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Institucioni i Avokatit të Popullit • Institucija Ombudsmana • Ombudsperson Institution

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Mr. Kadri Veseli
President of the Assembly of the Republic of Kosovo
Prishtina

Honoured President of the Assembly,

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

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

Sincerely,
Sami Kurteshi



The Ombudsperson of the Republic of Kosovo

Prishtina, on 31 March 2015

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The Speech of the Ombudsperson

The Ombudsperson's constitutional role it is to "monitor(s), defend(s) and protect(s) the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities".¹ Since, the Ombudsperson investigates the complaints, submitted by individuals and groups of individuals and in all cases having power to review, it represents the last hope for the appellant for resolving their problems, after having exhausted all effective legal remedies available.



This fact makes for the Ombudsperson indispensable to exercise its powers with the highest possible accountability and integrity. In one side, it must address citizens' complaints to authorities, by requesting, and sometimes with persistence even, solutions for these complaints, and in particular cases, to inform the public opinion of the violations of certain authorities. However, the Ombudsperson, as independent institution, shall also defend public authorities, when determines that the complaints and critics against them are unfounded and without legal merit.

However, no matter how important it is, the Institution of Ombudsperson cannot carry out its duty in the service of citizens without cooperation and commitment of other state authorities for the following two reasons.

Firstly, to treat and solve individual cases of various violations, more than Ombudsperson duty it is the duty of responsible public authorities themselves, because basically the authorities themselves are the one who enforce the laws adopted by the Assembly of the Republic of Kosovo, which at the core, comprise the declared will of all citizens and of each one of them individually, through their vote.

Secondly, in spite of a broad scope of action, the Ombudsperson lacks the executive and sanctioning power. Therefore, the Ombudsperson cannot force authorities to observe human rights and freedoms, whereas, public authorities themselves are not consciousness to observe them. As an intermediary institution between the citizen and public authorities, Ombudsperson with its constructive recommendations aims positive changes through moral authority and persuasion. Such a role has been underlined by the Venice Commission claiming that the "key to the success of the Ombudsman

¹ Constitution of the Republic of Kosovo, Article 132, paragraph 1.

institutions lies in his/her power to convince by reasoning on the basis of law and equity.”²

Because of these reasons, the commitment of the state authorities for the human rights, - including specifically their willingness to respond to the requests for information and documents as well as to implement the recommendations deriving from the investigations of the Ombudsperson - it is necessary for the success of the Ombudsperson Institution in the service of the citizens of the Republic of Kosovo.

In this area precisely, the Ombudsperson have noted that the performance of the state authorities, particularly of the highest instances, leaves much to be desired. The Constitution of the Republic of Kosovo it determines clearly that "Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law". However despite such a constitutional obligation Ombudsperson has encountered during this year failure or refusal by several institutions to cooperate or address legitimate issues raised by citizens of this country. This is a bad oman. Here we are talking about highest state institutions.

The overall decision-making process in the state or public administration, whatever we call it, it is extraordinary long and complicated, in principle. Kosovo makes no exception in this regard. In many cases it is a work of Sisyphus that in the multiplicity of the institutions, with or without functional resemblance, to clearly identify authorized persons holding legal responsibility for implementing the laws, recommendations and to take decisions. To determine the legal and moral responsibility of this situation even more it is aggravated by the multiplicity of superior institutions in front of which administration employees themselves should be held accountable for their actions or inactions.

It is precisely the latter one, the difficulty of determining legal liability, a characteristic of developing countries, which have not yet established an administrative routine and suffer from a multiplicity of largely unregulated and uncoordinated administration, always in the disadvantage of citizen. However, this shortcoming of new countries, in which Kosovo is situated as well, cannot and should not accompany Kosovo forever. Especially, when these defects are identified and easily ameliorated. We have passed childhood as a state. Responsibility we should incorporate as legal personal and collective category for all actions, individual and collective, private and institutional.

The constitutional separation of state powers in the Republic of Kosovo often, if not always, is misinterpreted by all parties. The separation and independence of these powers, depending on the power of the individual is interpreted and continues to be interpreted sometimes as absolute separation, sometimes as separation just for the eyes of others. Neither one nor the other brought results. This division is neither an end in itself, nor abstract category. This separation basically has a clear and concrete goal: the separation of powers should be serving the citizens, the sovereign, and in function of the human rights and freedoms.

