard, the media reported that it was suspected of murder and suicide, specifying that the murdered woman and the man that committed suicide were married for many years and from this marital union had four children, but as a result of domestic violence, the spouses lived separately and had begun the divorce proceedings. It was further reported that the SS had twice reported the case of domestic violence, but it was assessed that the relevant authorities had not taken appropriate measures and as a result the case had ended tragically.<sup>241</sup> There were also various reactions from civil society organizations, such as the Kosovo Women’s Network, which stressed that violence against the SS was neglected by justice institutions in the country.<sup>242</sup>

241 See the link:<http://www.ekonomia-ks.com/sq/siguri/shteti-po-deshton-ne-mbrojtjen-e-gruas>

242 See the link:[https://twitter.com/KWN\\_Rrggk/status/1372478958126653447](https://twitter.com/KWN_Rrggk/status/1372478958126653447)

The report aims to assess the application of the main principles of positive obligations of the state regarding the right to life, related to the murder and suicide which occurred on March 14, 2021, in the neighborhood Emshir in Prishtina, in which case the media reported that a man killed his wife with a firearm and then committed suicide. The report also assessed the application of constitutional provisions, international human rights instruments, laws, policies and strategies against domestic violence.

The Ombudsperson through this report ascertains that the relevant institutions also despite the fact that the Standard Operating Procedure for Protection from Domestic Violence in Kosovo has been drafted since 2013, which also defines checklists for actions that the responsible authorities are obliged to take, in case it is subject to treatment of this report, these procedures have not been followed. The responsible authorities had not sufficiently assessed the potential risk of the case, although the victim had stated about the continuity of actions of LS and had given indications of mental health problems.

Based on the findings of the report, the Ombudsperson recommended the Kosovo Police to establish a professional commission (ad-hoc) to evaluate the actions of responsible police officers regarding the case of domestic violence, reported on March 3, 2021 at the Gračanica Police Station, if they had acted in accordance with Standard Operating Procedures for Protection from Domestic Violence, as well as with the Law on Protection from Domestic Violence; to require all police stations to act in accordance with Standard Operating Procedures when dealing with reports of domestic violence; to require all police stations to act in accordance with Article 24, paragraph 4, of the Law on Protection from Domestic Violence, in cases where they are faced with reporting domestic violence.

Judicial Council and Prosecutorial Council recommended that, through the Academy of Justice, special training modules to be organized for judges and prosecutors to assess the riskiness of such cases and the measures to be taken to prevent domestic violence; The Judicial Council requires all judges to act in accordance with Article 17, paragraph 2, of the Law on Protection from Domestic Violence in all cases when deciding on a protection order.

While the Office for Protection and Assistance to Victims recommended that through adequate training, to build professional capacity of victim advocates, to be able to understand the needs of victims of domestic violence and the treatment of responsible parties in the exercise of their duties, so that situations of domestic violence do not recur.

### **Ex-officio report No. 698/2020 regarding access to health care services for persons affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB), during the period of the COVID-19 pandemic in Kosovo**

Measures taken to control COVID-19 and redirect health resources to combat this pandemic have made it difficult to work on preventing, treating and caring for vulnerable groups, such as: people affected by Human Immunodeficiency Virus (HIV) and with Tuberculosis (TB). This has threatened progress towards global goals for the eradication of these diseases and has had a negative impact on their rights. Poor investment in the health system has reduced the ability to respond to this pandemic and at the same time has affected the non-availability of other health services. COVID-19 is showing that the application of universal health

coverage(UHC)<sup>243</sup> should be imperative of the future.<sup>244</sup> This will only be achieved when states have established sustainable health systems that are able to respond to the basic needs of their citizens, equally, fairly and without discrimination, without leaving anyone behind. In this regard, national human rights institutions, such as the Ombudsperson, play an important role in monitoring the actions of the state, in achieving universal access for these groups.

The report has two main purposes: To assess the provision of health care services, with a human rights-based approach and without discrimination, to persons with HIV / AIDS and TB in Kosovo during the COVID-19 pandemic period, in relation to universal health coverage, as an objective of the 2030 Agenda for Sustainable Development.<sup>245</sup> And, draw attention to the importance of treating people with HIV / AIDS and TB, given the harmful consequences that their continued sampling may have, and provide recommendations on actions to be taken by the authorities responsible for improvement of the current situation with a focus on full observance of human rights.

The report finds violation of fundamental human rights and freedoms, as the relevant authorities have failed to meet their constitutional and legal obligations towards persons affected by HIV / AIDS and TB, as a result of the situation created by the COVID-19 pandemic.

Through this report, the Ombudsperson has addressed recommendations to the Ministry of Health that through the Office of the Coordinator for the HIV and AIDS Program, to supervise the treatment of persons with HIV and AIDS, so that they do not feel discriminated, trampled and neglected during treatment in the Infectious Diseases Clinic and other health institutions; to operate the Center for Voluntary Counseling and Testing at the Infectious Diseases Clinic, ensuring that patients receive all necessary services according to the best international standards; through the Office of the TB Program Coordinator, to request from the respective clinics / wards that during the eventual hospital treatment for TB patients, to create the necessary conditions / infrastructure so that they are not a source of infection for other patients and vice versa; to take all necessary measures to increase the number of pulmonologists in the Pulmonology Clinic and other general hospitals, as needed; to function the digital system of monitoring the treatment and receiving therapy of patients with TB (digital monitors and video therapy, according to the instructions of the WHO); to request from the responsible departments to make patronage teams functional for tracking new cases in the field with a focus on preventing the spread of TB.

While the Hospital and University Clinical Service of Kosovo was recommended to take all actions to build the professional capacity of Infectious Diseases Clinic officials, who work with patients with HIV and AIDS, in terms of practical implementation of the law and respect of fundamental human rights and freedoms. To issue *written* circulars and to inform all subordinate units, which work with patients with HIV and AIDS, regarding the obligation

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243 According to the World Health Organization, Universal Health Coverage (UHC) means that all people and communities can access the health, promotional, preventive, curative, rehabilitative and palliative care services they need, of sufficient quality to be effective, ensuring also that the use of these services does not expose the user to financial difficulties.

244 United Nations Secretary-General, Summary of Human Rights Policy and COVID-19, available at: [https://www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_human\\_rights\\_and\\_covid\\_23\\_april\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf), page 4

245 Agenda 2030 includes 17 Sustainable Development Goals (SDG). They are urgent calls for action for all developed and developing countries for a global partnership in their implementation. The objectives are primarily aimed at ending poverty and other deprivations, through developments and taking strategic actions that improve health, education, reduce inequality and promote economic growth. The Assembly of the Republic of Kosovo, on January 25, 2018, unanimously adopted the resolution on SDG.



and responsibility, to communicate to patients the results of written tests, in accordance with the law; in cooperation with subordinate units, to take the necessary measures that Room No. 2 of Ward A (dedicated to the treatment needs of people with HIV and AIDS) at the Infectious Diseases Clinic in Prishtina to be used only for their treatment needs, so that they feel unhindered by third parties.

**Case report A. No. 822/2017, A. No. 864/2018, A. No. 571/2019 and A. No. 518/2020 regarding discrimination in the implementation of the right to be exempted from import duties for passenger vehicles for persons with paraplegia and tetraplegia as well as for blind persons**

Kosovo Customs grants the privilege of exemption from customs clearance of vehicles to only one category of persons with disabilities from the age of 18 and who hold a driver's license, thus treating the different categories of persons with disabilities equally and without take into account and distinguish on the basis of the degree and nature of their physical incapacity.

By imposing a general condition (possession of a driver's license) for all categories of persons with disabilities, Kosovo Customs excludes persons with paraplegia, tetraplegia, blind persons, as well as other persons with disabilities to enjoy the right legally granted for the customs privileges in question. The condition set for the beneficiaries of the right in question, due to the nature of their disability, is an objectively impossible condition, which they cannot fulfill in any way and puts them in an unequal position in relation to the other category of persons with disabilities, for whom, by nature and degree of disability limited this condition is achievable.

The Ombudsperson considers that the purpose of the right to certain benefits granted to persons with disabilities should be reflected in the principle of equal access to the rights granted to all, together with the conditions and the proper manner of their use, starting from the point of view of their type and degree of disability.

Based on the findings of the report, the Ombudsperson recommends the Kosovo Customs, that without further delays, to create conditions for the full implementation of the right provided by law for customs relief, in relation to the import of passenger vehicles, adapted to the needs of persons with paraplegia and tetraplegia, as well as for blind persons, with the possibility of indirect exercise of rights of the beneficiary through the legal guardian or authorized persons, provided with a driver's license (Article 10 of the Law on the Status and Rights of Persons with Paraplegia and Tetraplegia, and Article 6 of the Law on the Blind). He also recommended the Kosovo Customs that in the future, to harmonize its practice with the anti-discrimination legislation, to be careful to refrain from making unjustified distinctions or unequal treatments (such as: exclusion, restriction or giving priority) in relation to persons or groups of *persons based on a personal characteristic with their practices and decisions*.

**Legal Opinion of the Ombudsperson in the capacity of Friend of the Court (Amicus Curiae) addressed to the Basic Court in Prishtina, regarding the positive obligations of the state for protection from domestic violence as well as against gender based discrimination**

On March 12, 2021, the Ombudsperson sent the Legal Opinion to the BCP regarding Claim A-1483/2019 of the complainant L.A.K against the Kosovo Police.

This Legal Opinion, (*Amicus Curiae*) focuses on clarifying the basis and legal analysis regarding the complaint of Mrs. L.A.K. regarding the inaction of the state regarding positive

obligations regarding protection from domestic violence and regarding gender based discrimination.

The Ombudsperson, based on the findings and facts collected, as well as the analysis of relevant laws, which define the right to life and the positive obligations of the state for the right to life, has found violations of fundamental human rights and freedoms. It was concluded that the Kosovo Police has not fulfilled its constitutional and legal obligations, nor the international standards applicable in the Republic of Kosovo, to take concrete actions for the protection of victims of domestic violence.

The Ombudsperson assessed that the Kosovo Police, when refusing to register the complainant's case, did not take preventive and effective measures to prevent domestic violence, to avoid the risk to the victim that could have brought serious consequences.

**Legal opinion of the Ombudsperson in the capacity of a friend of the court (*amicus curiae*) addressed to the Basic Court in Prishtina, regarding allegations of discrimination on the basis of disability, respectively non-compliance with legal provisions regarding the creation of appropriate physical conditions for persons with disabilities in public and private spaces in the Municipality of Prishtina**

The Ombudsperson, on December 2, 2021 has sent to the BCP the legal opinion regarding the Claim C.No.3663 / 18 of the complainant F.K against the Municipality of Prishtina, regarding the allegations of discrimination on the basis of disability, respectively non-compliance with legal provisions regarding the creation of appropriate physical conditions for persons with disabilities in public and private spaces in the Municipality of Prishtina.

This legal opinion in the capacity of friend of the court (*amicus curiae*) focuses on clarifying the basis and legal analysis regarding the complaint of FK, director of the organization Handikos in Prishtina and user of the electric wheelchair as a means of movement, who has filed a complaint in the Institution of the Ombudsperson (OI) against the Municipality of Prishtina, regarding the claim filed in the Basic Court in Prishtina (BCP), dated 12 December 2018, with case number C.No.3663 / 18, with allegations of discrimination on the basis of disability, namely, non-compliance with legal provisions regarding the creation of appropriate physical conditions in public spaces in the Municipality of Prishtina for persons with disabilities.

The Ombudsperson draws attention to the fact that people with disabilities, regardless of their abilities, have rights and needs that society, the state and especially local government, must fulfill in accordance with conventions, international standards, as well as the legislation in force in the Republic of Kosovo.

The Ombudsperson has assessed that the failure to provide a reasonable accommodation for persons with disabilities, in accordance with their specific needs, constitutes discrimination on the basis of disability, defined under Article 1 of Law No. 05 / L -021 on Protection from Discrimination, and is contrary to international practice.

The Ombudsperson points out that the Municipality of Prishtina, with a commitment and an affordable budget, can fix the ramps and create suitable conditions in Prishtina for physical access for people with disabilities, which obligations arise from the Law for Protection from Discrimination, from the Law on Local Self-Government as well as from the Administrative Instruction No. 33/2017 on the Technical Conditions of Construction Facilities for the Access of Persons with Disabilities.

The Ombudsperson recalls that according to the Law on Protection from Discrimination, the burden of proof falls on the respondent, therefore the Municipality of Prishtina must prove that there has been no violation of the principle of equal treatment. Determining the locations in Prishtina by the claimant in court, who encounters physical obstacles and which it considers to be in contradiction with the existing construction standards and with the Administrative Instruction No. 33/2007 on the Technical Conditions of Construction Facilities for Access to Persons with Disability, constitutes a restriction on the physical access of the complainant and other persons with disabilities, but in this case, the Municipality of Prishtina must provide information to the BCP in a way that would assess the existing situation physical conditions for access by persons with disabilities.

## **PROHIBITION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT**

### **Reports of the Ombudsperson in the capacity of the National Mechanism for the Prevention of Torture**

#### **The rights of persons deprived of their freedom and the impact of the COVID-19 pandemic from the perspective of the National Mechanism for the Prevention of Torture**

The National Mechanism for the Prevention of Torture of the Ombudsperson (NPM), due to the emergence of COVID-19 cases and based on the principle of non-infliction of a greater damage, decided to suspend visits to places of deprivation of freedom, until the situation changes. At the same time, the Kosovo Correctional Service (KCS) decided to temporarily ban all family visits to all correctional and detention centers.

On March 12, 2020, the Prisons Health Department (PHD), based on the decision of the Government of the Republic of Kosovo, took additional measures to prevent COVID-19 in prisons. Notice of these additional measures was sent to the relevant ministries and other competent institutions. One of these measures was to restrict the movement of prisoners inside and outside the correctional facility or detention facility, as long as it did not harm anyone's health. These measures were taken through operational orders. While in September 2020, the NPM resumed visits to places of deprivation of freedom. From March 2020 to August 2021, 53 visits were conducted to all places of deprivation of freedom, including the Detention Center for Foreigners and the centers for asylum seekers.

NPM through the visits so far has noticed that the health services were generally adequate, the supply of medicines was at a satisfactory level, and the available health staff was at a satisfactory level. Health authorities took health measures to combat and prevent the COVID-19 pandemic, prisoners were provided with instructions on how to comply with these measures, and information on COVID 19 was provided.

From the information gathered through visits and meetings with the competent KCS officials, the Ombudsperson was informed that so far one KCS official has lost his life as a result of COVID-19 and 237 others have been infected. As a result of the infections, prison authorities were forced to use officers from other units to meet their staffing needs. There were 44 infected and 5 dead in the ranks of the prisoners.

Regarding the challenges for performing the work and other challenges, the NPM on June 18, 2021, held a meeting with the competent officials of the Kosovo Police, where it was announced that as a result of the COVID-19 pandemic, so far 4109 police officers were in confinement, 1942 infected and 22 police officers failed to survive the infection.

The Ombudsperson finds that the restriction of certain rights and freedoms of persons deprived of their freedom was in principle necessary, proportionate, based on local laws, on the recommendations of the competent health institutions of the country and the recommendations of the WHO as well as other organizations, which monitor the observance of the rights of persons deprived of their freedom.

Decisions on restrictions on the rights of prisoners, which restrict fundamental rights, did not refer to the provisions of the LECS nor to the Administrative Instruction on House Order in Correctional Institutions. Restrictions were subject to occasional review, and depending on the situation in the country with the COVID-19 pandemic, these measures were tightened or eased. While the restriction of the right to contacts with the outside world was compensated through the provision of other types of communication (SKYPE, increase of telephone calls). Also in certain periods there were restrictions on the right to meet and communicate with defense counsel.

### **Report on the visit to the Center for Asylum Seekers in Magura, Mitrovica and Vranidoll**

On January 14, 2021, the National Mechanism for the Prevention of Torture, as part of the Institution of the Ombudsperson, visited the Center for Asylum Seekers in Magura, on January 19, 2021, visited the Center for Asylum Seekers in Mitrovica, and on January 25, 2021 visit to the Center for Asylum Seekers in Vranidoll.

The findings of the visits were sent to the competent authorities with a report with recommendations on February 23, 2021. The purpose of the visits to the above-mentioned accommodation centers for asylum seekers was to assess the respect of fundamental rights of asylum seekers by the authorities of the Republic of Kosovo in accordance with applicable legislation of the Republic of Kosovo and with the international standards for human rights embodied in the Constitution of the Republic of Kosovo. The Center for Asylum Seekers in Mitrovica, after a fire broke out in a part of it, was closed, while the asylum seekers were transferred to the Center for Asylum Seekers in Vranidoll.

During the conducted visits, NPM has identified that in the Center for Asylum Seekers in Magura there were 57 asylum seekers, in the Center for Asylum Seekers in Mitrovica there were 55 asylum seekers, while in the Center for Asylum Seekers in Vranidoll there were 61 such.

All asylum seekers have expressed in favor of a very good and humane treatment by officials of the Ministry of Internal Affairs and the Kosovo Police. In addition, the NPM noted very friendly and interactive communication between asylum seekers and police officers and those of the Ministry of Internal Affairs.

During this period, the centers for asylum seekers, based on the decisions taken by the Government of the Republic of Kosovo and the Ministry of Health, from time to time took decisions in order to prevent and combat the pandemic, which limited the rights of asylum seekers. Decisions on these measures have been clarified in other languages (Arabic, English, Serbian, etc.).

Through the report with recommendations, the NPM recommended to the Ministry of Internal Affairs to avoid technical shortcomings in the functioning of the sewerage system so that asylum seekers have decent and humane treatment and to engage the necessary staff in all asylum centers.

### **Report on the visit to the Foreigners Detention Center in Vranidoll**

NPM on January 20, 2021 conducted a general visit to the Detention Center for Foreigners in Vranidoll. In terms of international human rights standards, detention (sending a foreigner

into custody) should be the last measure implemented by the authorities of a state to remove a foreigner from the territory which is subject to forcible return. NPM notes that Law 04 / L-219 on Foreigners of the Republic of Kosovo provides that other alternative measures have priority over sending a foreigner into custody.

NPM, during the visit, noticed that foreigners in DCF are informed about their rights, through brochures written in the most common languages and in Arabic. In addition, they are notified of their rights by an Arabic translator, who has been hired by the International Organization for Migration (IOM).

The NPM did not receive any complaints from interviewees about physical ill-treatment, excessive use of physical force or conduct by security officials and / or DCF officials, which would be inconsistent with respect of their dignity.

The recommendation given in 2019 for DCF to issue protocols for desolation, self-harm, attempted suicide, sexual abuse and death cases, was fulfilled. The leader had established the registers as recommended by the NPM.

Based on the health files, 8 foreigners were under psychiatric therapy and difficult to manage, therefore the NPM encourages the competent institutions that in addition to increasing the number of staff in DCF, to engage at least one nurse, as recommended by the NPM in the report with recommendations during 2018, 2019. Recommendation that he also repeated this year is that, DCF should have at least one nurse available, who would distribute the therapy and take care of the medical records of the foreigners in the center. Also, the Ministry of Internal Affairs has recommended to increase the number of staff and to provide adequate training for security staff to work with this category.

### **Report on the visit to the Correctional Center in Dubrava**

Even during the period being reported, due to the COVID-19 pandemic, some rights of prisoners, which are guaranteed by the Constitution of the Republic of Kosovo, by Law No. -04 / L-149 on the Execution of Criminal Sanctions (LECS), with other relevant laws and international standards for the rights of prisoners, depending on the situation with COVID-19, were restricted and re-enacted after the improvement of the situation with COVID-19. These rights are generally the right to contact with the outside world, conducting family visits and free visits, the development of various activities within prisons, such as: the rights to sports activities, work, training and education, and the right to religious freedom in certain aspects.

During visits to correctional facilities and detention facilities in 2021, the NPM did not receive credible complaints of physical ill-treatment or excessive use of physical force by correctional officers. Overall, the NPM noted good communication and relations between prisoners and correctional officers.

During a visit to the Dubrava Correctional Center (*DCC*), the NPM received allegations from prisoners of corruption and favoritism, involving not only correctional staff but also healthcare staff. Regarding these allegations, the NPM has noticed the effort of the Ministry of Justice and the Correctional Service to combat these phenomena. There were also cases of arrests and convictions of correctional officers who were found to have committed disciplinary offenses or to have committed criminal offenses related to corrupt practices.

The number of prisoners was significantly reduced due to the COVID-19 pandemic. 572 prisoners were present during the visit, while the official capacity of the DCC is 1030

persons. In wards 2, 3 and 5, certain renovations are needed, while in some cells the humidity had penetrated.

The NPM has paid special attention to the conditions of accommodation of prisoners who have been disciplined for solitary confinement due to disciplinary violations. NPM has noticed that the conditions of accommodation in these cells are in accordance with the standards set by the LECS and the standards set by the CPT.

The NPM noted that prisoners at the Dubrava Correctional Center were generally supplied with new mattresses and blankets, as well as sheets, which in the past was a serious problem, as the previous mattresses were of poor quality and with moisture. However, the NPM has encountered cases where prisoners were not yet supplied with mattresses, sheets and blankets. A concern that has been conveyed to the authorities.

During the visit to the DCC, the NPM, based on the relevant documentation, noticed that there are about 262 prisoners engaged in work.

The NPM has received complaints regarding health treatment, some of these complaints were registered for further investigation. The NPM, in all cases, except for visits, requested from the PHD detailed reports on the health treatment of the complainants in question. In none of the cases did the NPM find serious violations of the right to health treatment, except in some cases when due to transportation the prisoner was not immediately sent for medical treatment as recommended by the doctor.

### **Report on the visit to the High Security Prison**

The NPM visited HSP on March 30 and April 12 and found that overall accommodation conditions are satisfactory in most wards and other spaces, in terms of space, cleanliness, and access to natural and artificial light. All cells have TVs, separate toilets and prisoners can take showers whenever they want. In addition, the cells are equipped with beds, sheets, desks, chairs and a call system.

However, the NPM has noticed that the floors in Pavillion 2 (wings D and E in the corridors and in the cells) have been severely damaged, which is why it has reiterated the recommendation to avoid damage. Regarding this recommendation, on September 1, the director of HSP informed the NPM that the floor of Pavilion 2 is being renovated and that the renovations on the second floor have been completed. Also, the director informed the NPM that they have started taking action regarding sports fields, which due to the white color constitute a problem during the summer time due to reflection.

About 70% of the prisoners are engaged in various jobs, such as maintenance, cleaning of pavilions, work in the kitchen, in the workshop for the production of toilet paper and bags, from where other KCS institutions are supplied.

Convicts may move freely inside the pavilions where they were accommodated, except in the case of detainees. Prisoners are entitled to 3 hours of walking per day during the summer season, and up to 2 hours per day during the winter. Also, 10 prisoners completed their anger management training.

During the period for which is being reported, due to the COVID pandemic, 19 the KCS from time to time was forced to suspend family visits, free visits, meetings with defense counsel and other contacts with the outside world. After the situation improved, these rights were restored and the prisoners enjoyed them in full or in part.

While the restriction of the right to contacts with the outside world was compensated through the provision of other types of communication (SKYPE, increase of telephone calls). Also in certain periods, depending on the situation with COVID-19, there were restrictions on the right to meet and communicate with defense counsel.

### **Report on the visit to the police stations in Peja, Istog, Klina and Deçan**

From 24 to 26 May 2021, the NPM visited the police stations in Peja, Istog, Klina and Deçan. During these visits, the NPM did not receive any complaints from the arrested persons or from those who were in custody at the time of the visit, for physical ill-treatment or non-compliance with fundamental rights, which are guaranteed by the Constitution of the Republic of Kosovo, with Law No. 04 / L-076 on the Police, the Code of Criminal Procedure and international standards for the protection of the fundamental rights of persons deprived of their freedom.

However, based on the claims of the citizens that the police used force against them, in 2021, the Institution of the Ombudsperson has registered 5 cases for investigation against the Kosovo Police.

Regarding rights, such as: notifying the family of the arrest, appointing a lawyer of his or her choice or ex officio, and the right to a medical examination, the NPM has not received any complaints related to these rights.

The Standard Operating Procedure, which was adopted by the Kosovo Police in October 2020, stipulates that detention centers must comply with the European Convention for the Protection of Human Rights and Freedoms (*ECHR*) and the recommendations of the CPT based on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Regarding the physical conditions in the detention centers in police stations, the NPM, during the visits conducted in 2021, has noticed that most of the police stations visited, in terms of space, natural, artificial lighting and hygiene meet the conditions necessary for the accommodation of detained persons.

However, recommendations were given for the Deçan Police Station as the NPM noted that the said station needed some renovations and inventory in order to create better working conditions for police officers, as well as cells that lack quite natural light, but there are bulbs which unfortunately can easily be caught by the persons in custody, who intend to eventually perform any other action harmful to them and others.

In terms of medical services, as a fundamental right, persons who are arrested or detained by the police, these services are provided by public institutions, such as: Family Medicine Centers and University Clinical Center, depending on the needs for treatment. NPM did not receive any complaints from interviewees for non-compliance with this right.

### **Report on the visit to the Detention Center in Peja**

In the report on the visit to the Detention Center in Peja, the NPM, regarding the conditions of accommodation in this center, has noticed that the cells, in terms of lighting and ventilation, do not comply with the LECS or with the standards determined by the CPT.

The NPM during the visit noticed that the prisoners' rooms were whitewashed, as part of the efforts to create better accommodation conditions for the prisoners. However, despite

the whitewashing, some rooms still had moisture. The NPM has been informed that this center has been supplied with new mattresses, sheets and pillows. Prisoners could take a shower twice a week, while those who were engaged in work could take a shower every day. However, the NPM has noticed that the premises where prisoners take a shower and the toilets are in very poor condition and need immediate renovation.

Even through this report, the NPM has reiterated the recommendation that the conditions of accommodation in the DCP, while this center is in use, should be in accordance with the standards set out in the LECS; with the standards of the CPT and with other international standards for the protection of the rights of prisoners.

### **Report on the visit to the Correctional Center in Smrekonica**

The purpose of the visit to the Correctional Center in Smrekonica (CCS) was the general assessment of respect for the rights of convicts, the health services provided, and accommodation conditions in accordance with local and international standards. Also, the visit aimed to follow the recommendations given for this center in the report of 2019.

The NPM noted that in general the cells where convicts were detained, in terms of size and natural and artificial lighting, in most of the cells where convicts were accommodated, complied with the standards set by the Committee for the Prevention of Torture and the LECS. In addition, the pavillion which was hitherto used as quarantine following the outbreak of the COVID-19 pandemic is now available to prisoners for housing and will provide even more living space for prisoners.

NPM noticed that on the second floor of the building it is necessary to renovate the roof, from where the atmospheric precipitation penetrates and in some cells the penetration of moisture in the ceilings was noticed. In this regard, the NPM again recommended to the Ministry of Justice to renovate the roof of the pavillion where convicts are accommodated. On November 3, 2021, the Ministry of Justice informed the NPM that it is aware of the need for urgent renovation of the roof on the second floor and that planning for renovation has been made, possibly, within 2021.

### **Report on the visit to the Detention Center in Mitrovica**

On July 29, 2021, the NPM visited the Detention Center in Mitrovica (DCM). The purpose of the visit was to review the respect for the rights of persons deprived of their freedom. Detainees and convicts up to 20 years are accommodated in this center.

NPM during the visit noted that the conditions of accommodation were generally acceptable, except in certain cases, in terms of living space for a prisoner, where the conditions of accommodation are not in accordance with the LESC, with international standards for protection of the rights of prisoners and with the standards of the CPT.

The NPM also received complaints from prisoners due to the high temperatures in their cells. NPM considers that the competent authorities should take action to avoid this shortcoming, which is more pronounced during the summer season.

Through the report with recommendations for visiting this center, the NPM recommended to the Ministry of Justice that while this center is in use, prisoners should be guaranteed accommodation conditions in accordance with the LESC, with international standards for fundamental rights of prisoners, as well as with CPT standards.



The Ministry of Justice, in the response sent regarding this recommendation, stressed that the air conditioning project is being prepared together with donors organized by NGOs, for 2022, and that it plans to carry out renovations on a large extent within the next two years to improve the situation in terms of accommodation conditions.

During the conducted visit it was noticed that about 16 convicts are engaged in work. Within this center there were five workshops, in which convicts can be engaged in work and various trainings. The NPM through the report with recommendations recommended to the Ministry of Justice that whenever such a thing is possible and the legal criteria are met, to be offered jobs and other genuine activities. The Ministry of Justice, in the response sent, emphasized that through the law on the KCS it has foreseen the activation of economic units in correctional centers and this will enable the engagement of detainees in some work activities, but due to their status as detainees, currently opportunities for their engagement in work and genuine activities remain limited.

### **Report on the visit to the Detention Center in Prishtina**

On October 5, 2021, the NPM conducted a general visit to the Detention Center in Prishtina (DCP), in order to assess the respect for the rights of persons deprived of their freedom, which are guaranteed by the Constitution of the Republic of Kosovo, by applicable law in the Republic of Kosovo as well as international standards on the rights of prisoners.

Regarding the conditions of accommodation, the NPM has noticed that the cells where the prisoners are accommodated have sufficient natural light, living space, which goes beyond the standard set by the LESC and the standards set by the CPT. The NPM also noticed that there were adequate cells available to prisoners with disabilities. However, some cells lack adequate furniture to store things. Through the aforementioned report, the NPM recommended to the Ministry of Justice that the prisoners' cells should be provided with the necessary furniture to store their belongings. The Ministry of Justice responded that the KCS, in December 2021, has started the procedures for the supply of the necessary orders and inventory and that such a recommendation is in the report of the CPT on the visit to the Republic of Kosovo in 2020.

Moreover, the NPM noticed that several renovations were carried out in order to avoid damage to certain parts of this center, as, although it is a new facility, it faced numerous infrastructural problems immediately after its commissioning.

During the period of which is being reported, the NPM, in all reports with recommendations after visits to detention centers, has considered that based on the legislation in force, the competent authorities should make efforts to increase out-of-cell commitments to detainees in other detention centers, as far as possible, and to the extent that criminal proceedings are not obstructed.

### **Report on the visit to the Detention Center in Prizren**

On October 19, 2021, the NPM visited the Detention Center in Prizren (DCPz), in order to assess the overall situation and treatment of detainees and convicts. DCPz has a capacity for 92 persons, while at the time of the visit 76 persons were accommodated, of which 60 detainees and 16 convicts.

The NPM noticed that the cells where the detainees were accommodated had sufficient natural and artificial lighting and had no moisture. Regarding the living space for prisoners, in some cells, it does not comply with the provisions of the LESC nor with the standards set by the CPT. The NPM noticed that not all cells were supplied with new mattresses. Thus, in some cells the mattresses are outdated and have not been replaced for a long time and as

a result, in some beds moisture has penetrated. Through the report with recommendations after the visit, the NPM recommended to the Ministry of Justice that this center should be fully supplied with new and quality mattresses. The Ministry of Justice, regarding this recommendation, through an official letter informed the NPM that at the end of November 2021, the center was supplied with 70 mattresses, 70 pillows, 140 fire blankets and that procedures have been initiated for another 20 mattresses for the needs of this center.

The NPM received complaints from some foreign nationals about a lack of clothing. Foreign nationals who practice Islam religion claim that due to the lack of adequate clothing, they are unable to perform their prayers in accordance with Islamic religious provisions. Based on the above findings, the NPM recommended to the Ministry of Justice that prisoners should be provided with clothing as needed. The Ministry of Justice in the response sent stated that it will ask the KCS, in accordance with the LESC, to provide free clothing for prisoners, suitable for the climatic conditions and the season of the year.

The number of medical staff at all levels was generally adequate in all correctional facilities and detention centers. Prisoners are also sent to other public health institutions on the recommendation of a competent doctor.

### **Report on the visit to the Detention Center in Gjilan**

On November 3, 2021, the NPM conducted a general visit to the Detention Center in Gjilan (DCGj), in order to assess the conditions of detention of persons deprived of their freedom which are guaranteed by domestic and international laws on rights of prisoners.

The NPM has noticed that the cells where the prisoners are accommodated are in accordance with the LESC and the standards of the CPT, they have sufficient lighting, they have no humidity and also they have adequate heating and cleanliness. There are one or two prisoners per cell. The NPM received complaints from prisoners about inadequate beds, as they were designed on two floors and the persons accommodated above had no side restrictions (no protection) and were high, some of them were placing the mattress on the floor.

NPM in this center has noticed that prisoners lack adequate space (cupboards) to store their belongings, as well as lack of inventory, such as: tables and chairs. From the prisoners accommodated on the upper floors, the NPM received complaints about the lack of water and hot water pressure. According to the director, the problem is intended to be fixed through the capital investment plan, by installing large boilers.

However, for the NPM, even for this reporting period, the regime offered to detainees in all detention centers remains a concern. The NPM noticed that most detainees, despite the efforts of detention center authorities, spend most of their time locked in their cells due to infrastructure.

### **Report on the visit to the police stations in Gjilan, Lipjan, Prizren, Ferizaj, Shtime, Shtërpçë, Rahovec, Kamenica, Viti, Suhareka and Malisheva**

During November 2021, the NPM conducted visits to the above-mentioned police stations, in order to assess the treatment and conditions of detention of persons arrested and detained.

The rights of persons arrested by the Kosovo Police are defined and guaranteed in the Constitution of the Republic of Kosovo, the Code of Criminal Procedure, the Law on Police and international instruments included in the Constitution of the Republic of Kosovo.

Article 13 of the Code of Criminal Procedure stipulates that every person deprived of freedom must be notified immediately, in a language he / she understands, of the right to legal aid of his or her choice, of the right to notify members of the family or any other person for the fact that he has been arrested and that these rights apply throughout the time of deprivation of freedom.

NPM during long visits to the above-mentioned police stations did not receive complaints from arrested and detained persons, who has interviewed, for non-compliance with these fundamental rights, which are guaranteed by the Constitution of the Republic of Kosovo, Law No. 04 / L-076 on the Police, the Code of Criminal Procedure and international standards for the protection of the fundamental rights of persons deprived of their freedom.

On October 1, 2020, the Kosovo Police approved the Standard Operating Procedures, in order to create a basic document, which defines the rules and procedures of police work, which will be in accordance with the Constitution of the Republic of Kosovo and applicable laws, aiming to respect the human rights of persons detained and held in detention centers.

In terms of the physical conditions in the detention centers in police stations, NPM, during the visits conducted in 2021, has noticed that most of the visited police stations, in terms of space, natural, artificial lighting and hygiene, meet the necessary conditions for accommodation of detained persons. However, for the centers in Malisheva, Prizren and Shërrtrpce, where renovations are needed, it has notified the competent authorities through the report with recommendations of 22 December 2021.

Also, not all detention centers provide to prisoners sheets for beds. The NPM, based on these findings, recommended to the Kosovo Police that detainees should be provided with hygiene items and sheets. On September 27, 2021, the Kosovo Police informed the NPM that in September the detainees were supplied with hygienic tools and sheets.

### **Report on the visit to the Women's Correctional Center and the Juvenile Correctional Center in Lipjan**

On October 26 and 27, 2021, the NPM visited the above-mentioned centers, in order to monitor the observance of the rights of detainees and convicts, as provided by domestic and international laws on the fundamental rights of prisoners.

The NPM, during a visit to the CC for Women, noticed that most of the convicts engage in work in the oven, kitchen, cleaning, while during the summer season they engage in gardens and the center's greenhouse. Pre-detainees are very little engaged in work and other activities as their engagement is subject to the permission of the competent court. The NPM received complaints from convicts, especially those with long-term imprisonment, who claimed that the number of other activities and engagements available was significantly lower than in the period when they were accommodated in the rest of the Correctional Center.

In this regard, the NPM notes that the CPT, in the report on the visit to the Republic of Kosovo in 2015, in paragraph 45 of the report, among other things, recommends to the competent authorities of the Republic of Kosovo to take priority actions to provide and implement a comprehensive regime of out-of-cell activities for all convicts (work, education,

sports, recreation, etc.). Further, this report emphasizes that special attention should be paid to prisoners with long sentences.

The NPM notes that these complaints were also confirmed by the convicts before the Minister of Justice during her visit to the WCC in Lipjan. The NPM considers that the competent authorities should act in accordance with the recommendation of the CPT, regarding the provision of an adequate regime for this category.

NPM during the visit to the Juvenile CC in Lipjan, noticed that in addition to daily ventilation, they are offered a comprehensive regime including education, training in various fields, work, as well as sports and recreational activities. There were four juveniles in JCC who had to attend primary school, while two of them did not even finish the first grade of primary school and could not read or write.

In terms of the regime in both of the above-mentioned centers, the NPM, through the report with recommendations, recommended to the Ministry of Justice to increase out-of-cell activities for prisoners (including pre-detainees, when possible), by paying special attention to prisoners sentenced to long-term sentences and special courses should be organized for prisoners who are illiterate.

During the period of which is being reported, due to the COVID-19 pandemic, the NPM found that the restriction of certain rights and freedoms of persons deprived of their freedom was in principle necessary, proportionate, based on local laws, in the recommendations of the competent health institutions of the country and in the recommendations of the WHO, as well as other organizations, which monitor the observance of the rights of persons deprived of their freedom.

While the restriction of the right to contact with the outside world was compensated through the provision of other types of communication (SKYPE, increase of telephone calls). Also in certain periods, depending on the situation with COVID-19, there were restrictions on the right to meet and communicate with defense counsel.

## **THE RIGHT TO A FAIR AND IMPARTIAL TRIAL AND JUDICIAL PROTECTION OF RIGHTS**

### **The right to a fair and impartial trial (functioning of the system: judicial, prosecutorial, police actions in imposing fines, misdemeanor proceedings during the COVID-19 pandemic in Kosovo)**

The Ombudsperson, within the constitutional and legal competencies, after the confirmation of the first cases with COVID-19 in Kosovo, has followed with additional care the functioning of the justice system in general, in terms of respecting the right of citizens to access to justice and the right to a fair and impartial trial. The Government issued decisions on the state of emergency in public health, which limited the work of public institutions, and in some it was completely banned. These decisions also affected the functioning of the judicial system of the country.

The Kosovo Judicial Council, on 12 March 2020, based on the Law on the Kosovo Judicial Council, issued Decision 52/2020, which temporarily limited judicial actions that involved the presence of the public and public access to all facilities of the courts of the Republic of Kosovo, while on 15 March 2020, issued Decision 53/2020 which profoundly reduced all activities within the KJC and in all courts of the Republic of Kosovo. These decisions were

changed several times, while on 27 July 2020, when the Assembly of Presidents of Courts and Supervisory Judges requested that during the COVID-19 pandemic, court hearings should be held through the online platform, where the first online hearings began in country courts.

The Kosovo Prosecutorial Council acted almost in the same way. KPC based on Law no. 06/L-056 on the Kosovo Prosecutorial Council and in implementation of the decision of the Government of the Republic of Kosovo to take measures after confirmation of positive cases with COVID-19, on 14 March 2020, approved the decision on substantial reduction of activities within the KPC and the State Prosecutor. The Chief State Prosecutor and the Chief Prosecutors of the Prosecution Offices of the Republic of Kosovo were also authorized to appoint enough prosecutors and administrative staff to maintain on duty schedule and to carry out only activities of an urgent nature and actions determined according to legal deadlines. On 6 April 2021, the Chairman of the KPC and the Chief State Prosecutor, based on constitutional and legal powers, as well as pursuant to the decision of the Government of the Republic of Kosovo to take measures to prevent the spread of the COVID-19 pandemic, have taken Decision KPK/No. 208/2021 & A. no. 105/2021 on the essential reduction of activities within the KPC and the State Prosecutor.

Kosovo Police, during the health emergency due to the COVID-19 pandemic, on 12 March 2020 issued an Operational Order for readiness and response. For the implementation of the Operational Instruction, 6500 police officers are engaged, in: a) preventive patrolling 24/7, initially with two shifts, in the 12-hour schedule; b) providing security in the Student Center, as a mandatory quarantine, and in the Infectious Diseases Clinic, with its presence 24/7; c) 166 entry-exit control points in 63 municipal areas in quarantine; d) 71,745 other control points; e) in the inspection of 12,880 citizens who are in confinement at home; f) 2,326 police escorts; g) 5,994 assistance to municipal inspectors, and h) 485 assistances to health services.

After Decision no. 01/10 of the Government, dated 5 July 2020, due to the small number of inspectors and the inability to cover each point, the Police provided support in completing the forms of minor offenses and submitting them to the sanitary inspector, who then proceeded with the imposition of punitive measures. Regarding its activities within 24 hours, the Police informed the public through press releases.

### **Report on case A. no. 482/2019 regarding the delay of the procedure in the Basic Court in Prishtina**

The purpose of this report is to draw the attention of the Basic Court in Prishtina (BCP), regarding the need to take appropriate action to review and decide the case. C. no. 66/2015, without further delay.

ECHR practice proves that the length of the proceedings is normally calculated from the time of the commencement of the proceedings (see, *inter alia*, Judgment *Moldovan and Others v. Romania*, dated 12 July 2005, and the Judgment, *Sienkiewicz v. Poland*, dated 30 September 2003) by the time the case was closed and/or the Judgment had been executed (see Judgment *Poitier v. France*, dated 8 November 2005). ECHR emphasizes that one of the factors to be considered is the conduct of the competent judicial and administrative authorities and that it is the responsibility of the court to organize its work in such a way that individuals are informed of progress and results on their cases, within a reasonable period of time (see Judgment *Zimmerman and Steiner v. Switzerland*, dated July 13, 1983). Deciding within a reasonable time is an essential element of the right to a fair and impartial trial, as guaranteed by Article 6 of the Convention on Human Rights.

Based on the findings of the report, the Ombudsperson recommends the The Basic Court in Prishtina to take all actions without further delay to decide on the case C. no. 66/2015.

### **Report on case A. no. 58/2020 regarding the delay of the procedure in the Special Chamber of the Supreme Court of Kosovo in case C-III-14-0315**

The purpose of this report is to draw the attention of the Special Chamber of the Supreme Court (SCSC) to the need to take appropriate action to review and decide the case. C. no. 66/2015, without further delay.

The report reiterates that the relevant period for reviewing the complainant's case begins on 17 November 2014, the date when the complainant filed the claim with the SCSC, and that the proceedings in the case have so far lasted over six years and seven months. The Ombudsperson therefore considers that there is a violation of Article 31 of the Constitution and Article 6 of the ECHR in terms of the right to a trial within a reasonable time.

Based on the findings of the report, the Ombudsperson has recommended the SCSC to take all necessary actions for further review and decision of the case C-III-14-0315 without further delay.

### **Report on case A. no. 543/2020 and A. no. 544/2020 relating to the decisions of the Kosovo Privatization Agency DM 220/2020 and DM 219/2020, dated 1 September 2020**

The purpose of this report is submission of findings and recommendations of the Ombudsperson to the Privatization Agency of Kosovo regarding violation of human rights caused by decisions DM 220/2020 and DM 219/2020, dated 1 September 2020.

On 19 September 2014, the KPA issued two decisions, imposing a precautionary suspension measure of 50% of salary on the complainants until a final decision was taken by the competent court, due to the initiation of criminal proceedings against them. The case further continued in the competent court. On 1 September 2020, the KPA, based on Article 58, paragraph 4, of the Law on Public Officials, issued Decisions DM 220/2020 and DM 219/2020, which prohibited the complainants from receiving 50% of the salary, but they remain employees of the institution with a salary of 0 EUR, until the final decision by the court.

The report finds that the complainants in the same case were issued two decisions, without a final judgment being issued by the court. It also finds that with the issuance of decisions DM 220/2020 and DM 219/2020, dated 1 September 2020, the rights of the complainants have been violated by the application and misinterpretation of the legal provisions in force.

Based on the findings of the report, the Ombudsperson recommends to the Privatization Agency of Kosovo to revoke the decisions DM 220/2020 and DM 219/2020, dated 1 September 2020, and to leave in force the decisions of 2014, until the final decision of the court.

### **Letter of recommendation for case A. no. 734/2020**

The Ombudsperson has handled the appeal filed against the Basic Court in Prishtina (BCP), due to the delay of the court procedure to proceed with case A. no. 1381/18, which is related to a labor dispute.

BCP - Department of Administrative Affairs, since the time when the party had filed a claim against the decision of the Independent Oversight Board for the Civil Service of Kosovo, in 2018, had not taken any action to proceed with the case.

The Ombudsperson has assessed that the further delay of the procedure in the case in question constitutes a violation of the right to a fair and impartial trial, therefore the Ombudsperson has recommended The Basic Court in Prishtina to take the necessary actions to handle the case A.nr.1381/18 without further delay.

#### **Letter of recommendation for case A. no. 404/2020**

The Ombudsperson has handled the complaint filed against the Basic Court in Prishtina (BCP), for the delay of the court procedure to proceed with the case C.nr.1210/18, which is related to a labor dispute. BCP - Department of Administrative Affairs had not taken any action to proceed with the case since the party filed a claim for annulment of the decision for dismissal from the leading position in the Police Inspectorate of Kosovo (PIK), dated 17 March 2017, as well as the abrogation of Regulation (MIA) no. 01/2017 on Internal Organization and Systematization of Jobs in PIK and Administrative Instruction (MIA) no. 01/2017 on Procedures Regarding Employment and Working Conditions for PIK Employees.

The Ombudsperson assessed that the further delay of the procedure in the case in question constitutes violation of the right to a fair and impartial trial, therefore the Ombudsperson has recommended The Basic Court in Prishtina to take the necessary actions to handle the case C.nr.1210/18 without further delay.

#### **Letter of recommendation for case A. no. 168/2018**

The Ombudsperson has handled the appeal filed against the Basic Court in Prishtina, which has to do with the delay of the court procedure regarding the case C.nr.3534/13. The complainant on 6 October 2009 filed a claim with the Basic Court in Prishtina for confirmation of the right of ownership, release of the immovable property from the persons and things and compensation of the damage. According to the complainant, three hearings were held, and the last hearing was held on 20 January 2017. After this date, the trial judge did not schedule further hearings and the complainant, until the day he addressed the OI, had received no information about the continuation of the proceedings of this case.

The Ombudsperson has concluded that this case has been waiting to be reviewed in the Basic Court in Prishtina for more than ten years and a final decision on the case has not been made yet.

Therefore, the Ombudsperson has recommended to the Basic Court in Prishtina that without further delays to take the necessary actions for the review and decision of the case C.nr.3534/13.

## **RIGHT TO LEGAL REMEDIES**

### **Report on case A. no. 512/2021 regarding the lack of reasoning and legal advice in the decision on the treatment of the complaint for non-selection for engagement as an external collaborator**

The Ombudsperson has received the complaint filed against the Faculty of Architecture of the University of Prishtina due to the lack of reasoning and legal advice in the decision rejecting his complaint, filed due to his non-election to the position of external collaborator.

In the report, the Ombudsperson finds that when taking a decision on the complainant's complaint, the standards and legal requirements for the mandatory elements of an administrative act have not been respected. Due to the lack of reasoning in the act and the lack of instructions for the use of available legal remedies, the party's right to information on the facts and circumstances on the basis of which his appeal was rejected was violated. Moreover, the Ombudsperson notes that the lack of legal advice in the decision has restricted the complainant's right to use legal remedies. Law no. 05/L-031 on General Administrative Procedure, part III in Chapter I, elaborates on the form and mandatory elements of an administrative act. Article 47, paragraph 1 of Law on General Administrative Procedure determines the structure and mandatory elements of the written administrative act, which more explicitly provides:

The report draws the attention of the Faculty of Architecture of the University of Prishtina "Hasan Prishtina" for compliance with the legal provisions of Article 47 of Law no. 05/L-031 on General Administrative Procedure, which deals with the structure and mandatory elements of an administrative act.

Based on the findings of the report, the Ombudsperson recommends to the Faculty of Architecture of the University of Prishtina "Hasan Prishtina" to act without further delay according to Article 53 of the Law on General Administrative Procedure and to issue a new decision in accordance with Article 47 of the same law.

### **Letter of recommendation for case A. no. 213/2020**

The Ombudsperson has handled the complaint filed against the Gymnasium "Kuvendi i Lezhës" for non-response/non-notification, respectively in the review of the recommendation of the Sector of the Education Inspectorate (SEI) in Gjilan, dated 16 November 2019.

The Ombudsperson, based on the evidence and letters provided by the complainant, as well as the evidence and letters provided by the gymnasium, concluded that the latter had failed to implement the law, because he had not notified by written the complainant and did not give an answer/notification regarding his case, regarding the recommendation of the SEI in Gjilan, dated 16 November 2019, and consequently the party in the procedure was denied the right to use legal remedies. Based on this, the Ombudsperson has recommended to the Gymnasium "Kuvendi i Lezhës" in Vitia to forward the response to the complainant in the manner prescribed by law, regarding the review of the SEI recommendation in Gjilan, dated 16 September 2019.

## **THE RIGHT TO PRIVACY**

### **The right to privacy during the COVID-19 pandemic**

The Constitutional Court, in the Judgment of case KO 54/20 stated that although apart from the Ombudsperson, neither of the parties has mentioned the fact that the challenged decision "interferes" in the right to privacy guaranteed by Article 36 of the Constitution, the Constitutional Court has noted that such an interference has occurred in terms of this right.<sup>246</sup> According to the Constitutional Court, the restriction of this right in question was made by the Government in point 4 of the challenged decision, where it is specifically stated that gatherings in all "private" premises, whether they are "open and closed", are prohibited, except when it is necessary to perform work tasks for "prevention and control of the pandemic" and where a distance of two meters with others is allowed.<sup>247</sup> The court

<sup>246</sup> Constitutional Court of Kosovo, Judgment no. KO 54/20, April 6, 2020.

<sup>247</sup> Ibid, paragraph 266.



further stated: “... *A literal reading of this restriction means that the Government, through the challenged Decision has banned all gatherings in private premises, respectively in families and private homes or apartments of the citizens of the Republic of Kosovo, unless those gatherings in private premises are necessary to perform the duties of preventing and combating the pandemic.* ”. According to this judgment, the Constitutional Court stressed that such a restriction is not provided by the laws of the Assembly which the Government has cited in the challenged decision as a basis for issuing it, because nowhere in those legal provisions are not mentioned the restrictions that can be made in “private premises”.<sup>248</sup> Given that the circumstances created by the pandemic had created a new reality in the legislative field, with the two new laws approved by the Assembly of the Republic of Kosovo for combating and preventing the pandemic, it is noticed that the legal basis has already been created by authorizing MoH in restricting the constitutional right to privacy, as part of the measures taken to combat and prevent the spread of COVID-19.

In terms of the findings of the OI regarding the publication of personal data from various print media, about persons who have undergone testing for COVID-19, as well as about the disclosure of the identity of persons who have tested positive, the Ombudsperson reiterates that such omissions by the media are unacceptable, as they are contrary to Article 36 of the Constitution, Article 8 of the ECHR, the Law on Personal Data Protection and the Kosovo Press Code.

The Ombudsperson estimates that the lack of regulation of bylaws for controllers and data processors, in addition to continuing to present a challenge in the effective implementation of Law no. 06 / L-082 on Personal Data Protection, it has deepened the negative impact regarding the effective implementation of this law in the current pandemic situation, especially as part of implementation of measures to prevent and control the further spread of COVID-19. In this regard, the Ombudsperson deems it necessary for the OI, for all controllers and data processors, to issue guidelines for the protection of personal data as part of measures against COVID-19. Such a guide would be necessary, especially for sectors such as employment, telecommunications, health and education.

### **Opinion of the Ombudsperson on the ex-officio case no. 711/2020, regarding the placement of body cameras on Kosovo Police officers**

The Ombudsperson has analyzed the issue raised by the Kosovo Police, which has to do with the Police project regarding the placement of body cameras on Kosovo Police officers. Regarding this issue, the Ombudsperson emphasizes that the Kosovo Police, as a competent institution for the protection of order in the Republic of Kosovo, exercises its activity according to the legislation in force, therefore in this regard it is very important that the activity of police officers to be impartial, with integrity, transparent and accountable in the exercise of the mandate deriving from the legislation in force.

In this regard, the Ombudsperson has emphasized that as long as such police actions are carried out in accordance with the Law on Protection of Personal Data, it is not a question of violating freedoms and human rights. However, if the police actions exceed the provisions of the Law on Personal Data Protection, then punitive measures should be taken against the perpetrators of such actions. Therefore, looking in this regard, the Ombudsperson has not noticed any obstacles in placing body cameras on police officers, as long as actions related to personal data are done in full compliance with the provisions of the Law on Personal Data Protection.

<sup>248</sup> Ibid, paragraph 267.

The Ombudsperson also assessed that a certain action or tool, which serves the police activities, does not constitute a violation of human rights and freedoms, according to which the transparency, accountability, integrity, impartiality and responsibility of police officers are increased in the performance of their duties prescribed by law.

## THE RIGHT OF ACCESS TO PUBLIC DOCUMENTS

### **Report on case A. no. 454/2020 against the Kosovo Prosecutorial Council regarding the restriction of the right of access to public documents**

The purpose of this report is to draw the attention of the Kosovo Prosecutorial Council (KPC) regarding the complaint of S.R. about access to public documents and the duties and responsibilities of the relevant institutions deriving from Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant had submitted to the KPC a request for access to the Decision KPK/No.729/2019 of the Kosovo Prosecutorial Council, dated 12 November 2019, and to the Investigative Report AD.Nr.18/2019, dated 11 October 2019, the documents which had to do with the disciplinary procedure against two prosecutors of the Basic Prosecution of Prishtina. The KPC responded to the complainant by notifying him of the epilogue of the two disciplinary proceedings against the two prosecutors, but without attaching the documents requested by the complainant. In response to the complainant's repeated request, the KPC informed him: "[...]The report of the Investigative Panel AD no. 18/2019, is a confidential document and is not public, according to the Law on Disciplinary Responsibility of Judges and Prosecutors only final decisions are made public, except for non-public written notice", and had sent to the complainant the decision of the Supreme Court on the appellate proceedings against the Decision KPK/Nr.729/2019, dated 12 November 2019.

The Ombudsperson through this report ascertains that the KPC, when it informed the complainant that the Report of the Investigative Panel AD no.18/2019 of the KPC, dated 11 October 2019, is confidential, failed to justify and prove that the requested document was a document classified according to the level of classification of documents based on Law no. 03/L-178 on Information Classification and Security Verification. Consequently, the Ombudsperson recommended to the KPC to allow the complainant access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, with Law no. 06/L-082 on Personal Data Protection and in accordance with the relevant legislation in force.

### **Report on case A. no. 658/2020 against the Municipality of Gjilan regarding the restriction of the right of access to public documents**

The purpose of this report with a recommendation was to identify violations of fundamental rights and freedoms by the Municipality of Gjilan regarding the complaint of the Network of NGOs AVONET, filed to restrict the right of access to public documents; analysis of Law no. 06/L-081 on Access to Public Documents (LAPD) regarding the complaint in question; as well as 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. The complainant addressed the Municipality of Gjilan with a request for access to information and public documents, regarding the project: "Construction of sidewalk in the neighborhood Dardania", with no. of procurement: GL 651 17 037 511, in Gjilan. Respectively, he requested access to the pre-measure and the minutes of the project manager regarding the project implementation process. It had also requested information regarding points 3.9 and 3.12 of the project position. Despite the actions taken by the Ombudsperson and communication with the officials of the municipality in question,

access to the required documents was only partially realized, therefore the Ombudsperson on 22 March 2021 sent the Report to the Mayor of Gjilan with recommendations stating that the Municipality of Gjilan had failed to fulfill the obligations related to enabling, respectively allowing access to public documents, in accordance with the filed request of the complainant, a right guaranteed by domestic acts and international instruments. Also, the Ombudsperson considers that the Municipality of Gjilan should do more in building the capacity of its officials in relation to the treatment of requests for access to public documents and implementation of the LAPD. Consequently, the Ombudsperson recommended to the Municipality of Gjilan to address the complainant's request and provide him with full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force.

### **Report on case A. no. 2/2021 against the Ministry of Health regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Ministry of Health regarding the complaint received by the journalist complainant on KTV, submitted for non-response to the request for access to public documents and identification of duties and responsibilities of public institutions/authorities deriving from Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant had addressed the Ministry of Health with a request for access to public documents, respectively for access to the expenses of the Minister's Cabinet, from June to December 2020.

Despite the actions taken by the Ombudsperson and communication with the officials of the Ministry in question, access to the required documents was not given, therefore the Ombudsperson on 23 March 2021 had sent to the Ministry of Health the Report with recommendation stating that it is matter of a request of a journalist and the required documents relate to the activity they carry out in informing the public and the right to information/access to public documents is considered an essential element for conducting debates in the public interest and the contribution of the media and civil society is important in discussing issues of public interest. The Ombudsperson in this report has ascertained that in the case of the complainant, the Ministry has not fulfilled the obligations related to enabling, namely allowing access to public documents in accordance with the submitted complainant's request, a right guaranteed by domestic acts and international instruments. Considering that in this case it is matter about a journalist and the activity she carries out for informing the public, and the information is considered an expiring good, therefore the delay in giving the answer and handling her request constitutes a violation of the same law as not giving information. Consequently, the Ombudsperson recommended to the Ministry of Health to respond to the complainant without further delay and provide her with access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force.

### **Report on case A. no. 756/2020 against the Ministry of Health regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Ministry of Health, regarding the complaint received by the journalist complainant on the portal Newspaper Shneta, submitted for non-response to the request for access to public documents, as well as the identification of duties and responsibilities of public institutions / authorities arising from Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant had addressed the Ministry of Health with a request for access to public documents, respectively for access to the expenses of the cabinet of the Minister for 2020. Despite the actions taken by the Ombudsperson and communication with officials of the Ministry in question, access to the required documents was not made. Consequently, the Ombudsperson through this report emphasizes that this is a request of a journalist and the required documents are related to the activity he carries out in informing the public and the right to information/access to public documents is considered an essential element to hold debates in public interest and the contribution of the media and civil society is important for discussing issues of public interest. The Ombudsperson in this report has ascertained that in the case of the complainant, the Ministry has not fulfilled the obligations related to enabling, respectively allowing access to public documents in accordance with the request submitted by the complainant, a right guaranteed by local acts and international instruments. Considering that in this case it is about a journalist and the activity he carries out for informing the public, and the information is considered an expiring good, therefore the delay in giving the answer and handling his request is a violation of the same law as not giving information. The Ombudsperson recommends to the Ministry of Health to respond to the complainant without further delay and provide him with access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force.

### **Report on case A. no. 580/2020 against the Ministry of Local Government regarding the restriction of the right of access to public documents**

The complainant in the complaint submitted to the Ombudsperson complains about the restriction of access to public documents. He addressed the Ministry of Local Government (MLG) with a request for access to public documents, namely access to assessments of legality for: Decision on the appointment of the Deputy Mayor for Communities, in the municipality of Gjilan; Decision on the election of the Deputy Chairperson for Communities of the Municipal Assembly; Decision on organizing a public hearing on the Municipal Development Plan (MDP) 2020-2028.

Despite the actions taken by the Ombudsperson regarding the complaint and the communication with the responsible officials in the MLG, the complainant did not have full access to the required documents, therefore the Ombudsperson on 23 March 2021 addressed the report to the Ministry of Local Government with a recommendation, in which he ascertained that in the case of the complainant, the MLG had failed to fulfill the obligations related to enabling, respectively allowing access to public documents in accordance with the request submitted by the complainant, a right guaranteed by local acts and with international instruments. The Ombudsperson had recommended to the MLG to address the complainant's request and provide him with full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force.

### **Report on case A. no. 739/2020 against the Ministry of Foreign Affairs and Diaspora regarding the right of access to public documents**

In the complaint submitted to the Ombudsperson, the complainant complains about the restriction of access to public documents, respectively for non-response to the request for access to public documents. He addressed the MFAD with a request for access to the names of persons declared honorary consuls outside the Republic of Kosovo; in the names of persons declared honorary consuls in the Republic of Kosovo, as well as copies of the file of CVs of honorary consuls exercising their activity on behalf of the Republic of Kosovo. The complainant had received a response from the MFAD, requesting the complainant to send the MFAD a copy of an identification document with his signature and requesting the reason why he needed the requested documents. Later, the MFAD informed

the complainant that he had been denied access to the requested documents as he had not acted according to the request of the MFAD. The Ombudsperson, in the report with the recommendation that he had sent to the MFAD, ascertained that the MFAD had failed to fulfill its obligations regarding the provision, enabling, namely granting of access to public documents in accordance with the submitted complainant's request, a right guaranteed by domestic acts and international instruments. It also found that the MFAD had not acted in accordance with Article 12, paragraph 1, Article 10, paragraphs 2, 4, 5, and 10 of the LAPD, and consequently the Ombudsperson had recommended to the MFAD to implement Decision no. 239/2020, dated 22.12.2020, to grant full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents and Law no. 06/L-082 on Personal Data Protection.

### **Report on case A. no. 486/2020 against the Municipality of North Mitrovica regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Municipality of North Mitrovica, regarding the complaint of the NGO Initiative for Progress - INPO, submitted for non-response to the request for access to public documents; and identification of duties and responsibilities of public institutions/authorities, arising from Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant addressed the Municipality of North Mitrovica with two requests for access to the contract with procurement number 647-19-5322-5-2-1, under the title: *“Protection and restoration of the facade of the yard on King Peter I Street with the arrangement of the partner and renovation of the roof of the residential building on Knjaz Milloshi Street, no. 32, in North Mitrovica”*; as well as in the contract with procurement number 647-19-5150-2-2-1, under title: *“Physical security services of the building of the Municipality of North Mitrovica”*.

Despite the actions taken by the Ombudsperson and communication with the officials of the municipality in question, access to the required documents was not granted, therefore the Ombudsperson on 29 March 2021 had sent the report to the Municipality of North Mitrovica with a recommendation stating that in the case of the complainant, the Municipality of North Mitrovica had failed to fulfill its obligations regarding the provision, namely granting the access to public documents in accordance with the complainant's request, a right guaranteed by local acts and international instruments. The Ombudsperson also considered that the Municipality of North Mitrovica should do more in building the capacity of its officials in relation to the treatment of requests for access to public documents and implementation of the LAPD. Consequently, the Ombudsperson recommended to the Municipality of North Mitrovica to address the complainant's requests and provide her with full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force.

### **Report on case A. no. 574/2020 against the Municipality of North Mitrovica regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Municipality of North Mitrovica in relation to the complaint of the NGO Initiative for Progress - INPO (complainant), submitted for non-response to the request for access to public documents; and identification of duties and responsibilities of public institutions/authorities, arising from Law no. 06/ L-081 on Access to Public Documents (LAPD).

The complainant addressed the Municipality of North Mitrovica with a request for access to information and public documents, respectively for access to the number of contracts

signed by the Municipality of North Mitrovica, with the criterion of *lowest price by weighting prices (scoring) for 2019 and 2020*, with the requirement that the information must contain the title of the contract and the procurement number for the respective contracts, if any.