² CDL-AD 2007 020 – *Opinion on the possible reform of the Ombudsperson Institution in Kazakhstan.*

It is obviously the public administration, either central or local level, the damn facing with the requests, complaints, concerns and needs of a society. Public administration is state's picture in relation with the society and individual. Therefore, there is one immediate request only towards it: it should be transparent, modern, efficient, effective, friendly, non-party affiliated and accountable for its actions in relation to the citizen. In this sense, the government and its mechanisms are obliged to create favorable conditions and motivation for work for the public administration.

Public administration's work must be based on professional ethics of a sound and modern administration. Professional ethics of a modern and accountable public administration relies on practical reason and wisdom in relation with the complex institutional decision-making. In this sense, professional ethics of public administration is of primary significance for all forms of state power.

Lack of professional ethics and running off from legal and moral accountability, is accompanied by exceptional negative consequences, expressed in different forms. Most negative forms of public administration activities such as corruption, bribery, incompetence, negligence or partiality of any kind, violate the political essence of a social organization. These phenomena expressed within the public administration constitute the biggest challenge for a sound social community and result in that where to an individual are not offered appropriate services, or the same will not be assessed based on universal criteria of transparency, legality, non-discrimination or merit, but based on its strengths and ability to corrupt the political system

A public administration of democratic culture of a state of equity should not suffer nor from legal activism of politic nor from political activism of the judiciary. These extreme offensive actions of separated powers must necessarily melt down into a democratic culture of legal inter-institutional interaction, where borderline is a legitimate normative democratically to be observed without exception.

In this contemporary sense of a public administration, where administrative actions are public processes initiated by individual or collective requests, should provide security for initiators by guaranteeing regularity and legality of these actions, and subjecting them to a judicial review, if needed. Only such merging, where judicial review becomes part of the administrative action as public process, guarantees supplementary or complementary role of the judiciary and administration in a democratic society as a regulated justice, acceptable by society and institutionally viable. And only in such societies where judicial review of public administration actions is not understood as interference in administrative procedure, but as an integral part of it, we can talk about legal certainty, for the respect of human rights and freedoms in the administrative process. To achieve this, it requires not only building a political culture of non-interference and influence of any form in the judiciary and to judges as individuals, but also a cultural and political understanding that justice court separation is nothing but a continuation of the state administrative action. This is an obligation that is required from us today, tomorrow and in the future also from Europe, part of which we pretend to become. This is the request of the ECHR, if we desire to be part of Europe's institutional justice.

Therefore, the main message of this report is that the Ombudsperson requires from all public authorities and organizations which exercise power in Kosovo, to respond to

requests and to take into account the Ombudsperson's findings and recommendations, whether made in this report, or in other annual or specific reports.

Ombudsperson institution remains committed to the principles of democracy and rule of law, trying to remain faithful to such a high legal standard under which assesses also the performance of other institutions. This is the form of inter-institutional cooperation established by the Constitution and law between the Ombudsperson and other public authorities.

Otherwise, not only the Ombudsperson, but the entire system is powerless if the link of inter-institutional cooperation and respect for the law fails.

Executive Summary

a. General insight on situation of human rights and freedoms in 2014

Through this report, and in accordance with an annual tradition set by the Constitution, the Ombudsperson shall inform the Assembly of the Republic of Kosovo, the direct representatives of the people, on the situation of respect, protection and promotion of human rights and freedoms with regards to previous year, and presents to relevant institutions recommendations to improve this situation, this year and in future years.

The annual report of the Ombudsperson provides a good opportunity, to all state institutions, in reminding them that "The Republic of Kosovo is a state of its citizens" and "exercises its authority based on the respect of rights and freedoms of its citizens and of all individuals within its borders "(Constitution, Article 1, paragraph 2). In other words, respecting of human rights is not just a goal, among others, that could be sacrificed or neglected against common interests of daily politics. Respect for human rights and freedoms under the Constitution, constitutes the very basis - foundation of our state.

If a state doesn't stand strong on the foundation it was built upon, this state is in a harsh situation. In his new year speech, the Ombudsperson concluded that the state of Kosovo has failed with regard to respect for human rights and freedoms, in all three pillars of democratic governance: legislative, executive and judicial. This report, which gives an overview of all the work of the Ombudsperson Institution (OI) in 2014, provides detailed evidence for this conclusion.