Despite the actions taken by the Ombudsperson and the communication with the officials of the said municipality, access to the required documents was not enabled, consequently the Ombudsperson on 29 March, 2021 had sent the report to the Municipality of North Mitrovica with a recommendation stating that in the complainant's case, the Municipality of North Mitrovica had failed to meet the obligations regarding the provision of access to public documents in accordance with the complainant's request, this right is guaranteed by domestic acts and international instruments. The Ombudsperson also considered that the Municipality of North Mitrovica should do more in building the capacity of its officials in relation to the treatment of requests for access to public documents and implementation of the LAPD. Consequently, The Ombudsperson recommended to the Municipality of North Mitrovica to address the complainant's requests and provide her with full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force.

### **Report on case A. no. 737/2020 against the Ministry of Foreign Affairs and Diaspora regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Ministry of Foreign Affairs and Diaspora (MFAD) regarding complaint of L. G., submitted for non-response to the request for access to public documents; and identification of duties and responsibilities of public institutions/authorities, arising from Law no. 06/L-081 on Access to Public Documents (LAPD). The complainant had addressed the MFAD with a request for access to information and public documents, respectively information regarding the objective reasons for which the vacancy of 15.7.2020 was canceled, for consular officers. Despite the actions taken by the Ombudsperson regarding the complaint and the communication with the responsible officials in the MFAD, the complainant did not have full access to the required documents, therefore the Ombudsperson on 22 April 2021 addressed the MFAD the report with a recommendation, in which it had concluded that in the case of the complainant, the MFAD had failed to fulfill its legal obligations regarding the provision of access to public documents, in accordance with the complainant's request, a right guaranteed by domestic acts and international instruments. In this concrete case, the Ombudsperson stressed that the public interest in accountability is essential in terms of promoting and strengthening democracy and good governance. Citizens, civil society and the media have an important role to play in this regard. Also the issue of circumstances caused by the COVID-19 virus does not justify the delay in responding to the complainant's request, given that the request for access to the requested information was not complex. Considering that information is considered an expiring good, delays in processing the request and providing a response constitute a violation of the law same as failure to provide information. Consequently, the Ombudsperson had recommended to the MFAD to address requests for access to information and public documents in accordance with Law no. 06/L-081 on Access to Public Documents, as well as in accordance with the relevant legislation in force.

### **Report on case A. no. 175/2020 against the Ministry of Foreign Affairs and Diaspora regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Ministry of Foreign Affairs and Diaspora (MFAD) in relation to the complaint of N. L., filed for non-response to the request for access to public documents and identification of duties and responsibilities of public institutions/authorities, deriving from the Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant had repeatedly requested by e-mail access to information/electronic copies of original documents related to the Republic of Kosovo and the Cook Islands, as well as information on the diplomatic relations of the Republic of Kosovo with Niue Island, but had never received a response by the MFAD. Following the actions taken by the Ombudsperson regarding the complaint in question, the MFAD had taken the necessary actions according to the legislation in force. However, on 22 April 2021, the Ombudsperson addressed a report with a recommendation to the MFAD, in which he found that the MFAD had failed to fulfill its legal obligations regarding the provision of access to public documents in accordance with the complainant's request, which right is guaranteed by local acts and international instruments. The Ombudsperson stressed in this report that the public interest in accountability is essential in terms of promoting and strengthening democracy and good governance. Consequently, the Ombudsperson had recommended to the MFAD to address requests for access to information and public documents, in accordance with Law no. 06/L-081 on Access to Public Documents, as well as in accordance with the relevant legislation in force.

### **Report on case A. no. 506/2020 against the Municipality of Ferizaj regarding the restriction of the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Municipality of Ferizaj regarding the complaint of Q. A. by the organization INPO, submitted for non-response to the request for access to public documents and identification of duties and responsibilities of public institutions/authorities, arising from Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant had addressed the Municipality of Ferizaj with a request for access to information and public documents, respectively for access to the contract entitled: "*Supply of MFMC and Ferizaj Hospital with medical protective equipment and devices*", with procurement number 656-20-1616-1-2-5.

Regarding the complainant's request for access to the requested documents, the Municipality of Ferizaj had issued Decision no. 43/20, according to which the complainant was allowed access to public documents upon request. However, the complainant had informed that the access was not enabled in the Contract Management Plan and in the Contract Manager Report. As the complainant did not have full access to the required documents, the Ombudsperson took action regarding the case in question and communicated with the responsible officials in the Municipality of Ferizaj, but full access was not realized. Consequently, on 28 April 2020, the Ombudsperson addressed a report with recommendations to the Mayor of Ferizaj, in which he concluded that in the complainant's case, The Municipality of Ferizaj failed to fulfill its obligations regarding the provision of access to public documents in accordance with the complainant's request, a right guaranteed by local acts and international instruments. The Ombudsperson had recommended to the Municipality of Ferizaj to provide the complainant with full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force, respectively to provide access to the Contract Management Plan and the Contract Manager Report. The Ombudsperson had recommended to the Municipality of Ferizaj to provide the complainant with full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force, respectively to provide access to the Contract Management Plan and the Contract Manager Report. The Ombudsperson had recommended to the Municipality of Ferizaj to provide the complainant with full access to the required documents, in accordance with Law no. 06/L-081 on Access

to Public Documents, in accordance with the relevant legislation in force, respectively to provide access to the Contract Management Plan and the Contract Manager Report.

### **Report on case A. no. 575/2020 against the Basic Prosecution in Prishtina regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the Basic Prosecution in Prishtina (BPP) regarding the complaint of executive director of the Kosovo Law Institute (KLI), E. M., filed for refusal of access to public documents; and identification of duties and responsibilities of public institutions/authorities, arising from Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant had submitted a request to the BPP for access to the *Ruling on the closure/dismissal of the case known as "Beni Dona" of the food supply for the Kosovo Security Force*. The BPP rejected the complainant's request for access to the requested documents. The complainant had submitted a request to the BPP for reconsideration of the decision, for which he had not received a response.

Following the actions taken by the Ombudsperson regarding the case, the complainant received a response to the case. In spite of that, the Ombudsperson on 28 April 2020 had sent a report to the BPP with a recommendation in which he had concluded that the BPP had not acted in accordance with Article 17, paragraphs 7 and 8, of the LAPD, which clearly states that when *a public institution refuses access to the requested document, in whole or in part, it must issue a refusal decision*. Also, regarding the case in question, the Ombudsperson had stated that the BPP gave the reasons for the rejection in the response to the Ombudsperson, but failed to issue a decision and send the document to the applicant on the said issue. Consequently, the Ombudsperson had recommended to the Basic Prosecution of Prishtina to act according to article 17, paragraphs 7 and 8, of Law no. 06/L-081 on Access to Public Documents, as well as in accordance with the relevant legislation in force.

### **Report on case A. no. 505/2020 against the Municipality of Ferizaj regarding the restriction of the right of access to public documents**

The complainant addressed the Municipality of Ferizaj with a request for access to information and public documents, respectively for access to the contract entitled: *"Disinsection, disinfection of buildings and public spaces due to the global pandemic Covid 19"*, with the procurement number 656-20-1487-2-2-5.

The purpose of this report was to identify violations of fundamental rights and freedoms by the Municipality of Ferizaj regarding the complaint of Q. A. filed for non-response to the request for access to public documents and to identify the duties and responsibilities of public institutions/authorities, arising from the Law no. 06/L-081 on Access to Public Documents (LAPD).

Regarding the complainant's request for access to the requested documents, the Municipality of Ferizaj had issued Decision no. 42/20, according to which the complainant was allowed access to public documents upon request. However, the complainant had informed that the access was enabled except in the Contract Management Plan, in the Technical or Final Acceptance Report, and in the Contract Manager Report. As the complainant did not have full access to the required documents, the Ombudsperson took action regarding the case in question and communicated with the responsible officials in the Municipality of Ferizaj, but full access was not enabled. Consequently, on 28 April 2020, the Ombudsperson addressed a report with recommendations to the Mayor of Ferizaj in which he stated that



in the complainant's case, The Municipality of Ferizaj failed to fulfill its obligations regarding the provision of access to public documents in accordance with the complainant's request, a right guaranteed by local acts and international instruments. The Ombudsperson had recommended to the Municipality of Ferizaj to provide the complainant with full access to the required documents, in accordance with Law no. 06/L-081 on Access to Public Documents, in accordance with the relevant legislation in force, respectively to provide access to the Contract Management Plan; to the Technical or Final Acceptance Report; and to the Contract Manager Report.

### **Report on case A. no. 187/2021 against the University Hospital and Clinical Service of Kosovo regarding the right of access to public documents**

The purpose of this report was to identify violations of fundamental rights and freedoms by the University Hospital and Clinical Service of Kosovo (UHCSK) regarding the complaint of Kosovo Democratic Institute (KDI), filed for refusal of access to public documents; and identification of duties and responsibilities of public institutions/authorities, arising from Law no. 06/L-081 on Access to Public Documents (LAPD).

KDI had addressed the UHCSK with a request for access to the Annual Report on Public Contracts signed for 2020. KDI had received a response from the UHCSK that their request for access to public documents had been rejected.

Despite the actions taken by the Ombudsperson regarding the complaint and the communication with the responsible officials in the UHCSK, the complainant did not have access to the required documents, therefore the Ombudsperson on 25 May 2021 addressed the UHCSK with a recommendation report which ascertained that the UHCSK had not acted in accordance with Article 12, paragraph 1, of the LAPD, which clearly sets out the time limits for processing requests for access to public documents and according to which the public institution is obliged to within 7 days, from the time of registration of the request, to issue a decision to allow access to the requested document or a reasoned decision for full or partial refusal and to notify the applicant of the rights he/she has in such cases. In the case of KDI, the UHCSK has failed to fulfill the legal obligations regarding the provision, respectively the permission for access to public documents, in accordance with the request submitted by the complainant, a right guaranteed by local acts and international instruments. The Ombudsperson had recommended to the UHCSK to address the KDI request for access to public documents and allow access in accordance with Law no. 06/L-081 on Access to Public Documents, as well as in accordance with the relevant legislation in force.

### **Letter of recommendation for case A. no. 205/2021**

The purpose of this Letter of Recommendation was to identify violations of fundamental rights and freedoms by the Ministry of Environment, Spatial Planning and Infrastructure (MESPI) regarding the complaint of the K. G., executive director of the NGO Network AVONET, submitted for non-response to the request for access to public documents; and identification of duties and responsibilities of public institutions/authorities, arising from Law no. 06/L-081 on Access to Public Documents (LAPD).

The complainant addressed the MESPI with a request for access to information: *"In the case in which the court dispute is taking place "Sallahu shpk" as plaintiff, while the respondent is the Ministry of Infrastructure."* While access to public documents was requested in the documents: *"All Rulings and 2. Actions that have been taken in relation to this case."*, but had not received a response.

Despite the actions taken by the Ombudsperson regarding the complaint in question and the communication developed with the responsible officials of MESPI, the complainant did not have access to the required documents. Consequently, on 1 December, 2021, the Ombudsperson addressed a Letter of Recommendation to the Minister of MESPI, stating that in the complainant's case, MESPI had failed to fulfill the legal obligations regarding the possibility, respectively the permit for access to public documents, in accordance with the submitted request, this right is guaranteed by local acts as well as by international instruments. The Ombudsperson had recommended to the MESPI to address the complainant's request and provide him with access to the requested information and documents, in accordance with Law no. 06/L-081 on Access to Public Documents as well as in accordance with the relevant legislation in force.

## **FREEDOM OF ASSEMBLY, FREEDOM OF RELIGION, CONSCIENCE AND RELIGION**

### **Freedom of assembly, freedom of religion, conscience and religion, as well as restrictions on these rights during the COVID-19 pandemic in Kosovo**

Based on Operational Order: *"For readiness and response to COVID-19"*,<sup>249</sup> Kosovo Police (KP) has started coordinating, planning and field implementation of police duties, according to the Law on Prevention and Combating Pandemic COVID-19250, according to the decisions of the Government as well as according to the decisions and recommendations of the Ministry of Health and NIPHK. The Law on Prevention and Combating Pandemic COVID-19 stipulates that restriction of freedom of assembly must be pursued with abundant and detailed reasoning. These reasons must prove that there is a direct link between the restriction, on the one hand, and the measures taken to combat and prevent the spread of COVID-19, on the other hand<sup>251</sup>. However, even after the measures were imposed and the gathering of more than two persons was stopped, according to the information provided by the KP, 155 requests for allowing the rally to be held were submitted to the police, of which 151 requests were approved.

According to the Law on Public Gatherings, the police must be engaged in monitoring public gatherings, in order to maintain public order and tranquility, as well as to take all measures in case the public gathering threatens to disrupt or destroy the public good. According to statistics provided by the KP, 253 rallies/organizations were monitored by the KP, of which 4 political rallies, and in all those cases where election rules were not followed, were reported to the relevant institutions. According to the same statistics provided by the KP for the period of restrictions, 71 public rallies, 180 protests and 10 marches were held.

Although the Law stipulates that no one should be discriminated in any way or prevented from performing religious rituals and ceremonies, however, the situation which encountered Kosovo and the whole world after the outbreak of the COVID-19 pandemic, made it limited the exercise of this right. Based on the decisions of the Government, which in certain periods, based on the situation and in order to preserve general health, this right was limited and in certain periods prohibited.

249 General Directorate of Police, "Standard Operating Procedures", approved on 01.10. 2020, Ref: DDO-04-023/2020

250 The Assembly of the Republic of Kosovo approved Law no. 07/L-006 on Preventing and Combating COVID 19 Pandemics, dated 25 August 2020. This law defines the responsibilities and role of public, private and public-private health institutions in taking measures to prevent, control, treat, monitor, ensure financing and sharing of responsibilities during the COVID 19 pandemic.

251 Assembly of the Republic of Kosovo, Law no. 07/L-006 on Preventing and Combating COVID 19 Pandemics in the Territory of the Republic of Kosovo, Article 4 (1.5).

In the Republic of Kosovo, although there are no official statistics regarding the religious affiliation of the population, it is considered that the majority of the population belongs to the Muslim religion, about 90%, while 6% is considered to belong to the Orthodox religion, 3% belong to the Catholic religion and 1% belong to other religions<sup>252</sup>.

According to the Presidency of the Islamic Community of Kosovo<sup>253</sup>, restrictive measures by the Government are welcomed and considered as reasonable measures, aiming at preserving public health. The imposed measures have influenced the performance of religious rites, as due to the ban on gathering, mosques have been closed and worshipers have been deprived of the opportunity to pray in the mosque. Restrictions have also affected the ban on manifestations for the feast of Eid, the feast of Mawlid, Mirage and the like.

The Catholic Church's response stated that they had complied with all Government decisions and had no problems, while the Serbian Orthodox Church, the Evangelical Protestant Church and the Jewish Community did not respond to a question as to what extent and how the pandemic affected during the general restriction.

The Ombudsperson considers that the restriction of human rights and freedoms to assemble/organize was necessary, proportionate and based on local and international laws as well as the recommendations arising from the Law on Preventing and Combating the COVID-19 Pandemic; in the Government decisions, decisions and recommendations of the Ministry of Health and NIPHK.

Decisions on restrictions on freedom of assembly/association, depending on the situation, have been constantly reviewed and measures have been tightened or eased, but also rallies have completely been banned.

The Ombudsperson has noticed that the Government of the Republic of Kosovo has continuously issued decisions with which it has taken measures proportional to the situation created, in order to protect against the COVID-19 pandemic.

## FREEDOM OF EXPRESSION AND FREEDOM OF MEDIA

### Freedom of expression and freedom of the media during the COVID-19 pandemic in Kosovo

Freedom of expression and freedom of the media in democratic countries, in addition to international instruments, are also guaranteed by the Constitution and the law, which determine the limits of the exercise of this right to avoid potential abuse or violation of other rights.

Restrictions on freedom of expression under Kosovo law consist of the intent to avoid hate speech, incitement to violence, discriminatory, insulting and defamatory language. In this regard, incitement to hatred is defined in the Criminal Code of the Republic of Kosovo (CCK), which in its article 147 defines the criminal offense of *"Incitement to hatred, division or national, racial, religious or ethnic intolerance."*

252 State Portal of the Republic of Kosovo.

253 Answer received via email, dated 16 July 2021.

According to the Deputy General Director of RTK, since the appearance of the first cases there has been a lack of transparency on the number of tests for COVID-19 and the number of results, as such have been published only through the official website of NIPHK on Facebook; by denying access to information regarding the origin of the results, especially about the potential inclusion of the results by licensed private laboratories, and others tested abroad. Therefore, according to him, the results were not categorized according to the origin of the tests.

According to the Kosovo Press Council regarding the observance of media ethics standards and print broadcasters during the pandemic, the media in general have been extremely correct in informing citizens, because they have mainly used official sources for information. Exceptions are the cases at the beginning of the appearance of COVID-19, still without confirming any case of infection in Kosovo, it is evident that some news portals have manipulated reliable sources that were actually panic-producing. There has also been misinformation spread on social networks mainly by unverified sites, but despite this, the reporting of journalists in the country has been considered accurate.

In April 2021, "Reporters Without Borders" published the index for 2021, according to which among 180 countries in the world, Kosovo is ranked 78th in terms of freedom of expression and media. According to this report, for 2021 Kosovo has decreased by 8 places in the Index, compared to 2020. The report shows an increase in media instability in the country, as a result of the coronavirus crisis, emphasizing that the media in Kosovo remains divided into ethnic lines; access to certain information is often restricted to one ethnic or political group and most media tend to cover and focus on issues related to their nationality.

The Office of the United Nations High Commissioner for Human Rights, calling for solidarity and cooperation to stop the spread of COVID-19, and respect for human rights, on 20 April 2020 published the Guidelines for COVID-19 [Human rights at the heart of the answer]. Through this guide, the Office of the United Nations High Commissioner for Human Rights, among others, calls for accurate information on the COVID-19 pandemic and for participation in decision-making.

The Ombudsperson considers positive the provision of considerable media space for information on the state of the pandemic, as well as the positive assessment of the management and combating of misinformation and malinformation by journalists in pandemic times, however, manipulation of reliable sources by some portals remains creating confusion and panic among citizens, as well as the dissemination of information and news on social networks from unverified websites.

On this occasion, the Ombudsperson calls for the regulation of the appropriate legal and effective infrastructure on the use of social networks in the country in order to combat misinformation and dissemination of unverified news and the construction of a standard that in a balanced way guarantees the freedom of expression by setting the necessary boundaries for the protection of freedoms and other human rights.

The Ombudsperson finds that threats, attacks and violations of the security of journalists, as well as obstruction of the free exercise of their profession, is one of the main problems of violation of freedom of expression and freedom of the media in the country. Enforcement of the right of access to public documents, as one of the preconditions for the realization of the right to freedom of expression, still remains a challenge for public institutions in the country, deteriorating even further since the outbreak of the COVID-19 pandemic.

## VOTING AND PARTICIPATION RIGHTS

### Voting rights in the COVID-19 pandemic period

The situation created by the COVID-19 pandemic has had reflections in all walks of life including voting and participation rights. The Ombudsperson has followed with special care the process of early central elections held on 14 February 2021. In this regard, the Ombudsperson has taken certain actions before the electoral process, and has also supervised this electoral process.

On 13 January 2021, the Ombudsperson issued a statement calling on all citizens of the Republic of Kosovo and political parties to take into account the situation created by the COVID-19 pandemic, and during the activities related to the early elections for the Assembly of the Republic of Kosovo, which were expected to be held on 14 February, 2021, to strictly respect the recommendations of the NIPHK and the measures set by the Government and the Ministry of Health for the prevention of the COVID-19 pandemic.

On 8 February 2021, the Ombudsperson published the second statement through which he expressed his concern regarding the selective implementation of the Government measures for the prevention of the COVID-19 pandemic, during the election campaign for the 2021 General Elections. The Ombudsperson noted that since the beginning of the election campaign, anti-COVID measures have not been respected by political parties, while on the other hand the institutions that are obliged to implement these measures have not reacted. The Ombudsperson has considered these actions as double standards that cannot be tolerated and violate the equality of citizens before the law. In addition, the Ombudsperson expresses his concern about endangering the lives of citizens due to non-compliance with the measures.

The Ombudsperson reminded them of the obligation of all institutions and political parties to respect the measures for pandemic prevention, while he invited the competent authorities to take concrete actions for the observance of these measures by political entities. The Ombudsperson considers that in its entirety, the electoral process has taken place in a safe, peaceful, free and democratic atmosphere. The maturity of the citizens on the one hand, the maximum commitment that the CEC has shown in its entirety in the preparation and organization of these elections, have marked an extremely important moment for respecting the free will of citizens and the level of democracy in the country. Therefore, from the perspective of respecting and exercising this political right, the Ombudsperson expresses his maximum consideration and appreciation. The Ombudsperson also praises the Kosovo Police for the professional support it has provided throughout the election day throughout the territory of the Republic of Kosovo, guaranteeing security and the smooth running of the electoral process.

### Report on case A. no. 757/2020 regarding the non-implementation of Article 61 of Law no. 03/L-040 on Local Self-Government

In order for representatives of minority communities to be able to exercise and protect their rights guaranteed by the Constitution, it is essential that they be provided with adequate representation in local public bodies. Thus, in municipalities where at least 10% of the inhabitants belong to minority communities, which in that municipality do not constitute a majority, the position of Deputy Mayor is reserved for a community representative as defined in Article 62, paragraph 1, of the Constitution. The report draws the attention of the Municipality of Graçanica and the Ministry of Local Government Administration, regarding the non-implementation of Article 61 of the Law on Local Self-Government and Article 5,

paragraph 1, of the Administrative Instruction (MLG) no. 02/2020 on the Procedure for the Appointment of Deputy Mayors in Municipalities.

The Constitution of the Republic of Kosovo and the Law on Local Self-Government have recognized to communities the right to have a deputy mayor for communities if at least 10% of the citizens of that municipality belong to non-majority communities. According to this definition, the law does not divide non-majority communities, but defines it as a whole, which must be not less than 10% of all citizens of a municipality.

The report finds that there is a discrepancy in the name of Article 60 between the Albanian language and the Serbian language, as well as Article 61, which in practice may lead to uncertainty about the implementation of the law. Based on the findings of the report, the Ombudsperson recommended to the Mayor of Graçanicë to take action in accordance with Article 61 of the Law on Local Self-Government and to appoint as soon as possible the Deputy Mayor for Communities in the Municipality of Graçanicë. While it recommended to the Ministry of Local Government Administration to oversee the implementation of Article 61 of Law no. 03/L-040 on Local Self-Government and in cooperation with the Assembly of the Republic of Kosovo, to take concrete actions in order to harmonize the language of the Law for Local Self-Government, Articles 60 and 61, respectively.

### **Opinion of the Ombudsperson regarding the request of political entities: Egyptian Liberal Party (ELP), United Roma Party of Kosovo (URPK)**

The Ombudsperson, based on the complaint filed by V. B. of the Egyptian community, has analyzed the Applicants' request to the Constitutional Court regarding the assessment of compliance with the Constitution of verdict AA.nr.29/2021 of the Supreme Court of Kosovo, as well as Decision A.nr.736 / 2021 of the Election Complaints and Appeals Panel (ECAP), respectively compliance with Article 58, paragraph 4, of the Constitution [Responsibilities of the State], as amended by Amendment 1 in conjunction with Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities, as well as the rights guaranteed in Article 45 of the Constitution [Electoral and Participation Rights] in conjunction with Article 3 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Through this opinion, the Ombudsperson has assessed that for the same cases the decision-making bodies should issue the same decisions. This guarantees the indiscriminate realization of the voting and participation rights, guaranteed by the Constitution and international instruments, on the contrary, if different decisions are made for the same cases, then a situation of inequality and double standards is created by decision-making bodies, emphasizing that it is important for the Constitutional Court to assess this issue and decide whether the constitutional electoral rights have been violated in this case.

Also, with this opinion, the Ombudsperson considers that the institutions of the Republic of Kosovo should be responsible and guarantors for the organization and conduct of the electoral process as a whole, fully and without distinction respecting the constitutional provisions regarding electoral and participation rights.

## THE RIGHT TO WORK AND EXERCISE OF THE PROFESSION

### The impact of the pandemic on social and economic rights and labor law in the public and private sectors

The COVID-19 pandemic also affected Kosovo's economy. Despite supportive policies, economic activity according to the IMF is estimated to have fallen by 6% by 2020,<sup>254</sup> while according to KAS, this decrease was 5.3%.<sup>255</sup> According to World Bank estimates, the decline is expected to be 6.9% (World Bank, 2021). The fiscal deficit increased by 7.7% of GDP, given the sharp decline in tax revenue collection and the implementation of mitigation and regeneration measures of 4.2% of GDP (IMF, 2021). Growth is expected to return in 2021 and real activity will reach pre-pandemic levels only in 2022 (IMF, 2021; World Bank, 2021). About 4.3% of GDP is allocated for measures taken, for the health system (0.4% of GDP), salary bonuses for health and insurance workers for overtime hours and for the increased risk they face in performing their duties (0.5% of GDP), social transfers and subsidies for families in need (1.6% of GDP), as well as support for firms in the form of wage subsidies and easier access to lending (including POEs and farms with about 1.7% of GDP), and capital expenditures (less than 0.1% of GDP). To stimulate aggregate demand, the Law on Economic Recovery allowed the withdrawal of 10% of savings in personal pension savings accounts in the KPST (2.6% of GDP), most of which (1.8% of GDP) will be reimbursed from the budget starting in 2023 (reimbursed only those who at the time of withdrawal had up to 10,000 euros savings in their accounts). According to TAK, Kosovo has experienced a significant decline in revenues in the first nine months of 2020, over 1 billion euros less than in 2019 (Civil Society Report, 2021).<sup>256</sup>

The pandemic also affected the labor market. Compared to 2019, there is a decrease in the employment rate by 1.7%, where this decrease in men was 3.4%, while in women we have an increase of 0.2% (KAS, 2021).

Data from the Labor Inspectorate show that in 2020 the Inspectorate conducted 18,506 inspections, but 2,419 were related to monitoring the implementation of protection measures imposed by the Government, which means that they did not aim at workers' rights. Of the 8,509 complaints received, 84% were from the public sector.

Regarding the tax policies, the Ministry of Finance and Transfers (MFT), in coordination with TAK, has extended the deadline for declaration and payment of tax liabilities, as well as pension liabilities and contributions, until 30 June 2020. Another temporary measure in relation to taxes was the abolition of VAT on imports of wheat and flour, as well as the extension of the deadline for public utility payments, until the end of April. Finally, on 18 May, the MFT took another decision announcing that the interest on property taxes will be suspended until 2021.

TAK during this period enabled taxpayers to fulfill tax obligations based on the financial capabilities of taxpayers, in order to maintain financial stability. However, complaints were reported from businesses that inability to pay the accumulated debt under the prior agreement with TAK, due to financial difficulties and due to the situation with the pandemic, TAK inspectors have been repeatedly warned that if they do not pay the installments on time, their property will be confiscated. In the response received from TAK it is stated that

254 International Monetary Fund, 2021, IMF Staff report for Republic of Kosovo, Volume 2021, Issue 041, <https://doi.org/10.5089/9781513569536.002>

255 KAS, 2021, Gross Domestic Product (GDP) by economic activities and expenditure approach 2008 - 2020: <https://ask.rks-gov.net/media/6311/bpv-2008-2020.pdf>

256 United Nations Mission in Kosovo (UNMIK), "Civil Society Report on Human Rights in Kosovo in 2020", June 2020, (link: <https://unmik.unmissions.org/file/158952/download?token=eZSA6ENf>)

the decision of the Government does not interrupt the procedures of TAK to exercise its right under the law, through the Debt Collection Management Department.

One of the Government's measures to support citizens and increase aggregate demand was the possibility of withdrawing up to 10% of pension savings from the Pension Savings Fund.<sup>257</sup> This right from 11. December, 2020 to 31 December, 2020 has been used by 397,572 people out of 644,582, i.e. 61% of contributors. The application continued until April 6, 2021.

Another measure taken was the postponement of loans by commercial banks. In the answers that the Ombudsperson received from the CBK, it was reported that the total number of persons who applied for loan deferral until the end of July 2020 was 77,629 persons, of whom 57,443 were natural persons (29,229 employees in private sector) and 20,186 were legal entities. Following the decision to postpone, the CBK has issued two instructions regarding the restructuring of loans, one in September 2020 and the other one in February 2021, according to which customers have been able to exercise the right to restructure loans. According to the latest data, the present value of total restructured loans, including all phases (decision and instructions) in May 2021 was 975.6 million euros, or 28.8% of the loan portfolio. In this case it should be noted that after the restructuring, customers have continued to pay installments in accordance with the agreements signed with banks and there is a stability in the return of installments after the restructuring. CBK representatives clarified that most of the customer complaints were related to the interest that banks have applied for the moratorium period. Although the CBK and commercial banks have clarified that no penalty interest will be applied during the moratorium period and interest for the moratorium period will be paid over the months following the start of loan repayment, customers have misunderstood that during the moratorium period banks will not calculate interest on loans. This indicates that there was a need for greater dissemination of accurate and explicit information to the public.

**Ex-official report no. 49/2021 regarding the rights of single mothers (parents) in Kosovo regarding the recognition of annual leave for two working days for a single parent, which belongs to them according to Labor Law no.03/L-212**

The report addresses the issue of non-recognition of annual leave for two additional working days for single parents, in accordance with Article 32 of the Labor Law. The report states that mothers with children up to three years old, single parents and people with disabilities are entitled to annual leave for two additional working days. Consequently, employers are obliged to apply Article 32 of the Labor Law.

Based on the findings of the report, the Ombudsperson recommends to the Labor Inspectorate to monitor the implementation of Article 32 of the Labor Law, which defines the right to leave for two additional working days for mothers with children up to three years, for a single parent and for people with disabilities; as well as the Ministry of Labor and Social Welfare to provide a precise definition of a single parent in the legislation.

**Report on case A. no. 928/2019 regarding the harmonization of Regulation (MCYS) no. 04/2019 on the Establishment and Functioning of the Resident Ensemble of the National Theater and City Theaters with Regulation (GRK) no. 15/2018 on Degrees and Salaries of Creators and Performers of Culture and Professional Employees of Cultural**

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<sup>257</sup> Kosovo Pension Savings Trust, Annual Report 2020, (link:[http://www.trusti.org/ep-content/uploads/2021/05/Raportivjetor\\_2020\\_shq\\_ueb.pdf](http://www.trusti.org/ep-content/uploads/2021/05/Raportivjetor_2020_shq_ueb.pdf)), visited on 01/07/2020.



## Heritage

This case was initiated for investigation in the institution of the Ombudsperson based on an individual complaint by which the complainant claims that Regulation no. 04/2019 is in contradiction with Regulation no. 15/2018.

The report aims to highlight the discrepancy of Regulation no. 04/2019 on the Establishment and Functioning of the Resident Ensemble of the National Theater and City Theaters (Regulation no. 04/2019), approved by the MCYS, with Regulation no. 15/2018 on Degrees and Salaries of Creators and Performers of Culture and Professional Employees of Cultural Heritage (Regulation no. 15/2018), approved by the Government of the Republic of Kosovo. The complainant alleges that Regulation no. 04/2019 is in contradiction with Regulation no. 15/2018 and does not recognize actors in roles played in other city public theaters. The complainant announces that on 4 September 2019, he has filed Complaint no. 3744/2019 in MCYS, but did not receive a response.

The report finds that Regulation no. 04/2019, respectively Article 8, is necessary to be harmonized with Regulation 15/2018 and to eliminate ambiguities between these bylaws. Based on the findings of the report, the Ombudsperson has recommended to the MCYS to amend and supplement Regulation no. 04/2019 on the Establishment and Functioning of the Resident Ensemble of the National Theater and City Theaters, respectively Article 8 of this Regulation to be harmonized with Article 6 of Regulation (NRC) no. 15/2018 on Degrees and Salaries of Creators and Performers of Culture and Professional Employees of Cultural Heritage.

## **Report on case A. no. 933/2019 regarding the issuance of the Administrative Instruction on Procedures for Licensing of Public Health Institutions, as well as the development of procedures for licensing of public health institutions**

The report draws the attention of the Ministry of Health regarding the legal obligation to issue an Administrative Instruction on Procedures for Licensing of Public Health Institutions. The report also draws attention to the implementation of Article 42 of the Law on Health, which deals with the licensing and accreditation of public and private health institutions.

The report states that the Ministry of Health has not issued the Administrative Instruction on Procedures for Licensing of Public Health Institutions, and also public health institutions are not licensed according to the provisions of Article 42 of the Law on Health. Furthermore, the Ombudsperson notes that the Ministry of Health has not fully implemented the obligation deriving from Article 42 of the Law on Health, according to which there must be a legal basis for licensing and accreditation of health institutions, without distinction.

Based on the findings of the report, the Ombudsperson has recommended the Ministry of Health that to issue an Administrative Instruction on Procedures for Licensing of Public Health Institutions, according to the obligations deriving from Article 42 of the Law on Health, in order to develop as soon as possible the procedures for licensing of public health institutions, as defined in Article 42 of the law.

**Opinion of the Ombudsperson on the request of the Supreme Court sent to the Constitutional Court regarding the assessment of Article 94 of the Labor Law, which is related to the competencies of the Labor Inspectorate**

The Ombudsperson has analyzed the request of the Supreme Court addressed to the Constitutional Court regarding the assessment of compliance with the Constitution of Article 94 of Law no. 03/L-212 of Labor, regarding the jurisdiction of the Labor Inspectorate, part of the provision *“Supervision of the implementation of the provisions of this law, which regulate the employment relationship”* and has noted that contentious issues in this case are the actions of the Labor Inspectorate, which according to the Supreme Court decides on claims from the employment relationship related to employees’ salaries and other material claims, the legality of decisions on disciplinary measures, the return of workers to work etc.

In this regard, it is important that the Constitutional Court of Kosovo clarifies the position of the Labor Inspectorate and its competencies, based on the request of the Supreme Court of Kosovo, in order to prevent the Labor Inspectorate from its actions that violate the rights guaranteed by the Constitution.

The Ombudsperson estimates that according to Article 94 of Law no. 03/L-212 of Labor, The Labor Inspectorate is competent to supervise the implementation of the provisions of the Labor Law that fall within its competence, based on the Law on Labor Inspectorate and Law no. 2003/19 on Safety at Work, Protection of Employees’ Health and Protection of the Working Environment (repealed by Law no. 04/L-161 on Safety and Health at Work).

The Ombudsperson notes that the review of cases related to the termination of the employment contract, compensations due to employees under this law, as well as the return of the employee to work and compensation of wages during the time of illegal dismissal from work by the Inspectorate of Labor, constitutes a violation of the competencies of the Labor Inspectorate and consequently results in violation of the principle of separation of powers, because a body which operates within the executive cannot review and decide issues which the law has expressly left to competence of the courts, i.e., within the judiciary.

**Opinion of the Ombudsperson regarding the request for extraordinary review of the court decision, submitted to the Supreme Court (ARJ. No. 115/2021) by the Trade Union of the Institute of Forensic Medicine**

The Ombudsperson through this opinion has analyzed the Applicants’ Referral to the Supreme Court regarding the extraordinary review of Decision A.nr. 1430/21 of the Basic Court in Prishtina (BCP) and Decision A.A.nr. 651/2021 of the Court of Appeals of Kosovo (CA). The case concerns the request of the Trade Union of the Institute of Forensic Medicine for the assessment of the legality of the Regulation MD - No. 01/2020 on Internal Organization and Systematization of the Institute of Forensic Medicine. Regarding this issue, the BCP on 5 July, 2021 has issued Decision A.nr 1430/21, by which it has rejected as inadmissible the lawsuit of the Trade Union of the Institute of Forensic Medicine. Further, the CA on August 6, 2021 has issued Decision AA.nr. 651/2021, by which it rejected as ungrounded the appeal of the Trade Union of the Institute of Forensic Medicine and confirmed the Decision A.nr 1430/21, dated 5 July 2021. Consequently, the Trade Union of the Institute of Forensic Medicine, on 29 September 2021, had submitted to the Supreme Court a request for extraordinary review of the court decision.

The Ombudsperson estimates that Law no. 06/L-054 on Courts, respectively Article 26 [Jurisdiction of the Supreme Court], paragraph 1, subparagraph 1.4, stipulates:

*“1. The Supreme Court is competent to decide on: 1.4. determines the principled positions, issues legal opinions and guidelines for the unique implementation of laws by the courts in the territory of Kosovo.”*

Therefore, the Ombudsperson has considered that it is important for the Supreme Court, through a principled position or legal opinion, to clarify the issue of the competence of the courts in terms of assessing the legality, but also the constitutionality of bylaws (administrative instructions, regulations), extracted from state or public administration bodies and also will create a practice, according to which it would act in cases when the assessment of the legality of the bylaws adopted by state or public administration bodies.

The Ombudsperson also estimates that through the position of the Supreme Court should be clarified the procedure which should be followed for the assessment of the legality of the bylaws, so that the citizens of the country can realize the constitutional right that has to do with judicial protection of rights and the right to effective remedies.

## **THE RIGHT TO EDUCATION and CHILDREN’S RIGHTS**

### **Children’s rights, the impact of a health emergency on the lives of children, including children with disabilities, and the difficulties encountered during the COVID-19 pandemic in Kosovo**

Children’s rights are an integral part of human rights. Thus, children and young people have the same general human rights as adults and also specific rights that suit their special needs as children. Children are considered as bearers of rights and active participants in their realization, therefore the realization of these rights enables children to develop and reach their full potential, recognizing their basic human dignity and urgency to ensure their well-being. Undoubtedly, the life, health, education and protection of the child are the foundations on which the future of our society and state depends. As children are dependent on the treatment and supervision of parents or guardians, any change that affects the latter affects children at the same time. Therefore, the actions or inactions of parents, the community and institutions can affect children more than any other social group. Consequently, it is important that these actions take into account the best interests of the child when drafting policies and legislation.

In Kosovo about 40% of the population is under the age of 25, while about 30% are children under the age of 18.<sup>258</sup> Seeing the importance of young people and children in the future of Kosovo, as well as the need to define and protect their interests, the state of Kosovo has taken care to regulate this issue in political and legal terms, including the rights of children in level of the Constitution and the issuance of other relevant laws.

The pandemic and the measures taken to manage and prevent it have had socio-economic effects and consequently have affected the well-being of children, their health, safety and education. The OIK has emphasized that these socio-economic effects can potentially also affect the risk from poverty. Throughout the analysis, the OIK pays special attention to the various factors that interact in the realization of children’s rights, such as: gender, ethnicity, and/or disability. In a concrete example, during the pandemic, the OIK noticed that in the transition from school to online learning, many children did not have access to technological equipment and the Internet. However, Ashkali, Roma, and Egyptian children in particular, and children with disabilities, were particularly affected. Furthermore, learning

<sup>258</sup> Kosovo Agency of Statistics: Last Population and Household Census 2011.

and access was more difficult for children with disabilities, where at the beginning of the pandemic there were no online curricula suitable for their needs.

At the global level, the Committee on the Rights of the Child, as the interpreting authority of the CRC, and at the same time one of the most influential bodies in this field, from the outset warned states parties of the serious physical, emotional and psychological effects on children caused by the COVID 19 pandemic and called on States parties to take measures to protect the rights of the child.

Children with disabilities, who even before the pandemic were vulnerable and with many obstacles in terms of exercising their rights, the pandemic has made even more difficult and disabled those few opportunities and rights they enjoyed. Children with disabilities, due to specific needs and failure to provide certain services, are faced with difficulties and risks of abuse, ill-treatment, increased stigma, risk to health and life, deepening social differences due to poverty and difficulty in rehabilitation and life skills.

Despite the impact that an action or inaction of the authorities and institutions may have had versus a right or group of certain rights of the child, as well as the alleged violation or violation of that right, the responsible authorities and institutions, the impact of pandemic should be understood and addressed from the comprehensive approach, due to the fact that the rights of the child are inseparable and interrelated rights, the violation or violation of a right has an impact and is related to the realization of one or more other rights.

The Ombudsperson finds that the decisions of the Government and relevant institutions have not taken into account the required level of implementation of the principle of best interests of the child. The COVID 19 pandemic and the relevant decisions issued by the Government and other institutions have affected the realization of the rights of the child in the Republic of Kosovo. Although it is difficult to draw the exact conclusion from this report the extent of violations of the rights of children, especially those with disabilities, violations by the action or inaction of the Government and other institutions have been identified throughout the investigation in many areas and aspects.

There has not been a comprehensive support strategy for children with disabilities, in many cases the support and assistance has been temporary, poorly organized and has not covered all children at the same time.

The interruption and suspension of some health services has worsened the health condition of children, including children with disabilities, and in some cases could have endangered the lives and development of children.

Although data from the pandemic show a decrease in cases of deprivation of liberty (apprehension, detention and imprisonment), the risk of infection was still high for juveniles who were undergoing correctional education or imprisonment. This pandemic should serve as a lesson for policymakers and legislators to review policies and legislation so that juveniles in such circumstances are allowed early release or transition to any of the alternative measures or sentences.

In this report, which is already public, the Ombudsperson addressed 22 (twenty-two) recommendations to the responsible authorities.

### **The right to education and cultural activities during the pandemic**

Due to the conditions and circumstances created by the COVID 19 pandemic, MESTI has taken measures for the start of the school year 2020/21, drafting documents that will facilitate the work of educational institutions, for this purpose various guidelines have been published, but the most important is the Master Plan for the Development of Learning in Pandemic Conditions 2020-2021 in the Republic of Kosovo, approved by the Government of the Republic of Kosovo on 26 August, 2020.<sup>259</sup> The purpose of this document is to reflect the Project for the start of teaching for the school year 2020 - 2021, with a focus on e-learning and teaching in school facilities, including an Action Plan and the projected cost of preparation, implementation and monitoring of e-learning. According to this document, it is foreseen that teaching will take place according to Scenario A: teaching takes place in schools; Scenario B: combined learning (school and distance learning) and Scenario C: online and distance learning.

After the mandatory closure of the entire education system in the Republic of Kosovo, the Ministry of Education, Science and Technology, with the help of local and international partners, managed to develop and offer learning through the distance learning system, through these forms: Platform E -Lesson - the main online platform broadcast by the public channel RTK; Early childhood education platform - distance education - care, development and early childhood education for ages 0 - 6 years; Distance learning platform for children with special needs - Inclusive education; Learning platform E-school - Learning platform for children for grades 1-9.

The first three platforms are offered to children in four languages: Albanian, Serbian, Turkish and Bosnian. Despite the results shown, distance learning offered through online platforms and follow-up activities organized through online applications (Zoom, Teams, Skype, etc.) was accompanied by challenges and difficulties, which were not few and without impact. These challenges from time to time violated the child's right to education, due to the fact that not all children were equally able to attend distance learning, because some of them lacked the Internet, lack of electronic devices (telephone, tablet or Desktop PC), and some of them even lack of physical space in the spaces where they lived (especially in cases of families that had two or more students). The worst situation has certainly been in children with disabilities, due to special needs and restrictions to use or access the platform, as well as children from the communities: Roma, Ashkali and Egyptian.

Consequently, the decision of the Government of the Republic of Kosovo to release pregnant workers was of particular importance for the protection of maternal and child health, while the replacement of pregnant teachers with students of the Faculty of Education was contrary to legal provisions.

Based on the Administrative Instruction no. 10/2018 on the normative on the professional staff of general education, educational institutions are obliged to require staff according to this administrative instruction (article 2), as well as the criteria of candidates who can be accepted as qualified teachers (article 10, paragraph 1).

<sup>259</sup> Office of the Prime Minister of the Republic of Kosovo, meeting decisions (link:<https://kryeministri.rks-gov.net/wp-content/uploads/2020/08/Vendim-nga-mqipja-e-27-t%C3%AB-e-Qeveris%C3%AB.pdf>)

Based on these provisions, the Ombudsperson notes that the engagement of students for positions in which it was possible to hire qualified candidates, who met the criteria according to the administrative instruction, was contrary to the provisions of the administrative instruction, as only candidates who met the foreseen criteria were considered qualified for the respective subjects, while eventually any position for which a qualified candidate could not be provided according to the administrative instruction, had the opportunity to engage students for a certain period of time, but always exhausting the requirements for employment of qualified persons.

### **Ex officio report no. 381/2020 regarding the implementation of the Law on Child Protection**

The report identifies the bylaws defined by the Law on Child Protection, and highlights the lack of compliance with the legal deadlines for the issuance of all acts provided by the law in question, by the responsible institutions.

The report states that only 2 (two) bylaws have been issued out of 18 (eighteen) that are foreseen to be issued pursuant to the Law on Child Protection. Furthermore, the report emphasizes the importance and concludes that the issuance of these acts, among others, enables: coordination of relevant authorities at central and local level; the functioning of the Council for the Rights of the Child; the establishment and operation of Child Rights Teams; the functioning of the establishment of multidisciplinary tables for assistance in case management; organization and scope of child protection homes; taking appropriate measures to protect the child from narcotic and psychotropic substances; taking appropriate preventive and protective measures to prohibit participation in nightclubs and games of chance; ways to protect children in the mass media, with special emphasis on children who are under institutional care; taking appropriate measures to protect children from Internet cafes and video games, including specific measures against pornographic content, punishing child abusers online, reducing child access to materials harmful to their health and life, providing assistance to children at risk of all forms of online violence.

Based on the findings of the report, the Ombudsperson recommended the Government of the Republic of Kosovo to implement the Law on Child Protection, to issue bylaws provided in Article 9, paragraphs 3 and 4, Article 18, paragraph 2, Article 20, paragraph 2, subparagraph 2.7, Article 21, paragraph 2, in article 26, paragraph 6, in article 30, paragraph 7, in article 43, paragraph 4, in article 44, paragraph 4, in article 46, paragraph 4, in article 50, paragraph 6, in article 53, paragraph 3, in article 57, paragraph 10, in article 63, paragraph 6, of this law.

The Judicial Council recommended that in implementation of the Law on Child Protection to issue the sub-legal act provided in article 58, paragraph 2, of this law. Whereas, the Independent Media Commission recommended that for the implementation of the Law on Child Protection, issue a sub-legal act provided in Article 45, paragraph 8, of this law.

### **Ex officio report no. 597/2020 regarding the amendment and supplementation of the Administrative Instruction (MEST) No. 19/2016 on the Inclusion of Children in Preschool Institutions in Kosovo**

The report is intended to attract the attention of the Ministry of Education, Science, Technology and Innovation to take appropriate action to amend and supplement the Administrative Instruction on the Inclusion of Children in Preschool Institutions in Kosovo, to harmonize the procedure and criteria for admission of children in preschool institutions with the basic principles and authorizations derive from the Law on Preschool Education and the Law on Child Protection.

The report states that the Administrative Instruction does not define the employment of both parents as a criterion for enrolling children in preschool institutions and does not provide legal certainty, nor clear and affordable alternatives for children with severe disabilities so that they enjoy the same rights like all other children, more specifically the right of children to education, to non-discrimination and to their best interests. The report also states that the Administrative Instruction is not clear, concise and that its relevant norms are contradictory, inconsistent and do not comply with the basic principles and authorizations arising from the Law on Preschool Education and the Law on Child Protection.

Based on the findings of the report, the Ombudsperson has recommended the Ministry of Education, Science, Technology and Innovation, to amend and supplement the Administrative Instruction on the Inclusion of Children in Preschool Institutions in Kosovo by regulating, inter alia, the procedure and criteria in accordance with the basic principles of the Law on Preschool Education, respectively the principles set out in Article 4: "(a) Equality; (b) Full involvement; (c) Democracy; (d) Autonomy of staff; (e) Professionalism and responsibility; (f) Equal opportunities for children and parents, taking into account differences between children; (g) The right to be different; (h) Comprehensive development of the personality of children", as well as the Law on Child Protection.

**Report on case A. no. 24/2018, A. no. 790/2018, A. no. 605/2019, A. no. 635/2020, A. no. 534/2020, A. no. 254/2021 and A. no. 276/2021 regarding the failure of the Ministry of Education, Science, Technology and Innovation to exercise effective supervision over the functioning of Higher Education Providers**

The report addresses several aspects: in the first case, the complainants had completed study programs at Higher Education Providers in areas that did not have accreditation and license; in the second case, upon registration of the complainant in the college, the college had accreditation, but upon completion of studies, the college was denied the request for re-accreditation and as a result in these cases their diplomas were invalid, they could not be recognized/verified and the complainants could not pursue further studies. In other cases, the complainants' diplomas could not be recognized/verified due to non-submission of registry books by providers of higher education and they also cannot continue further studies or studies abroad.

The report finds that the inaction of the institutions responsible for overseeing the implementation of legal provisions has created space for Higher Education Providers to operate in violation of legal provisions, in the absence of accreditation and without submitting, or in other words, improperly administering the relevant documentation as provided by legal provisions, among others, has created insecurity, financial loss and moral breakdown in students. Furthermore, the report finds that some Higher Education Providers have issued diplomas in complete violation of accreditation and licensing procedures.

Based on the findings of the report, the Ombudsperson recommends the Ministry of Education, Science, Technology and Innovation to engage that commissions formed by MESTI to complete the tasks given in a reasonable time and the issue of recognition/verification of diplomas obtain epilogue, based on legal provisions in force and in accordance with European standards; ensure that the Inspectorate of Education, as the central executive body, takes all effective actions to oversee the implementation of applicable legislation by all Higher Education Providers, until the cessation of the activity, so that such cases not to be repeated.

**Ex officio report no. 69/2021 regarding the lack of harmonization of Law no. 04/L-032 on Pre-University Education in the Republic of Kosovo with Law no. 05/L-087 on Minor Offenses**

The report is intended to attract the attention of the Ministry of Education, Science, Technology and Innovation to take appropriate actions to amend and supplement the relevant provisions of the Law on Pre-University Education in the Republic of Kosovo, respectively to harmonize it with the Law on Minor Offenses.

The Ombudsperson with this report states that The Law on Pre-University Education of the Republic of Kosovo, respectively Article 15 [School Attendance] and Article 47 [Home Education] are not in line with the provisions of the Law on Minor Offenses, even though more than four years have passed since the entry into force of the Law for Minor Offenses, their harmonization has not been done. Based on the findings of the report, the Ombudsperson recommends the Ministry of Education, Science, Technology and Innovation to amend and supplement the Law on Pre-University Education in the Republic of Kosovo, respectively Articles 15 and 47 to be harmonized with the Law on Minor Offenses.

**Letter of recommendation for case A. no. 152/2020**

The Ombudsperson has handled the complaint filed against the Municipality of Vushtrri, regarding the non-response to the complaint filed on 6 January, 2020 (Complaint *prot. no.02-104/02-0000526/20* against the principal of the Lower Secondary School “2” Vushtrri, regarding the removal from school of the three children of the complainant, for which he had not received a response.

Based on the facts and circumstances of the case, the Ombudsperson has recommended to the Municipality of Vushtrri that within its competencies and legal responsibilities, to take the necessary urgent actions for the children of M.A. and E. A. to attend classes in the respective schools.

**Letter of recommendation for case A. no. 272/2021**

The Ombudsperson has handled the complaint filed against the Municipality of Fushë Kosovë, regarding the non-response to the request submitted to the Municipal Directorate of Education, regarding the provision of transport for children with disabilities. According to the complainant, his two children attend classes at the Resource Center for Teaching and Counseling “Xheladin Deda” in Peja and that this year the transport costs from Fushë Kosovë to Peja and vice versa had to cover them himself.

Therefore, after analyzing the case and the legal basis, the Ombudsperson concluded that the Municipality of Fushë Kosovë failed to provide the complainant’s children with transportation from Fushë Kosovë to Peja to the Learning and Counseling Resource Center “Xheladin Deda” and vice versa, which constitutes a violation of human rights, in the present case of children’s rights with disabilities, respectively violations of the Constitution of the Republic of Kosovo, international standards and relevant legislation in force.

Therefore, the Ombudsperson recommended to the Municipality of Fushë Kosovë to take immediate measures to ensure that the complainant’s children are provided with



transportation according to their needs, so that they have the opportunity to attend classes at the Learning and Counseling Resource Center “Xheladin Deda” in Peja.

### **Letter of recommendation for case A. no. 408/2021**

The Ombudsperson has handled the complaint filed against the Municipality of Prishtina for non-response to the complaint (Prot.no.03-070/01-0123544/21, dated 29.6.2021), respectively in the Municipal Directorate of Education (MDE), against the school “Meto Bajraktari” in Prishtina, regarding the denial of the right to enroll the child I. K. as a student in the preschool class for the school year 2021/2022.

Based on the evidence and the documents provided by the complainant, the Ombudsperson found that the MDE in Prishtina failed to implement the law, as the complainant in his complaint filed on 29 June 2021 did not receive a response from the municipality despite legal obligation to review his complaint under the applicable law.

Therefore, the Ombudsperson recommended to the Municipality of Prishtina to decide urgently regarding the complaint of the party, dated 29 June, 2021, treating it in accordance with legal provisions.

## **RESPONSIBILITY FOR THE ENVIRONMENT**

### **Impact of the COVID-19 pandemic in Kosovo and responsibility for the environment**

This part of the report analyzes the extent to which, within the current situation, the Government has adapted the policies for the functioning of environmental protection bodies in an effort to protect the life and health of officials, in accordance with the rules for protection from COVID 19, in order to respect the main environmental principles (the principle of sustainable development, integration and prevention, environmental impact assessment, strategic environmental assessment, the principle of access to information, public participation in decision-making, access to justice, etc.)

Along with other institutions in the country, the competent bodies for environmental protection were faced with an unknown situation, in the face of difficult and urgent decisions which included the priority of protecting health and public safety. While the state was focused on protecting and guaranteeing the right to life and the right to health through restrictive measures, the impact on the environment from various activities had continued.

Ministry of Environment, Spatial Planning and Infrastructure (hereinafter: MESPI), as the competent body for drafting and implementing legislation on general management in the field of environment, water, spatial planning and housing construction, in the period March 2020 - March 2021 is faced with a complicated and very uncertain situation. The result of non-inclusion in state policy priorities, insufficient capacity, environment and its protection was not found even in government decisions on protection from the pandemic.

As a result of the changes of governments, and in the ministry within the period February 2020 - March 2021 as well as in the change of the structure of the ministry, there have been difficulties that have affected the adaptation of the actions of the ministry to the situation.

While in previous years an inspector has conducted an average of 80-110 inspections including the minutes, in 2020 on average about 20-30 inspections have been conducted. All these have had a sufficient impact in that the Inspectorate failed to fulfill its legal obligations nor the implementation of the work plan for the implementation of inspections

for the supervision of all laws in the field of environment, water, nature, construction and of spatial planning. Reactions have been largely based on complaints.<sup>260</sup>

Ex officio report no. 365/2018 against the Ministry of Economy and Environment regarding the issue of legality of procedures related to hydropower plants in the country and access to documents related to hydropower plants

The purpose of this report with recommendations was to draw the attention of the Ministry of Economy and Environment, the Municipality of Deçan, the Municipality of Shtërpçe and other competent authorities to respect the right to information of citizens by providing access to documentation for hydropower plants, respect for the right of the public to participate in decision-making and access to justice. The report with recommendations was addressed to the responsible institutions on 3 February, 2021.

The issue raised in this report is related to the degradation of the Lumbardh River in Deçan, from indiscriminate interventions in the environment by the company "Kelkos". The case was initiated based on the information received from A. G. in the forum organized for sustainable development, on the topic: *"Water is life/environmental crimes"*.

Considering that the situation could have irreparable consequences for the environment, the Ombudsperson asked the Ministry of Environment and Spatial Planning to suspend the activities of hydropower plants in Deçan and Shtërpçe, until an explanation is given for the legality of the operation of the said hydropower plants, as well as clarifications on competencies between the responsible authorities.

In the report on the issue in question, the Ombudsperson concluded that MESPI and municipalities, as competent bodies, despite the environmental impact of hydropower plants, dissatisfaction, protests and reactions of citizens and civil society, through various forms, have not achieved to provide accurate and complete information regarding the legality of the operation of hydropower plants and to respect the principle of public participation in decision-making. Also, in this report, the Ombudsperson has ascertained, based on Article 52.2 of the Constitution of the Republic of Kosovo, which provides the obligation of the responsible institutions to engage in ensuring and guaranteeing the process of public participation in decision-making, that the denial of access to documents that are directly related to, or related to hydropower plants, is an unconstitutional and illegal action. Consequently, the Ombudsperson, based on the constitutional and legal authorizations, regarding the issue in question, and in order for the information related to the operation of hydropower plants in the country to be made public, so that in the future organizing of the public participation processes in decision making be taken seriously by the institutions, for the Judicial Council and the Prosecutorial Council to take measures to treat cases related to this issue and related to the environment, with priority, recommended:

Ministry of Economy and Environment to make public all documentation related to hydropower plants in the country. To the Municipality of Deçan, to make public all documentation related to hydropower plants in the municipality of Deçan; Municipality of Shtërpçe to make public all documentation related to hydropower plants in the municipality of Shtërpçe; Kosovo Judicial Council to take measures to treat cases related to hydropower

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<sup>260</sup> Information received from the Environmental Inspectorate, MESPI, on September 8, 2021.

plants with priority; Kosovo Prosecutorial Council to take measures to treat cases related to hydropower plants with priority.

### **Letter of recommendation for case A. no. 59/2020**

The Ombudsperson has handled the complaint filed against the Municipality of Prishtina for non-response to the request regarding the deployment of waste containers, located in the neighborhood Kodra e Diellit, str. "Qamil Bala", and dedicated to entrances 4, 5, 6, 7 and 8, due to causing environmental pollution, so the residents of the neighborhood have asked to be moved to the same point where they were located earlier.

Based on the evidence and the documents provided by the complainant, the Ombudsperson found that the Municipality of Prishtina has failed to address the request of the complainant, according to the legal provisions which are in force. The Ombudsperson recommended to the Municipality of Prishtina to review the request of the party, treating it in accordance with the legal provisions in force.

## **LIMITATION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

### **Special report on the health emergency and the impact of the COVID-19 pandemic on human rights in the Republic of Kosovo**

It is more than two years since the appearance of the COVID-19 virus that affected almost all countries of the world and weighed heavily on the shoulders of everyone. Undoubtedly, the pandemic affected the functioning of all state institutions, part of which undertook the burden of taking actions, measures, decisions in order to protect the public health of citizens as the pandemic posed a threat to public health in general and for human rights in particular, such as the right to life.

There is a rational link between the responsibilities that the Government has in protecting public health and fighting the pandemic and the risk that citizens face with consequence up to their lives. However, even by international standards, governments also have a responsibility to show that any restrictions they impose on human rights must be balanced and proportionate to the real threat that threatens them.

Any measure applied that restricts rights must aim to achieve a legitimate objective, which needs to be strongly demonstrated by the authorities. Based on this, the Ombudsperson, through a report which was published in November 2021, analyzed the impact of COVID-19 on the fundamental rights of citizens and the application of government measures to prevent the spread of the pandemic. The report reflects the views of the Ombudsperson expressed through recommendations, which are addressed to public authorities in order to respect human rights standards in any restrictive measures that may be imposed in emergency situations. It addresses the impact of these measures, in particular the limitations of human rights and legislation in general; the impact of the pandemic on public health, on mental health; the impact of the pandemic on the right to a fair and impartial trial; the rights of persons deprived of their liberty; economic and social rights; labor law and the impact of the pandemic on the public and private sectors; living environment; domestic violence; freedom of assembly, belief, conscience and religion, as well as restrictions on these rights; freedom of expression, freedom of the media; the right to privacy and suffrage; children's rights and the impact of the health emergency on the lives of children, including children with disabilities; the right to education and cultural activities as well as the analysis of international standards and practices of countries with developed democracies.

The report is divided into fifteen chapters that address various aspects of the impact of the pandemic on human rights. In the first part, the report talks about international standards and practices of countries with developed democracies in terms of policies to fight pandemic.

## **International standards and practices of countries with developed democracies**

Analyzing international standards and good human rights practices plays an important role in shaping the way for states to respond during national health emergencies. They provide a unique comprehensive framework for the protection of human rights and freedoms by guiding states towards a response based on the perspective of human rights, in any restriction or avoidance of these rights, which are guaranteed by domestic laws, but also by international law.

The right to the highest attainable standard of health is a human right, recognized in international human rights law. The International Covenant on Economic, Social and Cultural Rights, regarded as the main instrument for the protection of the right to health, recognizes: *“The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”* In Article 12, paragraph 2.3, in order to achieve the realization of this right, the Convention obliges states to take steps to: *“Prevent, treat and control epidemic, endemic, occupational and other diseases.”*<sup>261</sup>

Various world organizations, since the outbreak of the pandemic, have been extremely committed to drafting adequate guidelines for states, so that the measures and restrictions taken do not violate human rights. These guidelines should be a reference point for any action to be taken, so as not to violate fundamental human rights guarantees.

### **Restrictions on human rights and legislation in general**

In Kosovo, in March 2020, when the first cases of the virus were identified, the Government of the Republic of Kosovo began to take the first measures to prevent the spread of this virus. Municipalities were quarantined in which these cases were identified and also interurban and international traffic was suspended, cafes, bars, restaurants, shopping malls, sports and cultural activities, school and university institutions, public institutions reduced the staff in the list of essential persons and private ones were ordered to organize work from home.

Regarding this issue, the Government with Decision no. 01/07, dated 11 March, 2020, interrupted the educational process in public and private educational institutions throughout the territory of Kosovo, until 27 March, 2020. Also, with this decision is made the restriction of public and private activities, and the organized international transport is halted.

On 12 March, the Government of the Republic of Kosovo, with Decision no. 01/08, has formed the Special Commission for the Prevention of Infection COVID-19. According to this decision, the Commission has the duty to manage the process of prevention of COVID-19 infection [...]. Thus, it is noticed that with this decision a special body has been created which has enabled the management of the process for the prevention of infection with COVID-19.

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<sup>261</sup> United Nations, International Covenant on Economic, Social and Cultural Rights, Article 12 (link: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>).

On 13 March, 2020, the Government of the Republic of Kosovo issued Decision no. 01/09, which decided to ban entry and exit in the municipality of Klina and Vitia. Also, with this decision is interrupted the interurban transport in the Republic of Kosovo as well as the organized international transport. Cafes, bars, pubs, restaurants and shopping malls have been closed, with the exception of pharmacies and food markets, all cultural and sports activities have been suspended and the animal and vehicle markets have also been closed.

Regarding this issue, the Government of the Republic of Kosovo, with Decision no. 01/11, dated 15 March 2020, has declared a public health emergency.

On 23 March, 2020, the Government of the Republic of Kosovo, with Decision no. 01/15, has stopped the circulation of citizens and private vehicles from 24 March 2020, during 10:00 - 16:00 and from 20:00 - 06:00. Gatherings in all private and public places, open and closed [...] were also prohibited.

This decision has also activated the Constitutional Court of the country, which on 31 March 2020 announced that it has received a Judgment in case KO 54/20 (which entered into force on 13 April 2020), in the case filed by the President of the Republic of Kosovo, regarding the assessment of the constitutionality of Decision no. 01/15 of the Government of the Republic of Kosovo, dated 23 March 2020, for which the Applicant claimed that it is not in accordance with the provisions of the Constitution of the Republic of Kosovo, Article 2 of Protocol no. 4 of the European Convention on Human Rights, Article 13 of the Universal Declaration of Human Rights, and Article 12 of the International Covenant on Civil and Political Rights. The constitutional issue in this case was the compatibility of the challenged Government Decision with the Constitution, namely whether with its issuance the government had restricted the fundamental rights and freedoms guaranteed or had gone beyond the powers provided by law.<sup>262</sup>

In this regard, the Constitutional Court found that the Government Decision was not in accordance with Article 55 (Restriction of Fundamental Rights and Freedoms) of the Constitution, in conjunction with Articles: 35 (Freedom of Movement), 36 (Right to Privacy), 43 (Freedom of Assembly) of the Constitution and Article 2 (Freedom of Movement) of Protocol no. 4, Article 8 (Right to private and family life) and Article 11 (Freedom of assembly and association) of the ECHR, and therefore decided to repeal it. During the review of this case, the Court found that the restrictions contained in the challenged decision of the Government regarding the above-mentioned constitutional rights and fundamental freedoms, are not "defined by law", and therefore contradict the guarantees contained in Articles 35, 36 and 43 of the Constitution in relation to the respective articles of the ECHR, and Article 55 of the Constitution, which in its first paragraph clearly states that the fundamental rights and freedoms guaranteed by the Constitution may be limited only by law.

Furthermore, the Court emphasized the fact that the challenged decision of the Government referred to the implementation of both laws, which authorized the MoH to take certain measures in those laws in order to prevent and fight infectious diseases, but did not authorize the government to restrict constitutional rights and freedoms at the level of the entire Republic of Kosovo and for all citizens of the Republic of Kosovo, without exception. Thus, the Court clarified that the Government could not restrict any fundamental rights and freedoms through decisions, unless a restriction of the respective right is provided

<sup>262</sup> Constitutional Court of Kosovo, Judgment in case KO54/20, 31 March 2020, published on 6 April 2020, no. ref.:AGJ 1543/20 (link: <https://gjk-ks.org/decision/vleresim-i-kstruutshmerise-se-vendimit-nr-01-15-te-qeverise-se-republikes-se-kosoves-te-23-mars-2020/>)

by law of the Assembly.<sup>263</sup> Therefore, in the spirit of this decision, it is specified that the government can only implement a law of the Assembly that restricts a fundamental right and freedom and that only to the specific extent authorized by the Assembly through the relevant law. So, taking into account the fact that Law no. 02/L-78 on Public Health, defines as single groups single-parent families, orphans, the extremely poor, victims of trafficking, the chronically ill, the elderly, prisoners, the homeless, injecting drug users, the mentally ill, etc., the health authorities should focus on the treatment of at least some categories of persons.

Regarding this case, the Ombudsperson, on 27 March, 2020, sent an Opinion to the Constitutional Court, in which he expressed his views. While the Constitutional Court was assessing the constitutionality of Decision no. 1/15 of the Government of the Republic of Kosovo, on 27 March, 2020 the Government took Decision no. 02/17, with which it has taken preventive measures in order to prevent and non-spread of the COVID 19 virus, stopping the movement of citizens and private vehicles during 17: 00-06: 00, in addition to medical needs, production, supply and sale of essential goods (food and medicine for humans and animals/poultry) and for services and activities related to pandemic management. Also with this decision the Government has banned the movement of citizens in open areas (squares) of the cities of the Republic of Kosovo.

The Ombudsperson considers it important to provide information on decisions made in the mother tongue to communities and categories of persons with disabilities, whether through audio and audiovisual media services, through press services or in any other appropriate form, especially in a pandemic situation where everyone's health is endangered.

## Requests for Interim Measure

### **Request of the Ombudsperson addressed to the Minister of Internal Affairs, for the suspension of the implementation of the Administrative Instruction (MIA) no. 07/2017 on changing the foreign driver's license to a driver's license of the Republic of Kosovo**

After handling the complaint of party A. S., the Ombudsperson was informed that the party with citizenship of the Republic of Kosovo and the Republic of Serbia has applied for changing a driver's license of the Republic of Serbia with a driver's license of the Republic of Kosovo. Based on the complainant's information, it is understood that on 16 April 2019, he had applied to the Civil Registration Agency (CRA) to obtain a driver's license of the Republic of Kosovo and on this occasion CRA officials had requested submission of the original driver's license issued by the authorities of the Republic of Serbia. Furthermore, the complainant had expressed his concern that the Republic of Serbia would delete him from the civil registers at the moment it is understood that his driver's license was sent to Serbia through the institutions of the Republic of Kosovo.

The Ombudsperson was also informed that the Albanians of the areas: Presevo, Medvedja and Bujanovac, are facing the problem of deletion from the civil registers and such actions by the institutions of the Republic of Kosovo are putting even more in difficulties the citizens of those areas. The Ombudsperson estimates that the deletion from the civil registers

<sup>263</sup> The Court clarified that the term "restriction" used in Article 55 of the Constitution implies the fact that the Assembly has the right to restrict fundamental rights and freedoms, through law, but only for the extent and to the extent that it is necessary that, in a open and democratic society, fulfill the purpose for which the restriction is allowed, specifying that "restriction" means a lighter degree of intervention and this can be done even without declaring a State of Emergency; while "avoidance" means a more severe degree of intervention, because it can not be done at all without declaring a State of Emergency.

produces irreparable consequences for the citizens of Presevo, Medvedja and Bujanovac, preventing them from carrying out any civil legal action in the territory of the Republic of Serbia.

Consequently, the Ombudsperson has requested the suspension of the execution of the Administrative Instruction (MIA) no. 07/2017 on Changing the Foreign Driver's License to the Driver's License of the Republic of Kosovo, respectively the suspension of the application of Article 4, paragraph 1, sub-paragraph 1.6, until the end of the investigation by the Ombudsperson regarding the allegations in the complaint submitted to the Ombudsperson from A. S.

The Ombudsperson considered that the substantial criterion of a request for such a suspension was clearly met in this case, because the actions under Article 4, paragraph 1, sub-paragraph 1.6, cause irreparable damage to the rights of the citizens of Presevo, Medvedja. and Bujanovac, who also have the citizenship of the Republic of Kosovo, these rights guaranteed by the Constitution of the Republic of Kosovo and international human rights instruments, directly applicable in the Republic of Kosovo.

#### **Request of the Ombudsperson addressed to the Agency for Verification and Comparison of Property for the suspension of the implementation of the last reprimand for eviction and return of the property in repossession, no. DS003164**

The Ombudsperson has handled the complaint of M. K., filed against the Kosovo Agency for Comparison and Verification of Property (KACVP) and, according to his assertion, he bought the apartment which is the subject of the dispute in 2005, in which case on 13 October 2005 he entered into a contract for the sale of this apartment, which was certified by the Municipal Court in Prishtina (Vn.nr 8388/2005), which was then registered in the cadastral book in the Municipality of Prishtinë. He also confirmed that this agreement was submitted to the Directorate of Housing in Prishtina. The complainant stated that on 20 October, 2019 he was invited by the KACVP, in which case he was informed that he was not recognized the right of ownership and that this right had already been recognized to another person, while on 6 June 2021 the last notice was sent for eviction and return of the property in repossession, no. DS003164, requesting the complainant to vacate the apartment in question, otherwise the KACVP would evict him without further notice.

The Ombudsperson was also informed that currently the Basic Prosecution Office in Prishtina is investigating the originality of Decision no. 27774, dated 31.8.1985, by which the apartment in question was allocated to XH. G. for permanent use.

The Ombudsperson has assessed that the expulsion of the party at this stage when the Basic Prosecution Office in Prishtina is investigating the originality of the decision mentioned above, produces irreparable consequences for the complainant. Furthermore, the Ombudsperson notes that in the present case the legal work over which the party has acquired ownership has not been annulled and is still in force.

Consequently, the Ombudsperson has requested the suspension of the execution of the last remark for eviction and return of the property in repossession, no. DS003164, dated 6 June 2021, until the end of the investigation by the Basic Prosecution Office in Prishtina.

#### **Visit of the Ombudsperson of the Republic of Kosovo to the Specialized Chambers of Kosovo**

The Assembly of the Republic of Kosovo, on 3 August, 2015, approved the constitutional amendments with the approval of amendment no. 24, included as a constitutional provision in Article 162 of the Constitution, which stipulates: *"In order to fulfill its international obligations regarding the Report of the Parliamentary Assembly of the Council of Europe, Document 12462, dated 7 January 2011, the Republic of Kosovo may establish Specialized*

*Chambers and an Office of the Specialized Prosecutor within the Kosovo justice system. The organization, functioning and jurisdiction of the Specialized Chambers and the Office of the Specialized Prosecutor are regulated by this article and by a special law.”*

The following provision stipulates: *“Specialized Chambers may establish their own Rules of Procedure and Evidence, in accordance with the international human rights standards contained in Article 22 and guided by the Code of Criminal Procedure. The Specialized Chamber of the Constitutional Court will review these Rules to ensure compliance with Chapter II of the Constitution.”*

The same provision stipulates: *“A special Ombudsperson of the Specialized Chambers shall be appointed, with exclusive responsibility for the Specialized Chambers and for the Office of the Specialized Prosecutor. His/her reporting function and obligations will be defined by a [special law]. Articles 133 (2), 134, 135 (1) and (2) shall not apply to the Ombudsperson of the Specialized Chambers. The Kosovo Ombudsperson may also refer matters in accordance with Article 135 (4).”*

Law 05/L-053 on Specialized Chambers establishes and regulates the organization, functions and jurisdiction of the Specialized Chambers and the Office of the Specialized Prosecutor. Article 1, paragraph 2, stipulates: *“Specialized Chambers within the Kosovo justice system and the Office of the Specialized Prosecutor are necessary for the fulfillment of international obligations provided in Law no. 04 / L-274, on guaranteeing the protection of fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo, as well as on guaranteeing safe, independent, impartial, fair and efficient criminal proceedings in relation to allegations of serious cross-border and international crimes committed during and after the Kosovo conflict, crimes related to those reported in the Report of the Parliamentary Assembly of the Council of Europe Doc 12462, dated 7 January 2011, and which have been the subject of criminal investigations carried out by the Special Investigative Task Force (“SITF”) of the Special Prosecution of the Republic of Kosovo (“SPRK”). “*

With the constitutional amendments and the law on specialized chambers, the mandate of the Ombudsperson refers only to the mandate to challenge laws before the Specialized Chamber of the Constitutional Court and with the mandate to provide opinions *amicus curiae*, as defined under Article 34 (9) of this law: *“In accordance with Amendment no. 24 and Article 135 (4) of the Constitution, the Ombudsperson of the Specialized Chambers appointed under Article 34 (9) of this Law, as well as the Ombudsperson of the Republic of Kosovo, may refer to Article 113 (2) of the Specialized Chamber of the The Constitutional Court.”*

The Ombudsperson notes that in the framework of the legislation of the Specialized Chambers, a special place has rightly been given to the protection of victims, it is very important that the guarantees for the protection of fundamental rights for victims are placed at the center of the functioning of authorities in order for these guarantees to provide full protection for victims. Article 23 of the law provides: *“The rules of specialized chambers of procedure and evidence provide for the protection of victims and witnesses, including their safety, physical and psychological well-being, dignity and privacy. These protection measures include, but are not limited to, the means that are defined in Articles 221-226 of the Criminal Procedure Code of Kosovo, Law no. 04/L-123, articles 5-13 of Law no. 04/L-015 on witness protection, closed-door proceedings, presentation of evidence by electronic means or other special means, and protection of identity.”* There is no proper information regarding the rights of victims in court proceedings, this will be the duty of the authorities to organize campaigns in the future in order to inform the public about this issue.



At the request of the Ombudsperson, on 9 April 2021 a working meeting was held with the Ombudsperson of the Specialized Chambers, it was planned to discuss the possibilities of future cooperation for the exchange of information, complaints received, visits undertaken in facilities of detention and whether a report has been prepared by the Ombudsperson of the Specialized Chambers. In this meeting, the Ombudsperson of the Specialized Chambers did not provide any information, although there was a prior agreement on the topics, with the justification that it is confidential information.

On 21 April 2021, the Ombudsperson of the Republic of Kosovo requested from the President of the Specialized Chambers of Kosovo to be enabled to pay a visit to the Specialized Chambers and the Detention Center of the Specialized Chambers in The Hague. Explaining that there is a complete lack of official information, adding the fact that the Ombudsperson of the Specialized Chambers did not share any information, it is necessary to visit the court and the detention center in order to be informed directly.

On 5 May 2021, responding to the letter of the Ombudsperson, the President of the Specialized Chambers had rejected the request of the Ombudsperson, stating that Law no. 03/L-195 does not apply in the case of the Kosovo Specialized Chambers or the Specialized Prosecutor's Office. This official letter further states that any inspection of the "conditions of detention and treatment of detainees" is the exclusive mandate of the Ombudsperson of the Specialized Chambers.

On 8 September 2021, a joint meeting was held at the Ombudsperson Institution between the President of the Specialized Chambers (accompanied by her associates) and the Ombudsperson and his associates. During the meeting, the Ombudsperson reminded him of the role and mandate of the Ombudsperson, especially the mandate as a National Mechanism for the Prevention of Torture, emphasizing the importance of cooperation and the Ombudsperson's interest in visiting detainees in the Detention Center of the Specialized Rooms. of the Republic of Kosovo in The Hague.

The Ombudsperson, on 9 November, 2021, visited the Specialized Chambers, where he met with the President of the Specialized Chambers and her associates. He also visited the detention center and met with detainees at the Hague Detention Center.

During this visit, in a meeting with the President of the Specialized Chambers, the Ombudsperson stressed that there is a constitutional, legal and moral obligation to visit the citizens of Kosovo wherever they are in such a situation, despite the fact that it has a limited mandate with legal and constitutional changes. The President of the Specialized Chambers and her associates informed the Ombudsperson about the progress of court proceedings, the opening of a *youtube* channel through which court hearings can be followed, the weekly press releases organized by the Information Office, and the public gallery, which remains open, where hearings can be attended and heard.

The Ombudsperson in this meeting emphasized that concerns regarding the circumstances in which the court and its jurisdiction operate and other issues were addressed to him, such as equality of arms, length of detention, rights of the accused in the proceedings, as well as the lack of transparency and cooperation of the Ombudsperson of Specialized Chambers.

During this visit, the Ombudsperson met with the detainees and was able to talk to each of them in a separate space and at sufficient time. A number of concerns were raised by detainees, such as: **non-compliance with the principle of equality of arms during the trial, length of detention, lack of supervision over the right to an effective remedy, alluding**

**to the fact that the court functions as a structure and has no expressed scrutiny for the efficient review of legal remedies, delays in the translation of court minutes into Albanian, editing of the indictment and other materials that deny them the right to have in time all the evidence and information in the language that they understand, double standards of implementation of legislation by establishing practices that are not in accordance with the legislation of the Republic of Kosovo, unequal treatment with other prisoners in terms of restrictive measures for protection from pandemics for family visits, inactivity of the Advocate of the Specialized Chambers and lack of confidential way to address him, etc.**

**The Ombudsperson notes that the principle of equality of arms in criminal proceedings is** guaranteed by Article 21 of the Law on Specialized Chambers, within the rights of the accused. This article defines the rights of the accused and, inter alia, guarantees that all persons are equal before the Specialized Chambers, the accused has the right to question, or have questioned, witnesses against him and to ensure the presence and examination of witnesses on his behalf under the same conditions as those of witnesses against him, to be tried within a reasonable time, etc.

Likewise, **Article 6 of the European Convention on Human Rights** also guarantees the right to a fair and impartial trial. In this regard, Article 53 of the Constitution of the Republic of Kosovo stipulates that those human rights and fundamental freedoms guaranteed by this Constitution are interpreted in accordance with the judicial decisions of the European Court of Human Rights.

This principle is also guaranteed by Article 14 of the Convention on Political and Civil Rights, which is part of the legal system of the Republic of Kosovo and has priority, in case of conflict, over the provisions of laws and other acts of public institutions of Kosovo. **The Criminal Procedure Code of the Republic of Kosovo, in Article 9,** stipulates that the defendant and the state prosecutor in criminal proceedings have an equal position.

The Ombudsperson recalls that the conduct of criminal proceedings in a language that the accused understands, including the right to receive translated materials, is a right guaranteed by all international standards, the Constitution of the Republic of Kosovo and the Code of Criminal Procedure of the Republic of Kosovo and **it is the obligation of the courts that throughout the court proceedings to ensure that all the rights of the accused to be respected guaranteed by international conventions, which are part of the legal system of the Republic of Kosovo: in the Constitution of the Republic of Kosovo, in the Code of Criminal Procedure and other relevant laws of the Republic of Kosovo.**

**The Office of the Ombudsperson of the Specialized Chambers has been established within the Specialized Chambers.**The Law on Specialized Chambers, in Article 34, paragraph 9, provides: The Ombudsperson of the Specialized Chambers may make recommendations to the President of the Specialized Chambers or the Office of the Specialized Prosecutor pursuant to Article 135 (3) of the Constitution and may make referrals to the Constitutional Court in accordance with Articles 113 (2) and 135 (4) of the Constitution and Article 49 of the Law on Specialized Chambers.

The mandate and official functions of the Ombudsperson are described in detail in constitutional amendment no. 24, in the Law on Specialized Chambers and the Office of the Specialized Prosecutor, in Rule 28 and Rule 29 of the Rules of Procedure and Evidence of the Specialized Chambers of Kosovo and Rule 26 of the Rules of Procedure of the Specialized Chamber of the Constitutional Court.

The way this office is determined to operate and function, does not seem to be in line with the standards and principles accepted by international instruments that guarantee the independence and impartiality of the Ombudsperson Institutions in exercising their function and role. According to the data on the official website of the Specialized Chambers, the Ombudsperson acts as an independent office within the Court: *“Although it is part of the Administrative Office, the Ombudsperson acts independently to monitor, protect and guarantee fundamental rights and freedoms of persons interacting with the Specialized Chambers and the Office of the Specialized Prosecutor. The Ombudsperson has exclusive responsibility for both institutions (Specialized Chambers and the Specialized Prosecutor’s Office).”*<sup>264</sup>

## Access to justice and the right to compensation of war crimes victims

For the establishment of a democratic society, peacebuilding, reconciliation and sustainable development, every society in transition, in the post-conflict stabilization period, has an obligation to address the consequences of war and the past of human rights violations and human freedoms.

In the period of the 90s, in Kosovo there were continuous violations of human rights and freedoms, which culminated during the war of 1998 and 1999 in Kosovo, when serious crimes were committed, such as: killing of civilians, forced displacement of the civilian population, illegal imprisonment of people, torture, sexual violence, destruction of property and economic assets, cultural and religious sites, etc.

More than twenty years after the end of the 1998-1999 war, Kosovo continues to face its past without being able to meet its obligations for institutional documentation of the crimes and all the consequences that have occurred in this period.

Many transitional justice initiatives have been undertaken, mostly unilateral, uncoordinated and non-inclusive. It was not possible to achieve a peaceful future by establishing bridges of communication and dialogue, where the crimes committed would be documented, those who caused the crimes would be tried, the right to restitution of victims through compensation would be established and offered justice to the victims of crime.

The Ombudsperson notes that according to local and international organizations as well as the Kosovo authorities during the Kosovo war in 1998-1999, more than 13,500 people were killed and disappeared. These figures are also published by the Humanitarian Law Center in Kosovo and are also used by the Kosovo authorities. Numerous data have been provided by both foreign authors and institutions for the protection of human rights, such as the Council for the Protection of Human Rights and Freedoms in Kosovo, Human Rights, Amnesty International, the Helsinki Committee, etc.

According to these sources, about 76% of these killed persons were civilians. Evidence states that 10,794 Albanians and 2,197 Serbs were killed, while the rest belonged to other ethnic groups living in Kosovo. Today, more than 21 years after the end of the war in Kosovo, 1,622 people are still considered missing and nothing is still known about them.

According to some unofficial estimates by economic experts from Kosovo, the total cost of material damage caused by Serbia during the 1998-1999 war is estimated at around 22 billion euros, but the details have not yet been properly verified by the Kosovo authorities,

<sup>264</sup> <https://www.scp-ks.org/sq/avokati-i-popullit/roli-i-avokatit-tyo-popullit>

which also have not yet taken any formal steps towards assessing damages or seeking compensation for material damages caused by Serbia during the Kosovo war.

Law no. 04/L-023 on Missing Persons of 2011 defines the mandate of the Government Commission for Missing Persons, as a government mechanism that reviews and informs the families of missing persons about the results of search requests, manages and harmonizes the activities of local institutions and international issues related to the issue of missing persons; tries to unravel the fate of missing persons as a result of the 1998-1999 war. This law guarantees the right of family members to know the fate and whereabouts of missing family members as a result of the war in Kosovo; regulates the legal status of missing persons; enables the creation of a central Register for missing persons. On December 10, 2021, the head of the Government Commission for Missing Persons stated that since the end of the war over 2700 locations have been excavated, however the fate of over 1600 missing persons during the last war in Kosovo still remains unknown.

According to the Commission, in the Republic of Kosovo, during this year, excavations were carried out in nine different locations and during this year the mortal remains of 25 people were handed over to families for reburial.

In order to document wartime crimes, in 2011, the Government of Kosovo established the War Crimes Research Institute, which was operational until 2018 and which has failed to do enough to fulfill its mission and for documenting serious human rights violations and crimes committed during the war, as well as uncovering the truth. The materials collected by this Institute as well as the publications it has managed to publish have not managed to be promoted and have not been made public, remaining outside the purpose for which they were collected.

The Ombudsperson appreciates the recently taken initiative, in May 2021, to establish a working group to assess the needs for the establishment of the Institute for War Crimes, to document war crimes and to know the truth.

In the Work Report for 2020<sup>265</sup> of the State Prosecutor, regarding war crimes cases, it is stated that the relevant department within the Special Prosecution of the Republic of Kosovo, had transferred from the previous year a total of 1,166 cases, received 113 new cases and solved 60 cases.

While in the Work Report of the State Prosecutor, for the first half of 2021<sup>266</sup>, The State Prosecutor has transferred from the previous year a total of 1,152 war crimes cases, has received 43 new cases and has solved 11 cases.

The number of indictments filed for war crimes in Kosovo, according to competencies, from October 1999 to October 2018, is as follows: EULEX 22 indictments, UNMIK: 10 indictments; Local prosecutors: 16 indictments, so far in total 48 indictments.

The International Criminal Tribunal for the former Yugoslavia, based in The Hague, established in 1993, has been dealing with the investigation and trial of war crimes in the former Yugoslavia and has functioned until 2017. According to data from the Humanitarian Fund, this court for war crimes in Kosovo has charged 15 people, accused 9 Serbs and 6 Albanians, of whom 6 Serbs and 2 Albanians have been convicted.

265 <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/Raporti%20i%20Pun%C3%ABs%202020%20-%20SHQ.PDF>

266 <https://prokuroriarks.org/assets/cms/uploads/files/Dokumente%20Publikime/PSH/Publikime/Raporti%20i%20Prokurorit%20t%C3%AB%20Shtetit-gjasht%C3%ABmujori%20i%20par%C3%AB%202021.pdf>

The Ombudsperson was informed from meetings with representatives of several Civil Society Organizations that a large number of lawsuits have been filed in the Kosovo judiciary against the Government of the Republic of Serbia, for compensation of material and non-material damages caused during the war between 1998 and 1999. The rulings in question show that the regular courts have rejected these lawsuits for lack of jurisdiction and the Constitutional Court has ruled inadmissible all these appeals against the decisions of the regular courts. Regarding the above-mentioned lawsuits, in some cases the Supreme Court, among others, reasoned: *“[The Republic of Serbia-RS Government in Belgrade has been sued for damages (ie in this case it is a legal-property dispute in a foreign state) for which dispute the domestic court is not competent to decide, therefore the Supreme Court of Kosovo considers that the courts of lower instance have correctly applied the provisions of article 18.3 and article 39 par. 1 and 2 of the LCP, in the case when they were declared incompetent to adjudicate this legal issue and rejected the claim of the plaintiff, because the Court of the Republic of Kosovo is competent is not competent to decide on this legal issue for the fact that the seat of the Assembly of the Republic of Serbia as a respondent party is not located in the territory of the Courts of the Republic of Kosovo]”*.

The Ombudsperson assesses that the authorities of the Republic of Kosovo have so far not done enough in addressing the issue of war crimes and compensation for material and non-material damage caused during the war in Kosovo. Currently, most crimes committed go unpunished and as a result, injured parties and war crimes victims have been denied the right of access to justice, the right to compensation for war crimes victims and the right to investigate and prosecute the perpetrators of these crimes as well as the right to know the fate of their family members missing during the war. Access to justice for war crimes victims, compensation for war crimes victims, and investigation and prosecution of perpetrators of these crimes is necessary to happen. It is necessary to increase the state responsibility to do more towards documenting, investigating war crimes cases and punishing the perpetrators of these crimes, in order to create a lasting peace and the families of the victims to understand that justice has been established.

Also, regarding missing persons, the institutions of the Republic of Kosovo have not done enough and this issue should be addressed with priority. In these 22 years, the institutions of the Republic of Kosovo seem to have seen the war crimes and missing persons more as the work of international organizations and civil society organizations. The Ombudsperson emphasizes that the information on the whereabouts of the missing must be revealed, it is unacceptable that the fate of the missing continues to be a hostage of politics. There should be a comprehensive national strategy for transitional justice and all parties should be involved to resolve this issue, which should not be politicized but should be treated as a humanitarian issue. The state must ensure the right of access to justice for victims, the right to know about the families of missing persons, to shed light on the fate of all missing persons, to make every effort to bring to justice persons who have committed war crimes and to document and preserve the truth, as a necessary precondition for the establishment of a democratic society, reconciliation, peacebuilding and sustainable development.

The Ombudsperson has ex officio opened a case for investigation, in order to verify how well the authorities are fulfilling their positive obligation related to the four main pillars of transitional justice: criminal investigation and punishment for those who have committed war crimes and crimes against humanity, institutional measures in documenting and remembering the past, fulfilling the obligation for reparations, as an important aspect of establishing justice for victims, as well as an essential component of transitional justice and structural and legislative changes aimed at restoring the rule of law and the abolition of the culture of impunity, restoring institutional trust as a precondition for the establishment of a democratic society.

## VII. International cooperation

The co-operation of National Institutions for Human Rights (NIHR), such as the Ombudsperson, with international human rights mechanisms is an essential requirement of the Paris Principles<sup>267</sup> and the Principles of Venice,<sup>268</sup> because in addition to protecting and promoting human rights, the rule of law and good governance at the national level, they also serve as a bridge to oversee the effective implementation of international human rights obligations arising from international mechanisms and instruments, which are part of the international human rights system. They are also an important link between state authorities and civil society, and as such help to remove obstacles to the protection of individual rights and state responsibilities in relation to their realization.

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<sup>267</sup> The Paris Principles are the minimum criteria that a national human rights institution must have in order to be considered credible, independent and effective in the international arena.

<sup>268</sup> Principles for the Protection and Promotion of the Institutions of Ombudsmen (Venice Principles) of Venice for the Institutions of Ombudsmen, Venice Commission, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)



Due to the importance of these institutions at the international level, the 2030 United Nations Agenda for Sustainable Development<sup>269</sup>, has included, through objective 16.A.1: *“The existence of independent National Human Rights Institutions in accordance with the Paris Principles”*<sup>270</sup>, this for the fact that, as the Merida Declaration states<sup>271</sup> *“These institutions will provide an important framework for the implementation of the Sustainable Development Goals, as well as the implementation of these objectives that will contribute to the realization of human rights.”*

Last year, in order to strengthen the position of Ombudsperson institutions worldwide in the exercise of their independent mandate, the United Nations General Assembly, on 16 December 2020, adopted a resolution on *“The Role of Ombudsperson Institutions and Mediators in the promotion and protection of human rights, good governance and the rule of law”*<sup>272</sup>, which is very important step, that consists of creation of a global standard for these institutions. This year, on 31 March 2021, the Council of Europe, considering these institutions as pillars for respect for human rights, rule of law and democracy, has approved Recommendation CM/Rec (2021) 1 of the Committee of Ministers<sup>273</sup> regarding the development and strengthening of National Institutions for Human Rights, that are effective, pluralistic and independent. This recommendation has reiterated the principles that must be respected in relation to the National Institutions for Human Rights (NIHR), including:

- <sup>269</sup> Agenda 2030 includes 17 Sustainable Development Goals (SDGs). They are urgent calls for action for all developed and developing countries for a global partnership in their implementation. The objectives are primarily aimed at ending poverty and other deprivations, through developments and taking strategic actions that improve health, education, reduce inequality and promote economic growth. The Assembly of the Republic of Kosovo, on 25 January, 2018, approved the resolution on the SDGs.
- <sup>270</sup> 2030 Agenda for Sustainable Development, objective 16, accessible at: [https://www.ohchr.org/Documents/Issues/HRIndicators/SDG\\_Indicator\\_16a1\\_Metadata.pdf](https://www.ohchr.org/Documents/Issues/HRIndicators/SDG_Indicator_16a1_Metadata.pdf)
- <sup>271</sup> Merida Declaration on the Role of National Institutions for Human Rights in the Implementation of the 2030 Agenda for Sustainable Development, Article 12, accessible at: <https://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf>
- <sup>272</sup> United Nations General Assembly, Resolution on the role of Ombudsmen and Mediators in promoting and protecting human rights, good governance and the rule of law, 16 December 2020, available at: <https://undocs.org/en/A/RES/75/186>
- <sup>273</sup> Council of Europe, Recommendation CM/Rec (2021) 1 of the Committee of Ministers on the development and strengthening of effective, pluralistic and independent National Institutions for Human Rights.

- Having a strong legal basis, at the constitutional level.
- Providing adequate access to information and be involved in all stages of law-making and policy-making that have an impact on human rights.
- Implementing the recommendations of the HRC and make it a legal obligation to return reasoned answers and within the deadline.
- Raising awareness and cooperation of all public authorities in relation to the mandate, independence and role of the NIHR.
- Protecting the NIHR from threats and intimidation, while respecting the confidentiality of the information collected by them.

The Ombudsperson of the Republic of Kosovo is an institution with many mandates, and among them is to act as an equality body. Equality bodies are independent institutions, usually operating within a National Human Rights Institution or separate ones, whose main mission is to assist victims of discrimination, monitor and report on discrimination issues, and promote equality in their respective countries. Therefore, in order to strengthen the role and independence of equality bodies, the European Union (EU), on 24 July 2021, has launched a new initiative<sup>274</sup> to set minimum binding standards on how they should operate on all grounds of discrimination, adopting adequate legislation for the member states of the European Union, in the form of a new directive.

The Institution of the Ombudsperson of Kosovo, as an independent constitutional institution for human rights, continues to be committed to acting in full compliance with international standards for the functioning of these institutions, including good cooperation with various international institutions, in which this year, despite the problems caused by the crisis with the global pandemic COVID-19, has participated in a large number of international meetings, listed below:

No.	Description of the activity	Date	Organizer
1.	Meeting between the Ombudsmen of the Western Balkans and Turkey (virtual)	20 January 2021	The Ombudsperson of Turkey
2.	Meeting on human rights violations established by the draft protocol of the Oviedo Convention (virtual)	10 February 2021	ENNHRI Equine
3.	Meeting on the United Nations Resolution on the Institutions of Ombudsmen and Mediators (virtual)	23 February 2021	IOI
4.	Participation in the launch of the project "Ending Violence Against Women in the Western Balkans and Turkey: Implementing Norms, Changing Mindset", Phase II - Addressing the Impacts of COVID-19 (virtual)	26 February 2021	UN Women
5.	Workshop "Addressing age discrimination: Increasing our engagement with young people" (virtual)	1-2 March 2021	Equine
6.	Participation in the launch of the ODIHR publication on the Human Rights of Armed Forces Personnel (virtual)	5 March 2021	ODIHR

<sup>274</sup> European Commission, New Initiative for Mandatory Standards for Equality Bodies, [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13098-Equality-bodies-binding-standards\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13098-Equality-bodies-binding-standards_en)



7.	Virtual meeting related to the investigation of deaths in prisons	12 March 2021	Council of Europe Northern Ireland Prison Ombudsperson
8.	Meeting regarding the work of the equality bodies regarding the vaccination phase for COVID-19 (virtual)	24 March 2021	EQUINET
9.	Council of Europe Regional Workshop “Addressing Hate Speech through the Use of Communication and Human Rights-Based Approaches” (virtual)	29 March 2021	Council of Europe
10.	Webinar on the work of National Institutions for Human Rights in relation to the Treaty on Business and Human Rights (virtual)	14 April 2021	ENNHRI
11.	Artificial intelligence training (virtual)	22 April 2021	EQUINET
12.	High Level Meeting on the Council of Europe Recommendation on the Establishment and Strengthening of National Human Rights Institutions, effective, pluralistic and independent (virtual)	26 April 2021	ENNHRI
13.	Meeting of the European region of the International Ombudsmen Institute (virtual)	6 May 2021	IOI
14.	Regional meeting on the rights of LGBTI people (virtual)	17 May 2021	Commissioner for Protection against Discrimination in Albania
15.	General Assembly and World Conference of the International Ombudsmen Institute (IOI) (virtual)	25-27 May 2021	IOI
16.	Official visit to the Ombudsperson in Northern Macedonia Skopje, Northern Macedonia	27 May 2021	The Ombudsperson of Northern Macedonia
	Meeting of the working group of the European Forum of National Preventive Mechanisms	1 June 2021	European Forum of NPMs
17.	Summit on “Ensuring respect for the human rights of migrants at the border: the role of the NIHR” (virtual)	2-3 June 2021	ENNHRI
	Consultative meeting of the working group of the European Forum of National Preventive Mechanisms	18 June 2021	European Forum of NPMs
18.	SIGMA Webinar on the Implementation of Administrative Procedure Laws in the Western Balkans (virtual)	22 June 2021	SIGMA
19.	A series of webinars on the right to health and access to health care (virtual)	22-30 June 2021	EQUINET
20.	Official visit to the Ombudsperson in Albania Tirana Albania	22-23 June 2021	The Ombudsperson of Albania
21.	Study visit to the Commissioner for Protection against Discrimination in Albania Tirana Albania	23-25 June 2021	Commissioner for Protection against Discrimination in Albania

22.	International Conference: COVID-19 and the Rights of Persons Deprived of their Liberty Pristina, Kosovo	25 June 2021	Council of Europe
23.	Regional Conference: Fighting Anti-Gypsyism as a Precondition for Achieving Equality for Roma - The Role of Ombudsperson Institutions and Equality Bodies (virtual)	22 June 2021	EQUINET
24.	SIGMA webinar on the implementation of laws on administrative procedure in the Western Balkans (virtual)	22 June 2021	SIGMA
25.	Video conference on human rights and migrants	7 July 2021	UN Special Rapporteur on Human Rights and Migrants
26.	Closed meeting with monitoring institutions on the issue of sexual and gender-based violence in places of detention (virtual)	21 July 2021	ODIHR
27.	Meeting of the Association of Ombudspersons of Francophonie (AOMF) on the topic: "Protection of the rights of future generations, what is the role of the Ombudsperson?" (virtual)	12 -13 July 2021	AOMF
28.	Meeting on independent monitoring of detention in the protection of human rights in prisons preventing and combating violent extremism and radicalization against terrorism (virtual)	15 July 2021	ODIHR
29.	Eighth Regional Forum on the Rule of Law in Southeast Europe Pristina, Kosovo	3-4 September 2021	Civil Rights Defenders
30.	Webinar on modern technologies & media in the work of Ombudspersons (virtual)	10 September 2021	AOM & Human Rights Defender of Armenia
31.	The 71st Session of the WHO Regional Committee for Europe on the topic: "Addressing barriers to public health and ensuring that no one is left behind" (virtual)	17 September 2021	WHO
32.	NPM European Conference. on "The role of the NPM in the effective implementation of the judgments of the European Court of Human Rights and the recommendations of the CPT - Police ill-treatment and effective investigations into alleged ill-treatment" (virtual)	20-22 September 2021	Council of Europe
33.	Extraordinary Annual Meeting of the European Network for Equality Bodies (EQUINET) (virtual)	27 September 2021	Equine
34.	General Assembly of the European Network of National Institutions for Human Rights (ENNHRI) (virtual)	29 September 2021	ENNHRI
35.	The second meeting of the Network of National Mechanisms against Torture in Southeast Europe, with the topic "Interviewing techniques with vulnerable groups " Budapest, Hungary	29-30 September 2021	Office of the Hungarian Commissioner for Human Rights

36.	General Assembly and Annual Conference of the Association of Mediterranean Ombudsmen (AOM) Nafplio, Greece	4-5 October 2021	AOM
37.	Online course related to General Recommendation no. ECRI 15 on combating hate speech (virtual)	13 September-24 October 2021	Council of Europe
38.	The Thirteenth International Conference of Ombudsperson Institutions for the Armed Forces, with the general topic "The contribution of Ombudsmen in the operational effectiveness of the armed forces" (virtual)	18-22 October 2021	DCAF
39.	International seminar for representatives of equality bodies from the Western Balkans and the Eastern Partnership region, on the topic: "Addressing hate speech through the use of communication and human rights-based approaches" Strasbourg, France	2-3 November 2021	Council of Europe
40.	General Assembly of the European Network for Equality Bodies (EQUINET) (virtual)	9 November 2021	EQUINET
41.	Seminar on the Manchester Memorandum on the Establishment of National Ombudsperson Institutions (virtual)	9-10 November 2021	Parliamentary Ombudsperson for Health of Wales
42.	Webinar on the topic: "The Right to Education of Persons with Disabilities during the COVID-19 pandemic" (virtual)	10 November 2021	ENNHRI The Ombudsperson of Georgia
43.	Official visit to the Detention Center of Specialized Chambers and the Specialized Chambers of Kosovo in The Hague (virtual)	9-11 November 2021	OIK
44.	Leadership Forum of National Institutions for Human Rights (virtual)	10-26 November 2021	ENNHRI
45.	EQUINET Conference on "Building Equal Cities: Promoting Equality and Addressing Discrimination at the Local Level" (virtual)	25-26 October 2021	EQUINET
46.	Regional Conference on Hate Crimes in Southeast Europe Pristina, Kosovo	23 November 2021	OSCE
47.	Online course on Human Rights and the 2030 Agenda for Sustainable Development: What is the role of the ICHR in the UNECE region? (virtual)	1 November-31 January 2021	ENNHRI
48.	International conference on "Advancing the rights of older people in an era of longevity" (virtual)	1 December 2021	IOI AOM The Ombudsperson of Israel
49.	General Assembly of the European Network for National Institutions for Human Rights: Elections, strategic plan, financial sustainability (virtual)	3 December 2021	ENNHRI

50.	Conference on “The role of digitalization in improving Ombudsperson Institutions” (virtual)	6 December 2021	AOM Moroccan Ombudsperson
51.	Round table of regional exchange on the topic: “The role of equality bodies and human rights institutions in the judiciary” (virtual)	9 December 2021	OSCE
52.	Study visit of representatives of the judiciary and the National Mechanism for the Prevention of Torture to the Council of Europe and the European Court of Human Rights Strasbourg, France	13-14 December 2021	Council of Europe
53.	Training on the mandate of National Institutions with Sustainable Development Goals and good practices (virtual)	14 December 2021	The Ombudsperson of Albania

Table: Participation in international meetings

## Cooperation with counterparts and other international organizations

The Ombudsperson Institution (OI) attaches special importance to cooperation with counterparts and other international human rights organizations and networks, and is therefore committed to engaging in various international activities aimed at exchange of information and good practices in the field of human rights and capacity building. This year, due to the crisis caused by the COVID-19 pandemic, the OIK has held more meetings with physical participation at the level of neighboring countries, while other international meetings have been held virtually. Below we present some of the most important.

The OIK has a memorandum of cooperation signed with the Ombudsperson and the Commissioner for Protection from Discrimination of Albania and North Macedonia, therefore, several visits have been made within it.

On 10 February 2021, the Ombudsperson of Kosovo, Mr. Naim Qelaj, received on an official visit his counterparts from Albania: Mrs. Erinda Ballanca, Ombudsperson, and Mr. Robert Gajda, Commissioner for Protection from Discrimination. They had come to congratulate Mr. Qelaj for his election as Ombudsperson. During the meeting the parties also discussed the impact of the COVID-19 pandemic on human rights in Kosovo and Albania and the work done by both institutions in addressing citizens' complaints and pledged that the established tradition of cooperation will continue in the mutual exchange of staff, as well as mutual support of institutions in regional, European and international networks.

On 27 May 2021, the Ombudsperson of Kosovo and Albania paid a joint official visit to their counterpart in Northern Macedonia. This visit was made to congratulate Mr. Naser Ziberi for taking the mandate as the Ombudsperson of the Republic of North Macedonia. During this visit, Mr. Qelaj said: *“We have already established a tradition of cooperation between the three institutions. This visit also aims to continue in this spirit to further contribute to our joint work. “Having gone through the whole pandemic situation and faced many challenges, we realized that cooperation and solidarity are the two main pillars of society.”*

On 21-22 June 2021, a delegation led by the Ombudsperson, Mr. Naim Qelaj, paid an official visit to the counterpart institution in Albania, where he had the opportunity to get acquainted with the work and staff. During this visit, he also had separate meetings with the President, the Speaker of the Assembly and the President of the Constitutional Court of the Republic of Albania. Then, on 23-25 June 2021, a delegation of the OIK, composed of officials of the Department for Protection against Discrimination, had a study visit to the Commissioner for Protection against Discrimination of the Republic of Albania. During this visit, information was exchanged regarding the work of this institution, organization, action procedures, case handling practices and the methodology of drafting

the annual report. The focus of the discussion was also to find the better ways to strengthen cooperation between mechanisms for protection against discrimination of Kosovo and Albania, in order to exchange experiences and best practices, as well as to provide the necessary and effective degree of protection of these rights against negative phenomena of discrimination, or discriminatory behaviors.

On 2 July 2021, the OIK received in a courtesy meeting the Ombudsperson of Turkey, Mr. Seref Malkoc. During this meeting was discussed the work and activities of our institutions on important human rights issues, with special emphasis on the work done during the pandemic. The Ombudsperson of Turkey, Mr. Malkoc said: *“He follows the work of the Ombudsperson of Kosovo with great interest and added that in the future mutual meetings should be held in order to deepen cooperation between the two institutions.”*

On 1-2 December the OIK hosted the Fourth Regional Meeting between the Ombudsmen and the Commissioners for Protection from Discrimination of Kosovo, Albania and North Macedonia. On the first day of the meeting, the topic of discussion was the work of institutions during the COVID-19 pandemic period, with special emphasis on the challenges of government measures to vaccinate the population and their balance with human rights standards, the independence of institutions human rights, as well as specific plans and areas for future cooperation. Courses on the second day of the meeting, given the principles regarding the status of institutions for the protection and promotion of human rights (the so-called: Paris Principles) require national human rights institutions to establish *“effective cooperation with civil society”*; On the second day of this meeting, a discussion forum was held with representatives of civil society, which aimed to highlight the current challenges and future opportunities in the partnership of national institutions for human rights with civil society. Important conclusions emerged from this discussion forum, which will be worked on with dedication in the future. In the framework of this meeting, the participants held separate meetings with the President and the President of the Constitutional Court of the Republic of Kosovo.

On the other hand, the OIK actively participates in the activities of the networks in which it is a member. Even in this reporting year, he attended a series of meetings, most of which were held virtually and the most important ones will be mentioned below.

The OIK this year, on 26-27 May 2021, participated in the General Assembly and the World Conference of the International Ombudsperson Institute (IOI), which was organized by the Ombudsperson of Ireland. The theme of this virtual conference was *“Let us give a voice to those who have no voice”* and it gathered ombudsmen offices from all over the world, who share their best practices in working with vulnerable groups, such as: detainees, the elderly, children and adolescents, refugees and asylum seekers, the homeless, national minorities and people with disabilities. She also addressed the challenges Ombudsmen faced during the COVID-19 health crisis and how they were overcome. At the end of it, the Dublin Declaration was adopted.<sup>275</sup>

A series of activities in which the OIK has participated have been carried out by ENNHRI, in which it is a member.

On 26-27 April 2021, a High Level Meeting was organized on the Council of Europe Recommendation on the Development and Strengthening of National Human Rights

<sup>275</sup> International Ombudsmen Institute, Dublin Declaration, accessible at: <https://www.theioi.org/ioi-activities/policies-principles-declarations>

Institutions (NHRI), which are independent, effective and pluralistic.<sup>276</sup> The first session of this important meeting focused on exploring ways to further strengthen cooperation and support between the Council of Europe and the NHRI at the national level and on the significant participation of the NHRI and ENNHRI in processes and mechanisms of the Council of Europe, in accordance with the adopted Recommendation. At this meeting, among others, the engagement of a Permanent Special Rapporteur of the Council of Europe was requested, who will report continuously on the implementation of this Recommendation. Whereas the second session focused on the interaction between the Council of Europe (its mechanisms) and the NHRI and how to advance the implementation of the Recommendation and the European Convention on Human Rights at the national level. This session called for an increased commitment to mutual cooperation as well as the creation of an opportunity for the NHRI to seek opinions on various human rights issues from the Venice Commission. Taking into account the discussions and results of the first day of the meeting, the representatives of the NHRI, members of the ENNHRI, met again in an internal meeting on the second day, in order to identify strategic plans for the NHRI and ENNHRI to follow up on the implementation of the recommendation, and to establish closer cooperation with the Council of Europe, for the promotion and better protection of human rights throughout the region. From the discussion of both working groups of this day, the following conclusions were drawn:

- NHRI have an important role to play in monitoring the implementation of this Council of Europe Recommendation;
- Organizing events in order to promote the recommendation, necessary;
- Translate and publish it on the web-respective pages of NHRI;
- Potentially also motivate the parliamentary debate;
- Recommendation to be promoted by being included in the Report of the NHRI.

In addition to this meeting, ENNHRI in the period from 10-26 November 2021, for the first time organized the Leadership Forum of NHRI. This forum aimed to provide support to the NHRI leaders in dealing with dilemmas regarding the complex decisions that need to be made and the possibilities regarding the best solutions within their work in fulfilling the mandate. The main goal of this forum was understanding and improving of leadership, improvement of skills in areas critical to the institution we lead, find solutions and approach issues together with experts and other counterpart institutions, and build and establish relationships with strong with other partners for sharing practices.<sup>277</sup>

Also this year, ENNHRI published the Report on the Situation of Rule of Law in Europe<sup>278</sup>, which presents the perspective of all member institutions of this network, on the state of rule of law in their countries, based on monitoring and data collection by member institutions, including the part for Kosovo, according to the report sent by the Institution of the Ombudsperson of the Republic of Kosovo. The findings of this report highlight the importance of stepping up efforts to strengthen the framework for respect for the rule of law, human rights and democracy in candidate and potential candidate countries in the EU accession process, as set out in the Commission's Enlargement Strategy. European 2021 for the Western Balkans. In this context, the establishment and strengthening of the NHRI is of particular importance, also as a tool to enable the NHRI to contribute to the

<sup>276</sup> ENNHRI, High Level Meeting on the Council of Europe Recommendation on the Development and Empowerment of National Human Rights Institutions (NHRI), which are independent, effective and pluralistic, <https://ennhri.org/online-high-level-meeting-council-of-europe-recommendation-on-the-development-and-strengthening-of-effective-pluralist-and-independent-nhris/>

<sup>277</sup> ENNHRI, NHRI Leadership Forum, <https://ennhri.org/news-and-blog/event/nhri-leadership-forum-2021-leading-with-others-nurturing-resilient-and-effective-nhri-leadership/>

<sup>278</sup> ENNHRI Rule of Law Report on Europe, <https://ennhri.org/news-and-blog/ennhri-publishes-its-second-annual-report-on-the-state-of-the-rule-of-law-in-europe/>

regular and comprehensive monitoring and follow-up of rule of law developments in the enlargement region.<sup>279</sup>

Also, on 3 December 2021, the ENNHRI General Assembly was held, in which the work of this network during the year was discussed. In the first session, the report of the head of the network, the report of the secretariat, the financial report and the accreditation report were approved; in the second session it was voted for the election of the chair of ENNHRI, a role which the members entrusted to Mrs. Sirpa Rautio, from the Finnish Center for Human Rights, elected the new board of directors, and in the third session, all participants were divided into small groups in which the Strategic Network Plan for 2022 was discussed.

ENNHRI, in cooperation with the Danish Institute for Human Rights, from 1 November has been launching an online course on “Agenda 2030 for Sustainable Development: What is the Role of NHRIs in the UNECE Region” which is expected to last until 24 January 2022. This training was attended by 4 officials from the OIK. The course aims to explore the possibilities of using the Sustainable Development Agenda and the platform it offers, at the local, regional and international level, for the advancement of human rights and the work of national human rights institutions in the region.

As reported in previous years, with the Law on Protection from Discrimination, the OIK received the mandate as an equality body, and since 2019 is also a member of the European Network of Equality Bodies (EQUINET).

In the framework of this membership, the OIK participated in several international events. Among the most important was the participation in a series of webinars related to the right to health and access to health care, which were held from 22-30 June 2021. The main purpose of these webinars was to increase the capacity of equality bodies regarding discrimination and inequality in access to health services, to better protect victims of discrimination in this area and to promote equal access to health care services.

On 16 October 2020, the EQUINET General Assembly was held, in which the network’s work was discussed during the year, and the chairman of the network and was voted for the board of directors, the budget, and the work plan for the next year. EQUINET during the year organized a series of meetings, conferences and trainings, which have an extraordinary role in informing the general about the news in this field, but also in the exchange and capacity building of OIK staff, who participate in these activities.

In the framework of the mandate as an equality body, the OIK on 9 December 2021, participated in the regional roundtable on “The role of Equality Bodies and National Institutions for Human Rights in the judiciary”, organized by the OSCE Mission in Albania, which enabled the discussion of key issues related to work against discrimination and the development of joint strategies to address them. The main focus of this roundtable was the discussion of the power of lawsuits in cases of collective interest and their initiation in the Constitutional Court, the role of equality bodies in the presentation of strategic litigation (strategic litigation) and the presentation of Amicus Curiae cases by equality bodies and National Institutions for Human Rights.

On 2-3 November 2022, the OIK participated in the International Seminar for representatives of equality bodies from the Western Balkans and the Eastern Partnership region, on the

<sup>279</sup> ENNHRI Communication regarding the publication of the Rule of Law Report in the enlarging countries, <https://ennhri.org/news-and-blog/ennhri-submits-a-report-on-the-rule-of-law-in-eu-candidate-and-potential-candidate-countries-to-inform-the-european-commission-enlargement-package-2021/>

topic: “Addressing hate speech through the use of communication and approaches based on it human rights” organized by the Council of Europe, within the project “Promoting diversity and equality in the Western Balkans.” The seminar addressed the need to build the capacity of equality bodies in addressing critical cases of hate speech, including redressing the damage caused to victims; exchanging experiences of cooperation with civil society organizations, which represent vulnerable groups, thus putting hate speech counter-narratives into practice.

On 4-5 October 2021, the Ombudsperson participated in the 11th meeting of the Association of Mediterranean Ombudsmen (AMO), on “From the sea that separates us to the sea that unites us”, which was held in Nafplio of Greece. On the first day of this meeting, the focus of discussions was on people on the move and migration, then climate change and natural disasters as well as the important role of Ombudsperson institutions in addressing these topics. On the second day, the proceedings of the General Assembly were held, in which the plan of activities of this association for the next year, the financial report, the new membership applications and the voting for the new members of the governing and executive board were discussed. In the reception organized in honor of this meeting, present was also the President of the Republic of Greece, Mrs. Katerina Sakellaropoulou. The Institution of the Ombudsperson of the Republic of Kosovo is a full member of this Association since 2016.

There is also good cooperation with other counterpart institutions in the region and beyond, with which the Institution of the Ombudsperson of the Republic of Kosovo is in constant communication on issues of common interest.

## Membership in international organizations

The membership of national human rights institutions (NHRIs) in international mechanisms and networks serves to advance the dynamic relationship that should exist between them and the international human rights system. As the OIK is already a member of the most important international networks and organizations, this year it has taken care to interact with them, holding joint meetings, exchange of information and good practices, which help to advance international cooperation.

The following is a tabular presentation of the current state of the OIK’s membership in international mechanisms:

No.	Network / Mechanism	Membership year
1.	European Ombudsperson Institute (EOI)	2002
2.	South East Europe Children's Rights Ombudspersons Network (CRONSEE)	2009
3.	International Ombudsperson Institute (IOI)	2012
4.	European Network of National Human Rights Institutions (ENNHRI)	2013
5.	Association of Ombudsmen and Mediators of La Francophonie (AOMF)	2015
6.	International Conference of Ombuds Institutions for Armed Forces (ICOAF)	2015
7.	Association of Mediterranean Ombudspersons (AOM)	2016
8.	Network of Ombudsmen for Environment and Human Rights <sup>280</sup>	2017
9.	European Network of Equality Bodies (EQUINET)	2019

<sup>280</sup> This network was established in 2017 and has been signed by the following countries: Bosnia, Croatia, Kosovo, Montenegro, Macedonia, Serbia and Slovenia.



During the reporting period, the Ombudsperson Institution has made a formal request to join these human rights networks:

- On 18 June 2021, the OIK presented the application for accession to the Statement on cooperation between Equality Bodies in Southeast Europe, which was established with the aim of advancing cooperation in combating discrimination and achieving full equality for all society in the region of Southeast Europe.
- On 3 November 2021, the OIK sent a formal application for membership in the European Network of Ombudspersons for Children (ENOC) and is awaiting a response. ENOC is a Network of Independent Human Rights Institutions for Children in the member states of the Council of Europe. Its mandate is to facilitate the protection and promotion of children's rights, as enshrined in the United Nations Convention on the Rights of the Child.<sup>281</sup>

In addition, the OIK was invited to and participated in activities of some other mechanisms and networks, where, due to the political barriers, it is only as observer member, such as:

- Global Alliance of National Human Rights Institutions - GANHRI (which reviews the compliance of NHRIs with the Paris Principles);<sup>282</sup>
- National Preventive Mechanisms of the South-East Europe Network (SEE NMPT) (within which the OIK participates in various meetings aimed at ensuring cooperation, promotion and exchange of experience in the field of protection of the rights of persons deprived of liberty).<sup>283</sup>

## Reporting to various international mechanisms

Annually, the OIK receives questionnaires of various topics from international organizations to report on the situation of human rights in Kosovo. This year, several requests for reports and questionnaires have been submitted, as listed in the table below.

<sup>281</sup> European Network of Ombudspersons for Children (ENOC), accessible at: [https://enoc.eu/?page\\_id=2316](https://enoc.eu/?page_id=2316)

<sup>282</sup> The condition for membership in this organization is Kosovo's membership in the United Nations.

<sup>283</sup> The condition for membership in this regional network is Kosovo's accession to the Optional Protocol to the Convention against Torture.

Date	Topic of reporting/survey	Organization/institution to which the report has been submitted
21 June 2021	Answer to the research questionnaire regarding the extension of the list of protected bases within the legislation for protection against discrimination in Europe	European Network of Equality Bodies (EQUINET)
23 June 2021	Response to the request for good practices related to the integration of equality in the work of the Ombudsperson as an equality body	European Network of Equality Bodies (EQUINET)
23 August 2021	Answer to the questionnaire regarding the rate of suicides within the armed forces	The European Organisation of Military Associations and Trade Unions (EUROMIL)
17 September 2021	Report on the work of Ombudsperson institution regarding compulsory vaccination for public servants	Office of the Human Rights Defender of Armenia
2 November 2021	Response to the questionnaire regarding the threats faced by the National Institutions for Human Rights and the responses of international and regional organizations as well as the HRD networks related to them	The OSCE Office for Democratic Institutions and Human Rights (ODIHR)
3 December 2020	Report on the mediation system in Kosovo and the mandate of Ombudsperson institution in this matter	European Institute of Mediation and Public Ethics (IEMEP).

Table: List of reports sent to international organizations



## VIII. Public communication and the media

As in other areas, also in the field of public communication, the ombudsperson Institution has paid great attention to timely conveying the messages and recommendations of the Ombudsperson to the public. During 2021, the Ombudsperson has had numerous appearances of communication with the public, either through the media or through the communication channels of the Institution, in order to raise awareness and promote human rights.

Local media have regularly covered the activities of the Ombudsperson, where the latter has provided an active role in debates and forums by discussing topics in the field of human rights. The level of cooperation of the OIK with the media and the public has deepened even more during this year, and the Institution is committed to return answers to media questions as soon as possible, so that the media are able to report in a timely manner.

Throughout this year, the Ombudsperson and his representatives have participated in interviews, debates and online discussions covered by online media, television and radio. Representatives of the OIK spoke on various human rights issues, such as: protection against discrimination, gender equality, human rights during the pandemic, domestic violence and other topics that fall within the mandate and competencies of the Ombudsperson.

The Ombudsperson has organized Open Days, where he has met with citizens who have submitted their complaints regarding the alleged violations of rights.

The Ombudsperson has also closely followed media reports and during this year has initiated investigations for 12 cases, according to information which had previously been published in the media.

Table 1: Initiated cases Ex-officio from media reporting

<b>Initiated cases Ex-officio from media reporting</b>	<b>12</b>
Portal "Koha.net"	2
Portal "Telegrafi.com"	2
Portal "Gazetaexpress.com"	1
Portal "Kallxo.com"	1
Portal "Frontonline"	1
Portal "Ferizaj press"	1
Portal "Arbresh.info"	1
Portal "Kossev.info"	1
Portal "o4online.info"	1
Televizija "Kanali10 "	1

All events, meetings and activities organized by the Ombudsperson have been presented in various sectors of the public, but also in the media. The media have been regularly interested in issues involving human rights and the Ombudsperson has always responded positively to media invitations to Express its views on the issues they have raised. The public had the opportunity to be informed about the work of Ombudsperson through the platform on the social network Facebook, where his meetings and opinions on human rights and fundamental freedoms were presented and contributed to intensive communication on issues important to society during pandemic time. During 2021, the OIK has managed to add 1,496 new followers, raising the number to 6,874 followers by the end of December.

During 2021, the OIK has published on its website 26 reports, of which 4 reports on cases, 9 reports ex officio and 13 reports of the National Torture Prevention Mechanisms (NTPMs). These reports were published with summary information, were sent to the media and were also distributed through the official website and profile of the OIK on the social network Facebook.

Also, in the reporting period 1 January - 31 December 2021, the public and the media were informed with other information and announcements related to the activities and engagements of the Ombudsperson and his deputies, published on the website of the Institution and in IAP profile page on the social network Facebook. The total number of press releases, news and information on the website reaches 99.

Table 3 presents news, press releases and other information by months.

Table 3: Communications/information/statements/announcements published on the website, by months

2021	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII
	3	13	10	13	10	7	8	1	7	6	8	13
<b>TOTALI</b>	<b>99</b>											

During 2021, numerous public appearances were made through mass media (interviews, speeches, shows, etc.) on television, portals and radio stations. This number of media appearances does not include the distribution or reproduction of the same by electronic portals or other electronic or print media that have borrowed the materials. Also, the media have published numerous articles based on the statements of the Ombudsperson, reactions or information from the OIK.

At the end of the year, the Ombudsperson organized a special press conference, where it presented the preliminary data of statistics and the work performed during 2021.

The Office of Public Communication and Media also manages the process of receiving requests for access to public documents (APD) addressed to the OIK, as well as processing the responses of institutions to the parties. During 2021, the OIK received 15 requests for access to public documents and for all of them allowed access within the legal deadlines. The requested documents were sent to the parties by e-mail.



# IX. Activities of the Ombudsperson

## Activities of the Ombudsperson in the promotion of human rights

The Ombudsperson, even during the reporting year, despite the challenges posed by the COVID-19 pandemic, has tried diligently to fulfill his mandate to promote human rights and fundamental freedoms.

Even this year, the promotion activity has continued in various fields, such as: through activities organized by the Ombudsperson himself, as well as with the support of international mechanisms in the country, and the CSO.

On 4 March 2021, in Gjilan was held the third training, information and interactive session supported by the EU Project “Support to the Institution of the Ombudsperson in Kosovo”. The aim was to develop capacity and raise awareness of the mandate and role of the Ombudsperson Institution (OI) among non-majority communities.

On 8 March 2021, on the occasion of International Women’s Day, the Ombudsperson published a press release where stressed that a gender-equitable society inevitably implies the equal participation of women and men in all spheres of public life, from the representation of women in senior decision-making positions to their involvement in the



planning and drafting of public policies, which directly affect the livelihoods and well-being of both sexes.

On 17 March 2021, the Ombudsperson, in the activity organized with the Chairman of the Kosovo Judicial Council and the Chairman of the Kosovo Prosecutorial Council, and their collaborators, discussed the Law on Disciplinary Liability of Judges and Prosecutors.

On 30 March 2021, the Ombudsperson organized the roundtable in which he published the five-year Strategy 2021-2025, and the Plan for the implementation of the strategy 2021-2023, which aims to increase the influence of the institution in the protection and promotion of human rights and fundamental freedoms as well as in the prevention of violations by public institutions.

On 22 April 2021, the Ombudsperson, on the occasion of the International Earth Day, published a statement to demand everyone's attention to the importance of land, as a source of life and health, and human rights, and reminded the responsible institutions of the importance of orienting policies towards land protection by paying attention to the balance between economic needs and social welfare with environmental ones, in order to protect the environment for present and future generations, according to the concept of sustainable development.

On 27 April 2021, the Ombudsperson, on the occasion of the National Day for Missing Persons, published a statement to commemorate this day for the missing persons and the plight of their families, who seek to know the fate of their loved ones. The Ombudsperson stressed that the families of the victims need to end this tragic past and be allowed to live like others by providing information and justice, emphasizing that the fate of the missing should be a priority in every institutional agenda, in every meeting and in every case be the first condition and address.

On 1 May 2021, the Ombudsperson, on the occasion of the International Labor Day, published a statement through which he drew attention to the poor condition of workers, emphasizing that many challenges remain ahead that require the commitment of all sectors to improve of this condition.

On 3 May 2021, the Ombudsperson, on the occasion of the World Press Freedom Day, organized an activity and through a published statement brought to attention the freedom of the press and the security of journalists which are one of the essential elements of a democratic society. The Ombudsperson called on the security and justice system to prioritize and effectively resolve cases of attacks and threats against journalists.

On 11 May 2021, the Ombudsperson participated in a roundtable discussion organized by the GAP Institute that presented its report: "Do we have a surplus of schools? The need for restructuring of pre-university educational institutions ", where he stressed that the right of the child to education is not only a matter of access to education but also of its quality. He added that a well-analysed plan and strategy is needed, utilizing the experiences of countries that have passed this stage, adapting to our needs and conditions.

On 5 June 2021, the Ombudsperson, on the occasion of World Environment Day, joining the global campaign "Ecosystem Restoration", addressed the public with a statement highlighting the importance of environmental protection and its impact on human rights. The Ombudsperson once again called on all institutions in the country for the need to prioritize the environment, focusing in particular on preventive and avoidance measures, in order to respect the right of citizens to a safe and healthy environment.

On 2 July 2021, the Ombudsperson participated in the opening of the campaign for the promotion of the Law on Child Protection, organized by the Down Syndrome Kosova Association (DSK), which had a special focus on promoting the protection of children with disabilities and the prohibition of corporal punishment, where he stressed that children still face difficulties in enjoying the right to education and social and health protection, and called on state institutions to do more in this regard, especially for children with disabilities.

On 7 September 2021, the Ombudsperson, in cooperation with the UNHCR and the Civil Rights Program (CRP/K), organized a conference on the topic: "*Do not leave anyone behind - The importance of creating a legal identity and access to rights*". This event was organized to mark the 60th anniversary of the 1961 Convention on the Reduction of Statelessness, where relevant authorities, representatives of municipalities, international organizations, civil society and unregistered persons discussed the importance of registering a civil status, as well as encouraged the relevant institutions to establish a mechanism to systematically identify solutions to be provided to unregistered persons at risk of statelessness, in accordance with the 1961 Convention on the Reduction of Statelessness.

On 28 September 2021, the Ombudsperson participated in a roundtable to mark the International Day for Universal Access to Information, organized by the Information and Privacy Agency.

On 11 October 2021, the Ombudsperson, in cooperation with the Council of Europe, organized a conference to mark World Mental Health Day, the aim of which was to raise public awareness of European standards in the field of involuntary placement in institutions of psychiatric prisons of persons with mental disorders deprived of liberty. The conference was organized following the findings and recommendations of the European Committee for the Prevention of Torture (CPT) and the National Preventive Mechanism (NPMT), after their numerous visits to closed psychiatric institutions.

On 3 November 2021, the Ombudsperson organized the first constitutive Forum for dialogue between the Ombudsperson Institution in Kosovo and Civil Society Organizations, the purpose of which was to establish a joint cooperation platform in order to identify

challenges and violations of human rights and the development of joint activities aimed at promoting and protecting human rights in Kosovo.

On 30 November 2021, the Ombudsperson participated in a roundtable organized by the NGO “Advancing Together”, the UNHCR Mission in Kosovo and the Ministry of Communities and Returns, on the topic: “Relocation in Kosovo - continuous gaps and solutions”. In this event was discussed about the current situation of the return process, integration challenges, as well as the identification of needs for sustainable solutions for returnees in Kosovo and internally displaced persons.

On 6 December 2021, the Ombudsperson participated in the conference: “Institutional Responsibility for Human Rights”, organized by the Youth Initiative for Human Rights, YIHR.

On 10 December 2021, the Ombudsperson, on the occasion of the International Human Rights Day, published a statement stressing that Covid-19 pandemic was another “war” of its kind between the individual and society, where the world had to find the “golden mean” between preserving human health and respecting the fundamental rights and freedoms of the individual, as values that, in an extraordinary situation, have extremely challenged each other. The Ombudsperson, on this day published the Report on the Impact of the Covid-19 Pandemic on Human Rights in Kosovo, in which the respect for fundamental human rights and freedoms is at the heart of all other state efforts and interests.

On 12 December 2021, the Ombudsperson participated in the roundtable discussion: “International Human Rights Day - Violation of the Right to Know”, organized by the Resource Center for Missing Persons, which discussed the main violations of human rights, pending excavations, the morgue in Pristina and the Law on Missing Persons, in which case the panel participants also answered questions from representatives of the families of missing persons about their concerns regarding war crimes and determining the fate of missing persons.

On 21 December 2021, the Ombudsperson participated in the closing conference of the project “ Strengthening the Institutions in the fight against torture, ill-treatment and other degrading treatment”, supported by the Council of Europe office in Pristina, which was organized to communicate the results and achievements of the project that has lasted 18 months, and to thank all the partners, beneficiaries and experts for the great commitment and excellent cooperation during the implementation.

### **Cooperation with local institutions and non-governmental organizations and promotion of human rights**

Institutional cooperation in the field of human rights with local institutions and civil society has continued this year.

During the reporting year, the Ombudsperson and his associates participated in roundtables, conferences, virtual meetings, workshops, trainings, public debates, consultative and thematic meetings as well as cultural activities, organized by public institutions and civil society organizations.. These activities address various topics in the field of fundamental human rights and freedoms.

In February 2021, in order to establish cooperation for the implementation of joint activities and projects in the field of human rights, the OIK and Fehmi Agani University in Gjakova signed a bilateral Memorandum of Understanding focusing on cooperation between these two institutions in the spirit of equality, transparency, development of necessary capacities

in terms of scientific studies, promotion of scientific initiatives and cultural exchange, promotion of high standards and quality of research and in particular the promotion and education of human rights.

In May 2021, the Ombudsperson organized a meeting with journalists in honor of the World Press Freedom Day with whom he discussed their challenges at work and the advancement to future cooperation in the field of human rights in general and the right to media freedom in particular.

In June 2021, the Ombudsperson and the NGO Advancing Together (AT) signs the continuation of the Memorandum of Understanding, which has already established a platform for cooperation in the implementation of projects in the field of good governance and human rights.

On 29 July 2021, the Ombudsperson received in a meeting representative of non-governmental organizations dealing with activities dedicated to people with disabilities, in which was discussed the work and activities of associations for the blind, deaf, children with autism and Down syndrome, and in particular for the problems they encounter in their work.

On 25 October 2021, the Informal Advocacy Task Force on Gender-Sensitive Standards for Occupational Safety, Health and Decent Work was established by a wide range of actors in the field. The task force consists of the Ombudsperson, as chair, while the co-chair will be the representative of the Group of Women MPs and a number of civil society organizations as well as the Labor Inspectorate, Kosovo Chamber of Commerce, and the Union of Independent Trade Unions of Kosovo. The Secretariat of the Task Force will be provided by UN Women. This Task Force was established with the aim of developing, advocating and promoting occupational safety and health for all, which will create a platform for the regular exchange of information, awareness raising and advocating for functional formal mechanisms and social dialogue at the national level.

On 3 November 2021, the Ombudsperson organized the first constitutive Forum for dialogue between the Ombudsperson Institution in Kosovo and Civil Society Organizations, the purpose of which is to establish a joint cooperation platform in order to identify challenges and violations of human rights and the development of joint activities aimed at promoting and protecting human rights in Kosovo.

In December 2021, the Ombudsperson and the NGO "Civil Rights Program in Kosovo" (CRP/K) signs cooperation agreements for the purpose of cooperation for the implementation of joint activities and projects in the field of human rights, the purpose of which is to improve respect for human rights in the country. The scope of the agreement includes the protection, promotion and advocacy of human rights, protection against discrimination, based on the mission and vision of the Ombudsperson Institution and CRP/K.

Both the Ombudsperson and the representatives of Civil Society Organizations discussed the importance and necessity of establishing and functioning of the forum, in order to address important issues, such as: human rights and fundamental freedoms in Kosovo; systematic human rights violations; promoting the work of the Ombudsperson Institution and Civil Society Organizations working on human rights issues; coordination of joint activities in the future and mutual cooperation.

On 2 December 2021, the Ombudsperson organized in Prishtina the round table of the Forum with civil society in the framework of the Fourth Regional Meeting between the Ombudspersons, the Ombudsperson of Albania and the Ombudsperson of Northern Macedonia, with the participation of the Albanian Commissioner for Protection from Discrimination. On this occasion, civil society representatives requested to be part of this forum in the future.

## **Activities in promoting protection against discrimination**

On 9 March 2021, the Ombudsperson organized a roundtable in which two reports were presented with recommendations regarding the non-implementation of laws related to domestic violence and the rights of single mothers (parents) regarding the recognition of annual leave. Recommendations for the implementation of this law have been made to the Ministry of Internal Affairs and the Kosovo Police, prosecutors and courts.

On 17 May 2021, the Ombudsperson, on the occasion of the International Day Against Homophobia, Biphobia and Transphobia, issued a statement highlighting the guarantee of the rights of persons of the LGBTI communities, who continue to be among the most vulnerable groups in our society. To mark this day, the Ombudsperson joined the NGO CEL Kosova to show solidarity in support of LGBTIQ + persons by sharing a solidarity awareness message.

On 19 May 2021, the Ombudsperson organized a roundtable on “The role of civil society and the media in preventing and protecting against discrimination”, which was attended by representatives of civil society and the media.

On 29 July 2021, the Ombudsperson received in a meeting representative of non-governmental organizations dealing with activities dedicated to persons with disabilities.

On 15 September 2021, the Ombudsperson organized a roundtable with representatives of the justice system in the country, in which they discussed the challenges of implementing the Law on Protection from Discrimination. Given that the year 2021 was set to be the year for the promotion of this law, in this roundtable, among other things, the main focus was on further raising the awareness of citizens about the existence and benefits that this law has for the wider society.

On 13 October 2021, The Ombudsperson visited the Center for the Promotion of Women’s Rights in Drenas, where he was closely informed about the work and activities of the center, projects, but also about the challenges they face. The Ombudsperson praised the commitment and work of the staff of this center in fulfilling their mission and pledged to strengthen cooperation in the future.

On 22 October 2021, the Ombudsperson took part in marking International White Cane Week, organized by Committee of Blind Women of Kosovo- CBWK, on the topic “Empowerment of women and girls with disabilities to strengthen their decision-making”. The Ombudsperson stressed that local institutions need to reflect on the implementation of legislation in order to have a greater inclusion of women with disabilities in the labor market and in the education system, and that behind the ‘white cane’ lies a potential which can be a great contribution to society and all that needs to be done is to create the conditions to express their creative ability.

On 3 December 2021, the Ombudsperson participated in the celebration of the International Day of Persons with Disabilities, organized by the Office for Good Governance, within the Office of the Prime Minister of the Republic of Kosovo. The Ombudsperson at this roundtable emphasized that this day finds the community with disabilities with many problems and these come due to the stagnation in the implementation of laws, strategies and sectoral policies dedicated to this community.

On 3 December 2021, the Ombudsperson met with the blind in Kosovo on the occasion of marking the International Day of Persons with Disabilities, an event which was organized by the non-governmental organization Independent Initiative of Blind People of Kosovo, in cooperation with the OIK. The meeting was also attended by other local and international institutional officials, representatives of civil society with whom they had the opportunity to talk to members of this community.

On 7 December 2021, the Ombudsperson participated in the launch of the report "Electronic devices: focus on the prevention of cases of domestic violence", published by the non-governmental organization "Fol", which aimed to advocate and attract institutional attention to the importance of implementing the Law on Electronic Surveillance, which would serve for the protection of victims of crime in general, with a focus on the protection of victims of domestic violence.

## **Activities in promoting children's rights**

During the reporting year, a number of activities were promoted within the OIK for the promotion and advancement of children's rights, also the representatives of the OIK participated in many activities organized by local institutions, international organizations and civil society in relation to with children's rights.

On 27, 28 and 29 January 2021, the representative of the OI participated in the workshop: "*Contracting of social services by public authorities (central and municipal level), contracting scheme, procurement procedures*", organized by the Coalition of NGOs for Child Protection.

On 3 March 2021, the Ombudsperson visited the exhibition for children killed during the war, in the library "Hivzi Sylejmani" in Prishtina, where he called on public authorities for the need for institutional documentation of the past, especially for crimes that have occurred in relation to children.

In March 2021, the representatives of the Ombudsperson visited the Children's Day Center in Prishtina, the Resource Center "Përparimi" in Prishtina, the Day Care Center - PEMA in Prishtina, in order to get acquainted with the work and activities of these centers.

On 23 March 2021, representatives of the Ombudsperson attended at the regional conference on school violence, organized by the Child Protection Hub, which unveiled the main findings of the regional research, which took place in 2020 in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Moldova, Romania and Serbia, in order to explore social norms that influence violence in schools.

On 29 March 2021, the representative of the Ombudsperson participated in a working meeting dedicated to "The impact of the COVID-19 pandemic on child protection services, opportunities and challenges to be addressed", organized by the Office of Good Governance.

On 2 April 2021, the representative of the Ombudsperson participated in the meeting of the advisory body for care, development and education in early childhood.

In April and May of 2021, the representatives of the Ombudsperson, in the framework of promotional activities, conducted the information campaign “Meet the Institution of the Ombudsperson”, for students and teachers of primary and lower secondary schools in the municipalities of Gjakova, Suhareka, Ferizaj, Mamusha, Malisheva, Rahovec, Han i Elezit, Podujeva, Gjilan, Prizren, Srtrpce, Shtime, Peja, Mitrovica. These campaigns were organized in order to inform students and teachers about the role, mandate and competencies of the Ombudsperson Institution in the protection and promotion of human rights, especially in raising awareness of the necessity of preventing corporal punishment in schools, as well as their opportunities, to address this institution regarding human rights violations.

On 1 June 2021, the Ombudsperson, on the occasion of the International Children’s Day, through a statement expressed the importance of this date to reflect as a society regarding the state of children’s rights. The Ombudsperson stressed that children should have a life without violence, as a fundamental right and a necessary precondition for the physical and mental health of the child. Since the issuance of the new law on child protection, on July 17, 2020, the Ombudsperson drew the attention of all actors and institutions responsible for the implementation of this law and requires maximum commitment to protect and guarantee the best interest of children in the Republic of Kosovo.

On 1 June 2021, on the occasion of the International Children’s Day, the Ombudsperson visited the resource centers in Prizren “Mother Teresa” and “Lef Nosi”, which serve children with special needs. The Ombudsperson underlined the good work being done by the staff of the centers for these children and added the importance of inclusion in the educational process and the obligation of the state to provide access to education, schooling and training, especially for children with disabilities.

On 4 June 2021, the representative of the Ombudsperson participated in the internal working group to review some issues related to the Draft Civil Code of the Republic of Kosovo, organized by the Ministry of Justice. In this meeting was addressed only issues from the topic “Marriage at an early age in the Draft Civil Code”.

On 4 June 2021, the representative of the Ombudsperson participated in the launch of the “Teacher’s Guide to Inclusive Education on the occasion of the International Menstrual Hygiene Day”, organized by the UNFPA Office in Kosovo.

On 5 June 2021, the Ombudsperson, on the occasion of the Universal Children’s Day, published a statement through which he asked all institutions of Kosovo to increase efforts and actions towards fulfilling the obligations towards children and for respecting and realizing the rights of children. He called on the government and responsible institutions to take into account the child’s right to life and development, to design and then implement a plan to support children in general, and those with disabilities in particular, to compensate for health services which have been suspended or interrupted for certain periods during the pandemic, etc.

On 19 November 2021, in honour of Universal Children’s Day, the day open to children, the Ombudsperson received groups of children in the office and discussed issues of importance to them. They were better informed about their rights and the work of the Ombudsperson as a defender of their rights.

On 8 December 2021, the representative of the Ombudsperson participated in the annual meeting to review the 2021 UNICEF program. The purpose of the meeting was: “To review the progress achieved for children during 2021 and to discuss the ongoing work on the implementation of the UNICEF program”

On 15 December 2021, the representative of the Ombudsperson participated in regional conference on “Protection of the rights of children in conflict with the law - The link between the juvenile justice system and the child protection system”, organized by Terre des hommes.

On 20 December 2021, the Ombudsperson, with the support of the European Union Office in Kosovo, “EU Support to the Ombudsperson Institution”, organized a roundtable discussion in which the young people of the country were discussed about the draft brochure on the OI’s internal regulation on the receipt and handling of child complaints, which is intended to be distributed to Kosovo children so that they can better understand their rights. The participants were interested in the number of children’s complaints to the Ombudsperson, the forms of addressing that protect the interest of children and they are not violated.

## **NPMT activities and meetings with competent institutions**

During the reporting period, the NPMT has carried out a considerable number of activities. Some of these activities were supported by the Council of Europe Office in Prishtina through the project for strengthening the capacities of the institutions of the Republic of Kosovo in combating and preventing torture, humiliating and degrading treatment.

On 8 March 2021, the director of the NPMT participated in the meeting organized by the Office of the Council of Europe, with the Director General of the Kosovo Police and the training coordinator of the Kosovo Police, where the project of the Council of Europe for strengthening the capacity of public institutions to prevent and fight corruption and opportunities for cooperation.

On 17 March 2021, the EULEX Correctional Unit, in the framework of mutual cooperation, held a meeting with the NPMT staff, regarding the treatment that was planned to be performed for the NPMT, regarding the treatment of prisoners with mental illness, from the perspective of correctional staff, in which case they share with the NPM staff their practices as former prison directors in Sweden and the Netherlands.

On 29 April 2021, in the framework of mutual cooperation with the EULEX Correctional Unit, training was conducted for NPMT staff, for the treatment of prisoners with mental illness in prisons, in which case those with NPMT staff shares their practices as former prison directors in Sweden and the Netherlands.

On 12 May 2021, the NPMT held a meeting with the Kosovo Correctional Service, regarding the cases registered with the OIK and the challenges of this institution in carrying out its mandate.

On 14 May 2021, the Deputy Ombudsperson and the Director of the NPMT held a meeting with the Minister of Justice, in which various aspects were discussed, including the implementation of recommendations and regarding the strengthening of inter-institutional cooperation.



On 19 May 2021, the NPMT met with representatives of the KCS, regarding the impact of the COVID-19 pandemic on the work of this institution, as well as the challenges it faced during the pandemic period in carrying out its daily tasks.

On 27 May 2021, an online video consultation organized by the Council of Europe was held between the NPMT and experts engaged by the Council of Europe, where various aspects related to the visit of the NPMT to the institutions of the Peja region were discussed. as: in police stations, in CIH (Community Integration Homes) and in the Detention Center in Peja.

On 18 June 2021, representatives of the NPMT met with the competent officials of the Kosovo Police, on which occasion the impact of the COVID-19 pandemic on the work of the Kosovo Police was discussed.

On 18 June 2021, on the occasion of marking June 20 - World Refugee Day, a meeting was organized by the UNHCR in Vrandidoll (Center for Asylum Seekers), on which occasion the renovations made in this center were presented. The ceremony was attended by the Deputy Ombudsperson, responsible for NPMT, Mrs. Naile Alaj.

On 25 June 2021, the NPMT and the Council of Europe Office in Prishtina, on the occasion of the International Day in Support of Victims of Torture (June 26), organized a conference on “ *The impact of the Covid-19 pandemic on the human rights of the people deprived of their liberty* “. In addition to local and international institutions, civil society, this conference was attended by representatives of NPMTs of Southeast Europe and former and current experts of the European Committee for the Prevention of Torture (CPT).

On 13 July 2021, the director of the NPMT participated in the roundtable organized by the European Union Program for the Justice Sector in Kosovo (EUKOJUST Project) in cooperation with the Kosovo Correctional Service (KCS) and the Kosovo Probation Service (KPS), for the presentation of the initial findings and the assessment of the administrative gap in the current functioning of the Kosovo Correctional Service (KCS) and the Kosovo Probation Service (KPS).

On 7 July 2021, representatives of the NPMT held a meeting with the PIK, to discuss various aspects of the investigation of cases of citizens's allegations of physical ill-treatment by Kosovo Police officers. On this occasion, it was announced that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the International Criminal Court (ICC) will launch their new publication: “ *Protecting Human Rights in Prisons while Preventing Radicalization Leading to Terrorism or Violence: A Guide for Detention Monitors* . The publication underlines the importance of independent detention monitoring and looks in detail at a number of specific areas of human rights risk in preventing and combating violent extremism and radicalism leading to terrorism in a prison context.

On 22 July 2021, the NPMT, in cooperation with the EC Office in Prishtina, organized a meeting of the working group to assess the implementation of certain provisions of the Law on Mental Health, for the involuntary placement of persons deprived of their liberty in closed mental health institutions. The meeting was organized in the framework of the project: Strengthening Kosovo Institutions in the Fight against Torture, Ill-Treatment and Other Degrading Treatment, funded by the Norwegian government and implemented by the Council of Europe, in close cooperation with the Ombudsperson Institution.

On 2 August 2021, an online consultation was held with experts engaged by the Council of Europe, regarding the NPMT visits to places of deprivation of liberty in the Mitrovica region,

in the framework of the Council of Europe project for strengthening institutions in the fight against torture, ill-treatment and other degrading treatment.

On 6 and 7 September 2021, the NPMT and the Council of Europe Office in Prishtina organized two-day workshops to finalize the NPMT Strategy for the 5-year period, as well as the discussion of the Law on Mental Health.

On 29 September 2021, the National Preventive Mechanisms against Torture, with the support of the Council of Europe, held a roundtable discussion on the topic: “ Involuntary detention and treatment of persons with a mental disorder and implementation of the Law on Mental Health”. The roundtable was attended by representatives of all mental health institutions. The purpose of this meeting was to discuss the challenges and problems that health workers directly face and that require attention from the judiciary.

On 30 September 2021, the National Preventive Mechanisms against Torture, in cooperation with the Council of Europe, held a second roundtable on “ Involuntary detention and treatment of persons with a mental disorder and implementation of the Law on Mental Health”, which was attended by representatives from the judiciary, the prosecution, the police, representatives from the Academy of Justice, experts hired by the Council of Europe and some representatives from mental health institutions. During the discussion were presented the challenges faced by mental health professionals in involuntary treatment with prohibition of cases with chronic psychiatric disorders.

On 11 October 2021<sup>284</sup>, The National Preventive Mechanisms against Torture of the Ombudsperson, with the support of the Council of Europe, marked the World Mental Health Day (October 10), organizing a regional conference on the topic: “Human Rights Standards and involuntary placement of persons with mental disorders in closed mental health institutions”. The purpose of the conference was to raise public awareness of international standards for involuntary placement and treatment in closed psychiatric institutions. The conference was organized following the findings and recommendations of the NPMT and the findings of the CPT after the last visit to the Republic of Kosovo in 2020.

On 20 and 21 October 2021, the NPMT, with the support of the Council of Europe, conducted general evaluation visits to relevant institutions in the Prizren region.

On 2, 3, and 4 November 2021, the NPMT, with the support of the Council of Europe, conducted general visits to institutions in the region of Gjilan, Ferizaj and Lipjan.

On 7 December 2021, the NPMT, with the support of the Council of Europe Office in Pristina, organized a roundtable discussion on the topic: “ Mandate and Challenges of Social Workers in Places of Deprivation of Liberty.” The purpose of the roundtable was to exchange experiences between the NPMT, experts from the University of Prishtina and social workers, who work in correctional centers and detention centers, to advance social work with persons deprived of their liberty.

On 21 December 2021, the NPMT, with the support of the Council of Europe, held a roundtable discussion on the topic: “Alternative sentences - How much do they apply to us?”.

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284 See the press release of the Ombudsperson Institution: <https://oik-rks.org/2021/10/11/iap-shenoi-diten-boterore-te-shendetit-mendor/>, see the press release from the Ministry of Justice: <https://md.rks-gov.net/page.aspx?id=1,15,2582>.



# X. Funding

## OI budget

The OIK is an independent institution, which is financed by the Budget of the Republic of Kosovo. According to the Ombudsperson Law: “*The OIK prepares its annual budget proposal and sends it to the Assembly of the Republic of Kosovo for approval.*”<sup>285</sup> According to this legal provision, the OIK is provided with the necessary additional budget for cases of increasing obligations and competencies with this law and other laws, respectively additional relevant and adequate financial and human resource.<sup>286</sup>

## Funding of OIK from the Budget of the Republic of Kosovo

The OIK, based on the legal process for the preparation and submitting the regular budget request, submitted its budget request for 2021 to the Assembly of the Republic of Kosovo and the Ministry of Finance, Labor and Transfers (MFLT).

The budget request for 2021 by the Ombudsperson has been prepared based on the planning of needs and work activities of the OIK for the calendar year 2021, based on the legal mandate.

<sup>285</sup> *Law on the Ombudsperson, no. 05/L-019, Article 35, paragraph 3.*

<sup>286</sup> *Ibid.*

The budget of the OIK for 2021 has been allocated in the monetary amount of € 1,269,278.99. This budget is intended for the following budget categories:

- Wages and salaries, in the amount of € 982,850.99;
- Goods and services, in the amount of 258,928.00 €;
- Utilities, in the amount of € 15,000.00;
- Capital expenditures, in the amount of € 12,500.00.

We will present the reflection of the OI budget for 2021 according to the budget request of the budget according to the Law on Initial Budget for 2021, according to the Law on Amending and Supplementing the Budget Law for 2021, budget expenditures and declaration of budget savings in tabular form based on general data by economic budget categories. Detailed financial reporting for the budget year 2020 for all economic budget categories and for special economic budget subcategories will be drafted separately and will be sent to the Assembly of the Republic of Kosovo based on regular annual reporting, and the unified form for financial reporting by independent institutions, as required by the Committee on Budget and Finance of the Assembly of the Republic of Kosovo.<sup>287</sup>

More specifically, the following table presentation will reflect OI budget for 2021, starting with the Budget Request, the initial budget of the Budget Law on 2021, according to the Declarations of budget savings by the OI, the budget reduction by decision of the Government of the Republic of Kosovo and the final budget for 2021.

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<sup>287</sup> The detailed financial report for the OI budget will be sent to the Assembly of the Republic of Kosovo, according to the unique financial reporting form.

Table 1: OI budget for 2021, according to the following data:

Economic category	OI budget request, final, dated 25.09.2020	Budget allocated by the Budget Law for 2021	Declaration of savings by the OIK	Cuts by government decision	Final budget 2021
Wages and salaries	1.051.387.00	982.850.99	0.00	( 35.279.60 )	947.571.39
Goods and services	258.928.00	258.928.00	( 30.000.00 )	( 10.988.87 )	217.939.13
Utilities	15.000.00	15.000.00	( 8.500.00 )	( 1.592.38 )	4.907.62
Capital expenditures	51.500.00	12.500.00	( 4.500.00 )	( 3.000.00 )	5.000.00
<b>Total budget</b>	<b>1.373.815.00</b>	<b>1.269.278.99</b>	<b>(43.000.00)</b>	<b>( 50.860.85 )</b>	<b>1.175.418.14</b>

Budget planning, budget spending and declaration of budget savings for 2021 was carried out according to the planned needs and the destination determined to meet the needs and work activities of the OIK, which were in the interest of providing the performance of the mandate, the progress of the work and the functioning of the OIK. Whereas the planning and budget expenditures for 2021 have been affected by the pandemic situation, because a large part of the work activities could not be carried out according to the work plan of the OIK, in which case the non-realization of these work activities has directly affected the non-spending of the planned budget for the budget year 2021. The OIK did not lack internal monitoring and control in the economic and efficient use of the budget.

For 2021, according to legal procedures, the OIK has made the declaration of budget savings in October 2021 in the total amount of 43.000.00 €. However, with the decision of the Government of the Republic of Kosovo, in December 2021, the OIK budget was harmonized and reduced in different budget categories in the monetary amount of € 50,860.85.

## Final budget and realization of expenditures for 2021

The budget of the OIK for the budget year 2021 was realized in the monetary amount of 1.134.291.88€, or expressed as a percentage for 96.50%, in relation to the final budget of the end of the year.

In the following table we present the situation of the final budget to the budget expenditures for 2021, according to budget data of economic categories and expressed as in percentage.

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Table 2: Final budget and realization of budget expenditures for 2021

No.	Economic categories	Final Budget for 2021	Budget spent	Free means	Implementation in %
1.	Wages and salaries	947.571.39	947.571.39	0.00	100.00
2.	Goods and services	217.939.13	182.212.28	35.726.55	83.61
3.	Utility costs	4.907.62	4.507.91	399.71	91.86
4.	Capital expenditures	5.000.00	0.00	5.000.00	0.00
<b>In total</b>		<b>1.175.418.14</b>	<b>1.134.291.88</b>	<b>41.126.26</b>	<b>96.50</b>

# XI. Statistics

## Statistical summary of complaints and cases

From 1 January 2021 to 31 December 2021, 1612 complaints were submitted by the citizens of Kosovo to the OIK headquarters in Prishtina and the regional offices: Prizren, Gjilan, Ferizaj, Peja, Mitrovica, Gjakova and Gracanica. These complaints are about violations of human rights and freedoms by public authorities in the Republic of Kosovo, and also for the right to legal remedies.

From the analysis of the complaints submitted by the citizens, according to the constitutional categories of human rights and freedoms, it is noticed that the largest number of them are related to: *the right to a fair and impartial trial, the right to legal remedies, the right to work and practice the profession, health and social protection, property protection, equality before the law, the right of access to public documents, etc.*

The following tables present in detail the total number of complaints received and cases reviewed and decided for their acceptance or non-acceptance for investigation, cases initiated for investigation on the initiative of the Ombudsperson, then the ethnicity of the complainants and the gender, the responsible public authorities to whom the complaints were filed, the number of cases decided as closed/completed, the number of reports



and recommendations published to public authorities and the level of implementation of the recommendations by these authorities.

Table 1: Complaints filed to the Ombudsperson in 2021

	<b>Total number of complaints filed</b>	<b>1612</b>
	Number of persons involved in complaints filed	2494
<b>Ethnicity of the complainants</b>		
	Albanian	1461
	Serbian	54
	Turkish	26
	Ashkali	18
	Bosnian	15
	Egyptian	14
	Rome	11
	Gorani	11
	Others	2
<b>Gender of the complainants</b>		
	Male	1154
	Females	458
<b>Responsible public authorities against which the complaints were filed (a complaint may have more than one responsible party).</b>		
	Ministries	484
	Courts	456
	Municipalities	241
	Police	93
	State Prosecutions	65
	<b>Private person</b>	<b>58</b>

Private companies	38
Public enterprises	27
Foreign authorities	20
Privatization Agency of Kosovo	19
Others	214

Table 2: Complaints found inadmissible

<b>Number of inadmissible complaints</b>	<b>939</b>
<b>Inadmissible complaints, according to the articles of the Law on the Ombudsperson</b>	
No violation, maladministration - Article 22, point 1.1	248
In using legal remedies - Article 22, point 1.3	232
Non-use of legal remedies - Article 22, point 1.4	229
Outside jurisdiction - Article 21, point 1.3.1	160
Lack of interest, failure of the party - Article 22, point 1.2	56
The report has been published - Article 24, point 3	6
Filed after the legal deadline - Article 21, point 1.3.2	4
Anonymous complaint - Article 21, point 1.3.3	2
Misuse of the right for filing the complaint - Article 21, point 1.3.4	2

Table 3: Complaints pending for review

<b>Number of complaints pending review</b>	<b>7</b>
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Table 4: Complaints found admissible for investigation

<b>Number of complaints found admissible for investigation</b>	<b>692</b>
<b>Number of cases for investigation initiated by the OI (Ex officio)</b>	<b>45</b>
<b>Ethnicity of citizens based on cases investigated</b>	
Albanian	599
Serbian	42
Turkish	16
Gorani	8
Ashkali	7
Rome	7
Egyptian	6
Bosnian	5
Others	2

Gender of complainants based on the investigated cases		
	Male	479
	Female	213
Public authorities responsible for cases investigated (a case may have more than one responsible part)		
	Courts	246
	Ministries	226
	Municipalities	114
	Police	43
	State Prosecutions	27
	Public enterprises	8
	Private person	8
	Private companies	5
	Privatization Agency of Kosovo	4
	Foreign authorities	1
	Others	92

Table 5: Number of cases investigated under Chapter II of the Constitution - Rights and Fundamental Freedom (one case may involve more than one violation of guaranteed rights)

	The right to a fair and impartial trial	261
	The right to legal remedies	215
	The right to work and practice the profession	138
	Equality before the law	77
	Health and social protection	75
	Property protection	62
	The right of access to public documents	40
	The rights of the child	33
	The right to education	28
	Prohibition of torture, cruel, inhuman or degrading treatment or punishment	24
	The rights of the accused	18
	Freedom of movement	15
	Human dignity	13
	Right to life	13
	Right to election and participation	10
	Restriction of fundamental rights and freedoms	9
	The right to marriage and family	5
	Freedom of the media	5

Responsibility for the environment	4
Freedom of expression	4
The right to personal integrity	4
Freedom of thought, conscience and religion	4
Judicial protection of rights	2
Cases for mediation	2
The right to privacy	2
Freedom of art and science	1
Religious denominations	1
The right to freedom and security	1
Freedom of association	1
Freedom of assembly	1

Table 6: Number of cases closed upon completion of investigations (including cases of 2021 and previous years)

<b>Total number of completed/closed complaint</b>	<b>806</b>
<b>Completed/closed cases, according to the articles of the Law on the Ombudsperson</b>	
Resolved, in accordance with the complainant's request - Article 21, point 1.5	340
Inadmissible, no violation, maladministration - Article 22, point 1.1	173
Inadmissible, in the use of legal remedies - Article 22, point 1.3	132
Closed with report - Article 24, point 3	79
Inadmissible, non-use of legal remedies - Article 22, point 1.4	45
Closed due to lack of interest of the complainant, failure of the party - Article 22, point 1.2	32
Inadmissible, outside the jurisdiction - Article 21, point 1.3.1	5

Table 7: Reports with Recommendations, Opinions and Requests for Interim Measure.

Reports on investigated cases (from citizens' complaints)	24
Reports on investigated cases initiated by the OI, Ex officio	10
NPMT reports	13
Letters of recommendation for investigated cases (from citizens' complaints)	9
<b>Recommendations in Reports and letters of recommendation</b>	<b>157</b>
Amicus Curiae	2
Request for interim measure	2
Opinions	4

Table 8: Implementation of the Ombudsperson's recommendations by public authorities responsible

Responsible authority	Implemented Recommendations	Unimplemented recommendations	Awaiting implementation
Government of the Republic of Kosovo	0	0	22
Ministry of Justice	7	0	30
Ministry of Internal Affairs	1	0	6
Ministry of Economy and Environment	1	0	0
Ministry of Education, Science, Technology and Innovation	2	0	5
Ministry of Foreign Affairs and Diaspora	3	0	0
Ministry of Culture, Youth and Sports	0	0	1
Ministry of Health	6	0	9
Ministry of Local Government Administration	1	0	2
Ministry of Finance, Labor and Transfers	0	0	1
Ministry of Labor and Social Welfare	0	0	1
Ministry of Environment, Spatial Planning and Infrastructure	0	0	2
Kosovo Police	4	0	8
HUCSK	5	0	1
Kosovo Customs	0	0	2
Labor Inspectorate	0	0	2
Privatization Agency of Kosovo	1	0	0
Information and Privacy Agency	0	0	1
University of Prishtina	3	0	0
Faculty of Architecture - UP	0	0	1
Independent Media Commission	0	0	1
Kosovo Judicial Council	0	0	3
Kosovo Prosecutorial Council and Kosovo Judicial Council	1	0	1
Kosovo Prosecutorial Council	0	1	2
Basic Court in Prishtina	1	0	3
Victim Protection and Assistance Office	1	0	0
Special Chamber of the Supreme Court	0	0	1
Basic Prosecution in Prishtina	1	0	0
Municipality of Prishtina	1	0	1

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Municipality of Fushe Kosova	1	0	0
Municipality of Vushtrria	0	0	1
Municipality of Gracanica	0	0	1
Municipality of Ferizaj	2	0	0
Municipality of North Mitrovica	0	2	0
Municipality of Gjilan	0	1	0
Municipality of Deçan	0	0	1
Municipality of Shtrpce	0	0	1
Gymnasium "Assembly of Lezha"	1	0	0
<b>TOTAL</b>	<b>43</b>	<b>4</b>	<b>110</b>

## Graphic presentation of statistics of cases filed to Ombudsperson - 1 January 2021 - 31 December 2021

Figure 1: Percentage of citizens' complaints reviewed/decided by Ombudsperson

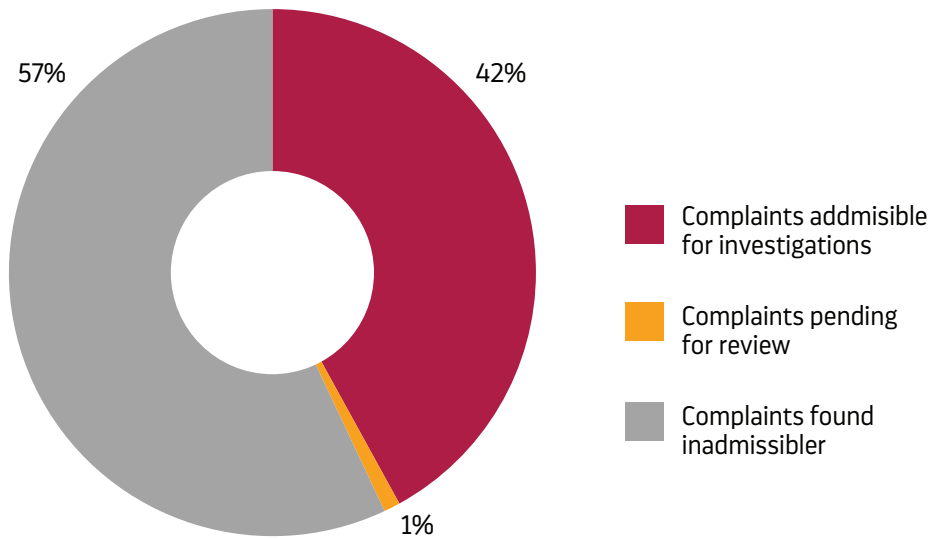


Figure 2: Percentage of cases by ethnicity of citizens

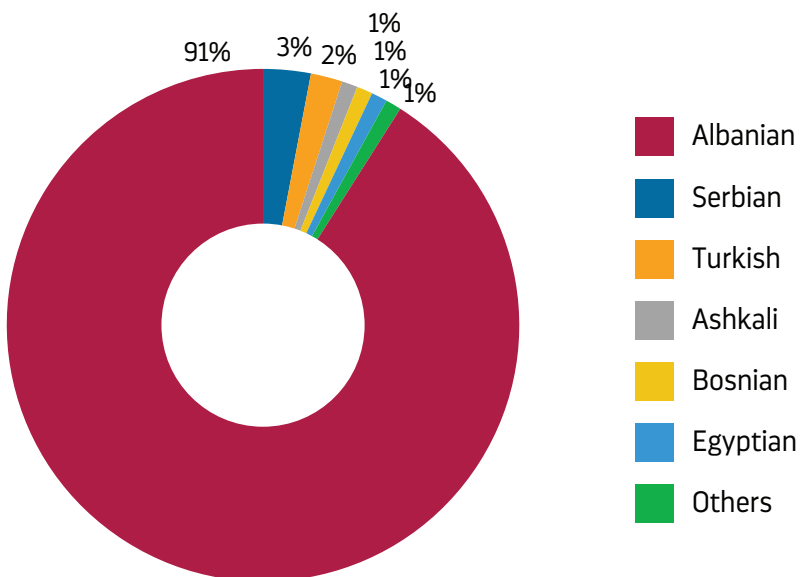


Figure 3: Percentage of cases by gender of citizens

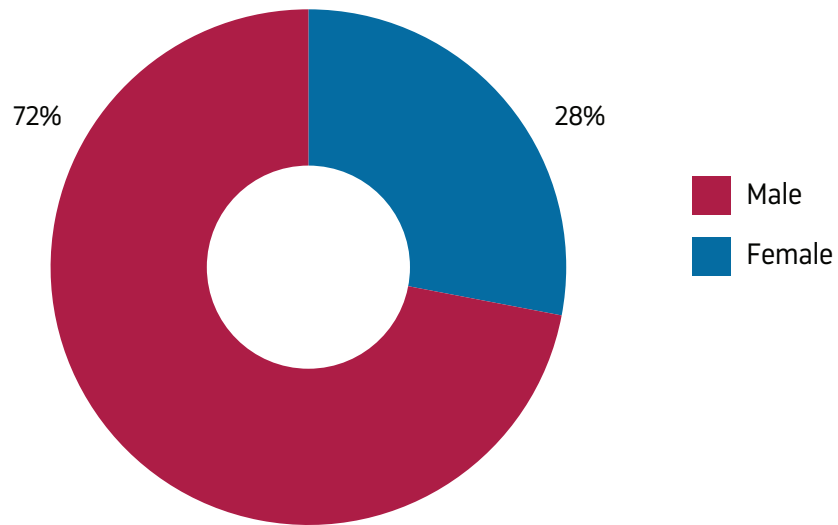


Figure 4: Responsible public authorities, according to citizens' complaints

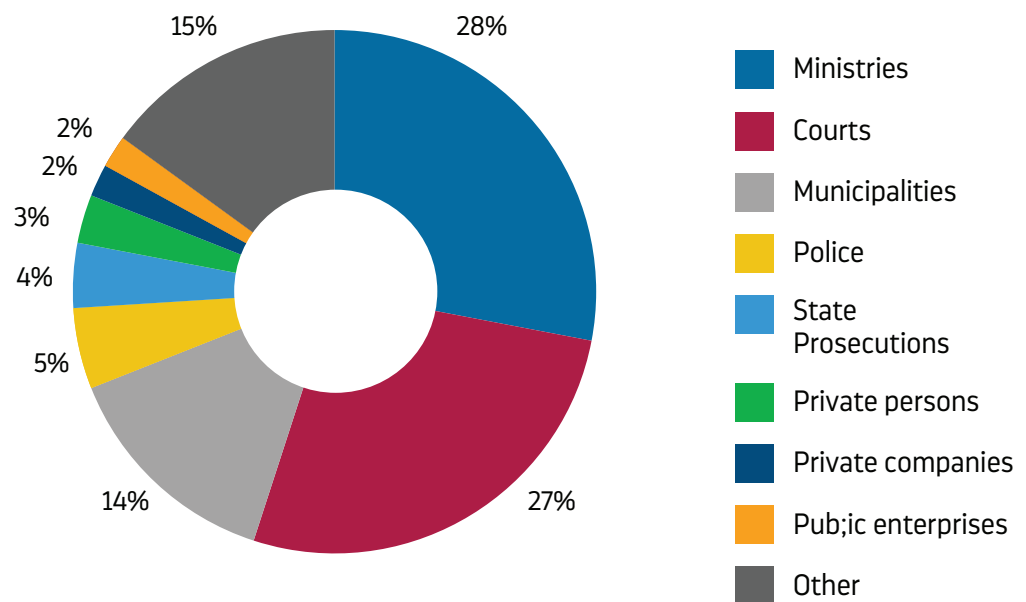




Figure 5: Percentage of cases opened for investigation, according to ethnicity of citizens

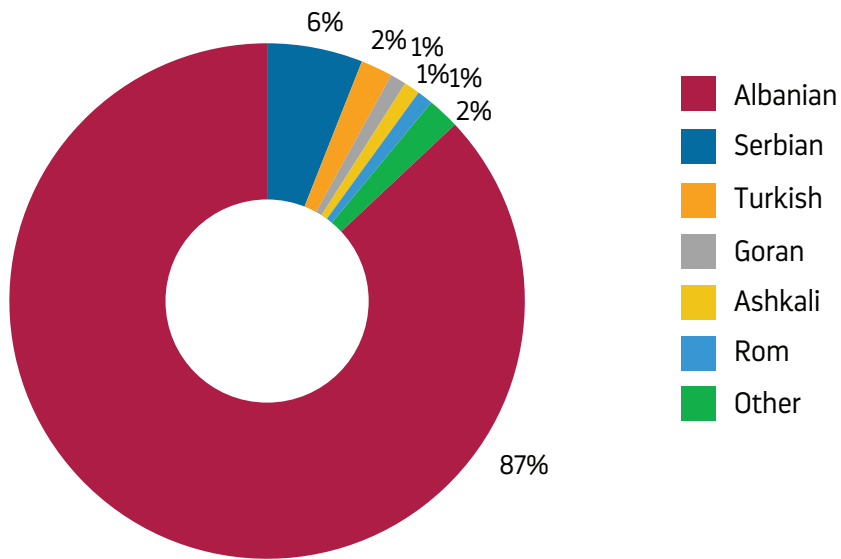


Figure 6: Responsible public authorities, according to cases open for investigation

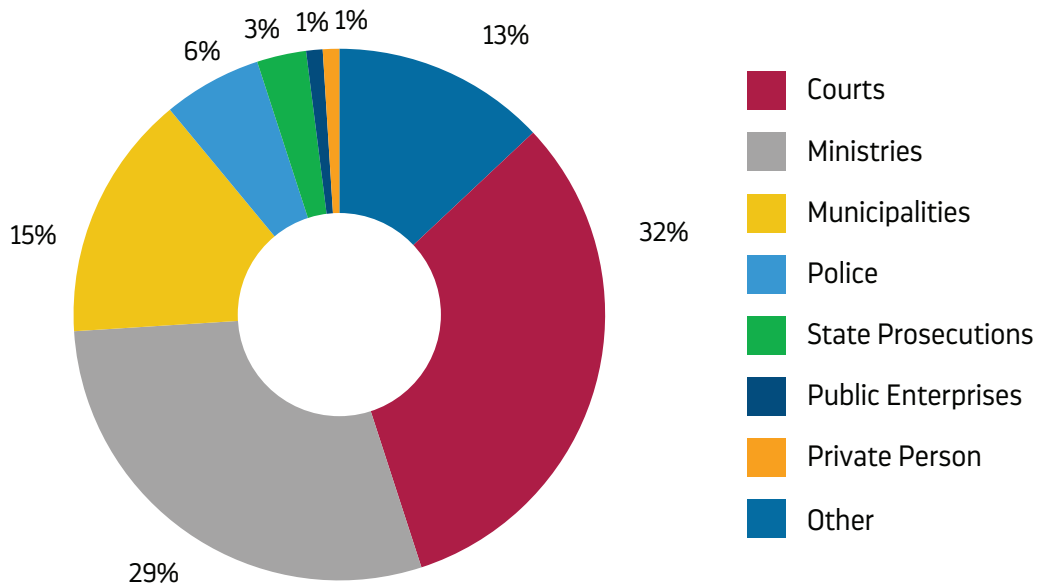


Figure 7: Percentage of cases investigated, according to Chapter II of the Constitution - Fundamental Rights and Freedoms

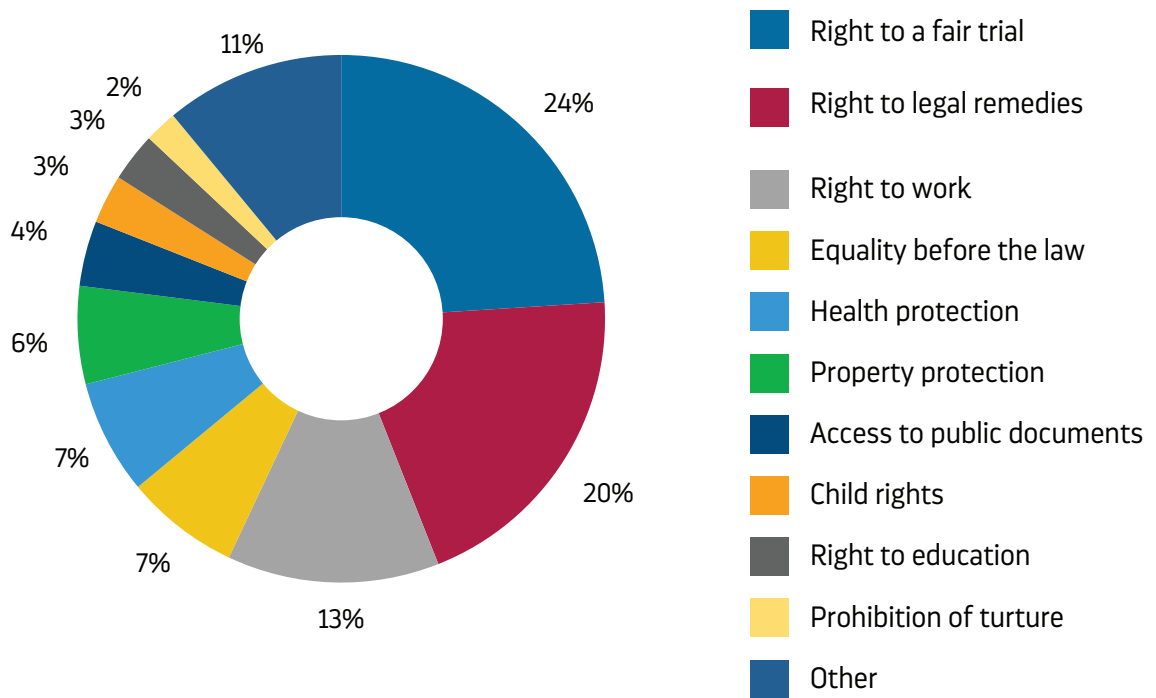


Figure 8: Cases closed/completed (including cases of 2021 and cases of previous years)

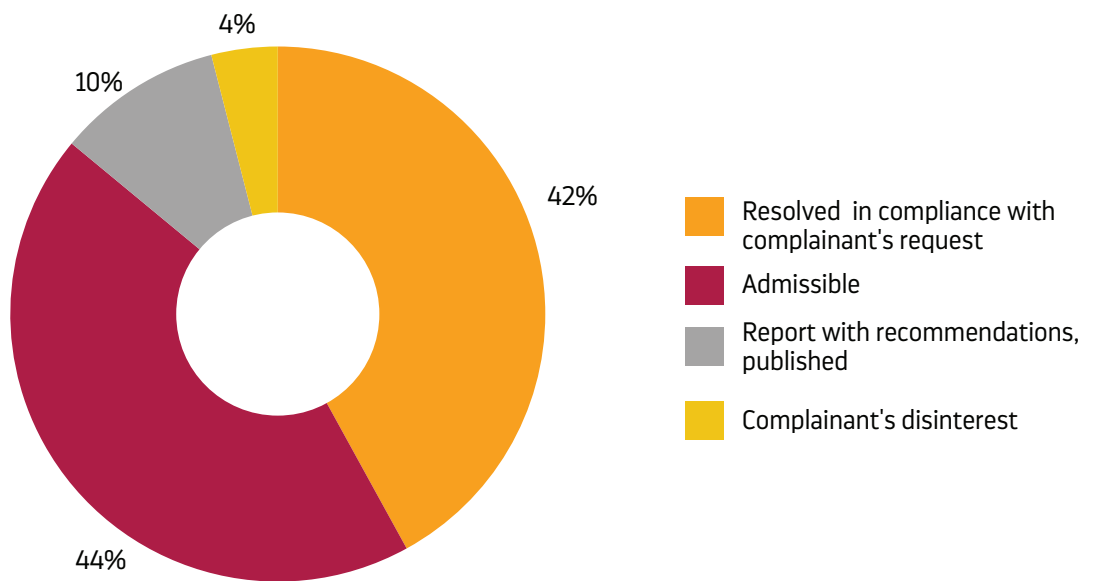


Figure 9: Percentage of implementation of the Ombudsperson’s recommendations by the responsible public authorities

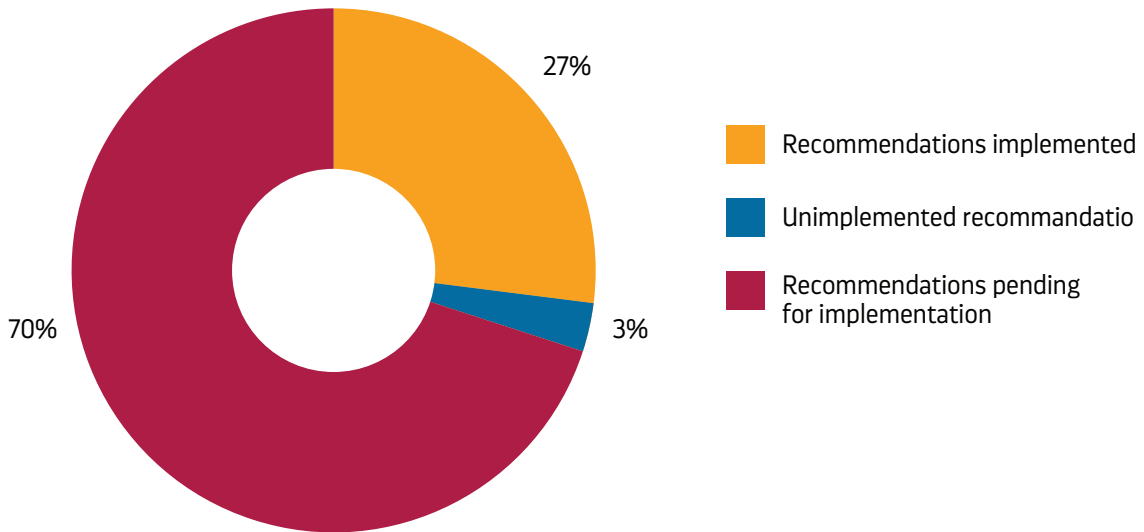
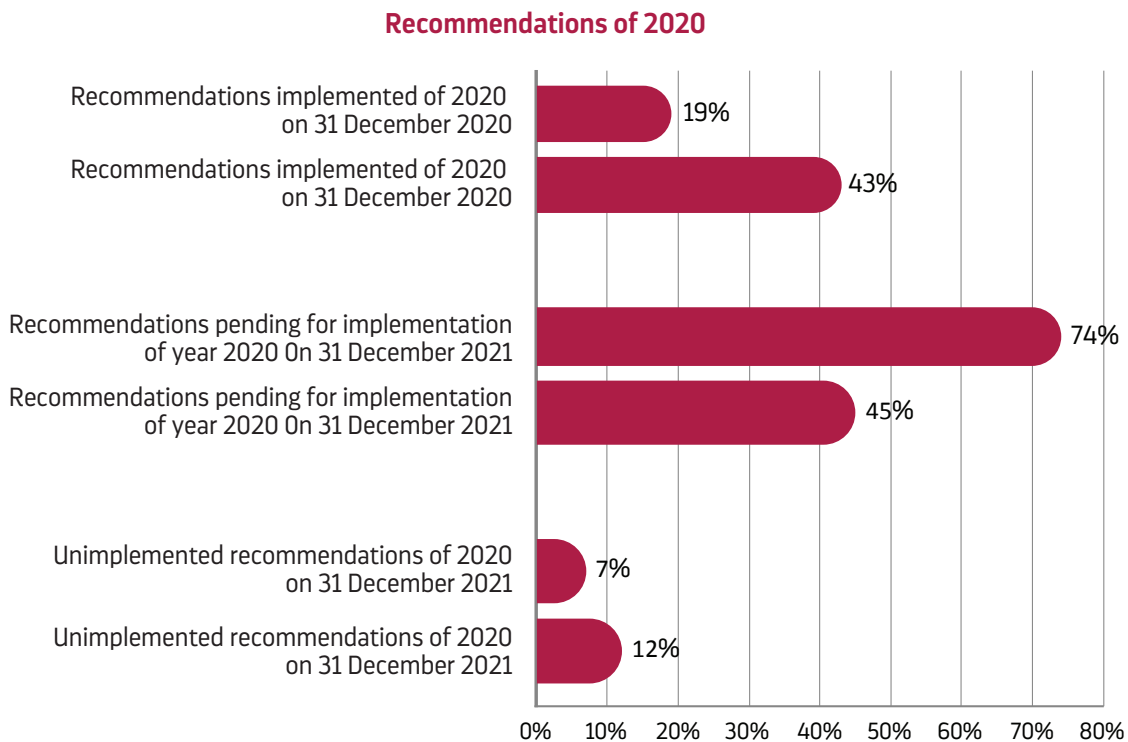


Figure 10: Percentage of implementation of the Ombudsperson’s recommendations published during 2020, 31 December 2020 and 31 December 2021



## Statistics on indicator 7 of the Sectoral Reform Contract for Public Administration Reform<sup>288</sup>

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 is in the amount of EUR 25.000.000.00.

The overall objective of this agreement: *“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.”*<sup>289</sup>

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 addressed to the central level institutions was 16%. Due to the situation created by the Covid-19 pandemic, at the request of the Government of the Republic of Kosovo, the European Commission, taking into account the circumstances created, has given the green light that the deadline for achieving the targets related to the indicators set out in the contract be postponed from the end of 2020 until the end of 2021.

We reiterate the fact that this contract, through the inclusion of indicator 7, has greatly influenced an ever-increasing trend of returning responses in terms of recommendations addressed to central government institutions and the implementation of recommendations in general. This has been achieved thanks to the continuous interaction of the triangle between the Ombudsperson Institution, the Office for Good Governance and other relevant institutions, to which the recommendations have been addressed.

Below in narrative and graphic manner we are presenting the state of implementation of indicator no. 7.3.1 and 7.3.2 for the year 2021:

**Indicator 7.3.1 requires that at least 80% of the central government institutions addressed by the Ombudsperson with recommendations in the period between January 1 and November 30, 2021, to have responded with a letter within the legal deadline of 30 days.**

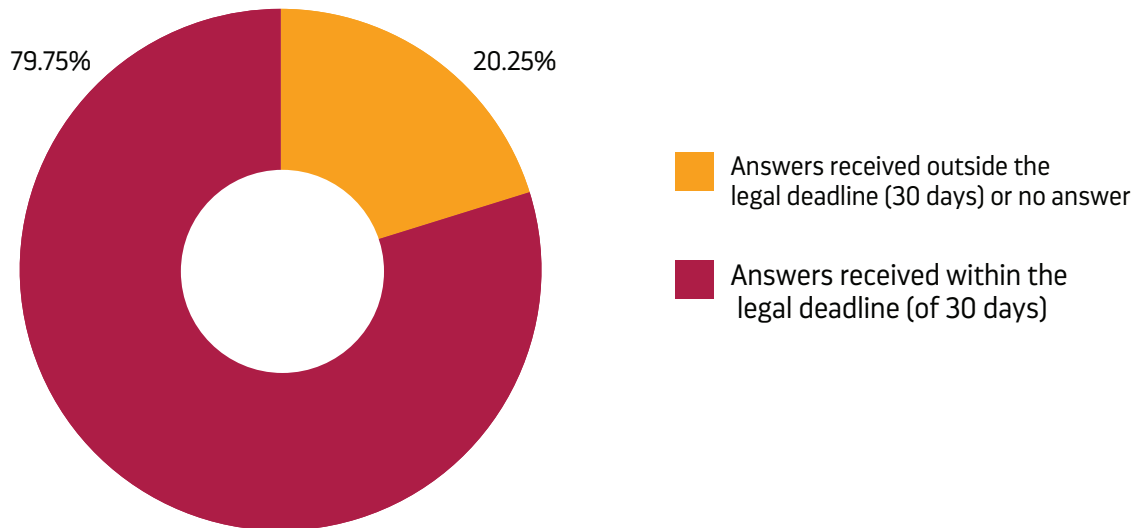
The Ombudsperson, during the period 1 January to 17 December 2021, has addressed 79 recommendations to central level institutions<sup>290</sup>, of which, for 63 recommendations it received a response within the legal deadline of 30 days, defined by Articles 25 and 28

288 Financial agreement for IPA 2016 - the second part, between the Republic of Kosovo and the EU.

289 Financial agreement for IPA 2016 - the second part, between the Republic of Kosovo and the EU, p. 18.

290 Central level institutions defined by indicator 7 of the Financial Agreement between Kosovo and the European Union; This agreement can be found in the official gazette at the link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707>

of Law no. 5/L-019 on the Ombudsperson,<sup>291</sup> while for 16 other recommendations it did not receive a response or the response arrived outside the legal deadline. Therefore it is concluded that the implementation rate for indicator 7.3.1 is quite low (only 0.25%), because the Ombudsperson during the specified period has received a response within the legal deadline of 30 days for only 79.75% of the recommendations addressed to the central level institutions. Therefore, according to these data, indicator 7.3.1 is not met.



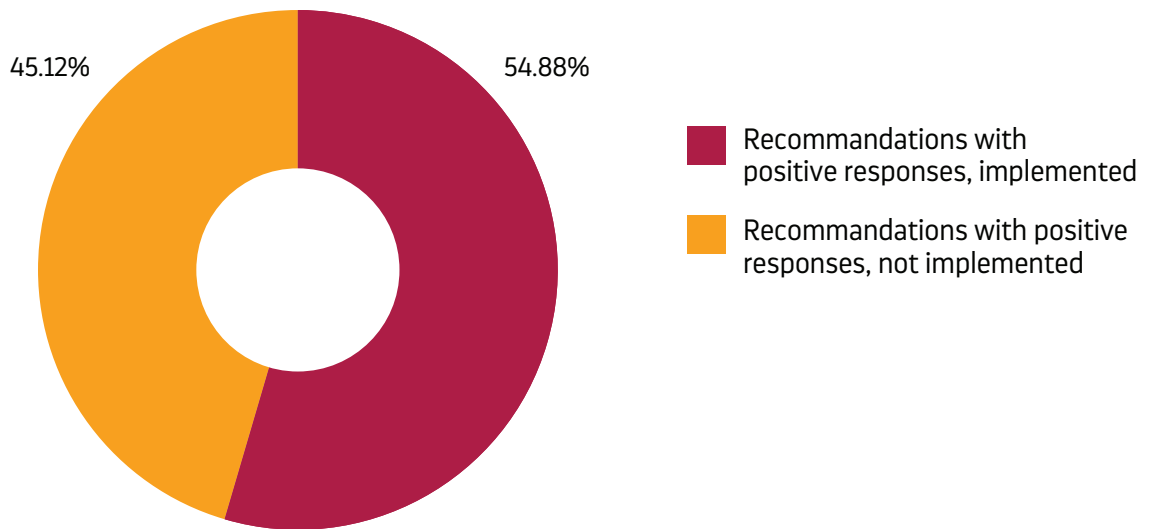
**Indicator 7.3.2 requires that at least 60% of all recommendations addressed to central government institutions, issued in 2019, 2020 and 2021, be implemented, to which central level institutions have responded positively.**

The Ombudsperson, during the years 2019, 2020 and the period from 1 January to 17 December 2021, has addressed a total of 296 recommendations to central level institutions.<sup>292</sup> In the addressed recommendations during the same period and for which we have received a positive response on the implementation of the recommendations, we have 215 recommendations, of which 118 have been implemented, or the rate of implementation of the Ombudsperson's recommendations, according to this indicator 7.3.2, has reached 54.88 %, which indicates that it has not been met.<sup>293</sup>

291 <https://www.oik-rks.org/2018/08/20/ligji-per-avokatin-e-popullit-nr-05l-019/> accessed 13/02/2019.

292 Central level institutions defined according to the list in the methodology of indicator 7 (7.3.1 and 7.3.2) of the Financial Agreement between Kosovo and the European Union; This agreement can be found in the official gazette at the link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15707>

293 The calculation method is done according to the formula defined by indicator 7.3.2:  $X = \frac{\text{number of recommendations addressed to central level institutions during the specified period, for which the responsible institutions have responded positively on the implementation of recommendations}}{\text{total number of recommendations addressed to central level institutions during the specified period}} \times 100$





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