Certainly, no country is perfect, therefore, even most democratic states also may sometimes make mistakes in the field of human rights. In these countries, if cases of failure to fulfill constitutional and legal obligations are indeed rare, these few black dots cannot unsettle at all their pure and honest commitment and willingness, to protect, respect and promote human rights, in the most efficient manner.

The situation of the state of Kosovo, unfortunately, is quite the opposite. As it is clearly evidenced in this report, in the Republic of Kosovo there are rare cases in which state institutions undertake actions to fulfill their obligations regarding human rights, whereas the consecutive failures in this direction are in hundreds of small pieces, which assemble together to form an endless mosaic of institutional neglect and irresponsibility. The main purpose of this report it is to bring out to the public, without any hesitation or artificial diminishment, the serious situation of human rights in Kosovo. This situation which, although cannot be observed by analyzing each failure isolated apart from others, it becomes very clear and undeniable only when looking at all failures altogether, and identifying repetitive patterns of various violations committed by a range of state institutions, with regard to a wide range of human rights and freedoms.

In the legislative field, this report provides examples of failures of the Assembly of the Republic of Kosovo even for reviewing recommendations of the Ombudsperson for the adoption of new laws, or amendment of the existing laws that affect human rights and freedoms. This failure of the Assembly for human rights becomes even more concerning

in case it is taken into account also the fact that in the previous year, the Annual Report of the Ombudsperson has not been discussed in the plenary session. The delay of the election of a new Ombudsperson, as of June 2014, constitutes another failure. Of course, the commitment of the Parliamentary Committee for Human Rights for cooperation with OI during last two years, it is worth to be emphasized here.

The fact that all these failures are closely linked with a more fundamental failure it has to be mentioned: the failure of the politics after June 2014 Elections to constitute the new legislature of the Assembly. This report shows that the six-month political stalemate has not only been a ridiculous farce proving the failure of politics and the judiciary. Political stalemate has been a serious strike to human rights and freedoms, leaving a backlog, for six months in a row, of a series of legislative reforms proposed and of recommendations given by the Ombudsperson, in some cases are repeated over and over for years. After a failed legislative year, Ombudsperson's expectations are that the proposed reforms and recommendations, which are elaborated under different subjects of this Report, to be taken under review and implemented without further postponement by the new legislature of Assembly.

Failure of the executive/government was far more serious at both national and municipal level during 2014. The information in the report evidence that, in 2014, as in previous years, refusal or failure to respond to the requests and recommendations of the Ombudsperson, continues to be a chronic disease spread out among the highest state authorities, including the President, former Prime Minister, the current Prime Minister, and several ministers of previous and new government. Failure or refusal to collaborate with the Ombudsperson constitutes a direct violation of the Constitution of the Republic of Kosovo, which clearly stipulates that: "Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law" (Article 132, item 3). Moreover, according to the Law on Ombudsperson, failure or refusal to respond "is considered obstruction to its work". Under this standard, the number of investigations of the Ombudsperson that have been hampered by the highest executive authorities in the Republic of Kosovo is inexplicable for a democratic society.

The fact that the President of the Republic, "the head of state [that] represents the unity of the people of the Republic of Kosovo" (Constitution, Article 83), has refused and continues to refuse to cooperate with the Ombudsperson, it is exceedingly concerning.

The failure of the current Prime Minister and his subordinates to cooperate it is equally disappointing. Still, it remains to be seen how realistic was the promise at the inaugural speech he held as the nominee for Prime Minister's post; Mr. Mustafa himself promised that "the government will place high in his political agenda the human rights" and "will ensure that Ombudsperson's recommendations are properly addressed." Taken into consideration the failure since the beginning of the establishment of his Government to cooperate with the Ombudsperson, it remains to be seen how reliable the promises he made were. However, the Ombudsperson, hopes for a fruitful cooperation in the future, either that by the President, as well as by the Prime Minister and the Government of the Republic of Kosovo, in accordance with their constitutional and legal obligation.

The situation of the judiciary with regard to human rights continues to be exceedingly concerning and having no hope for improvement, thus transforming from defenders

into violators of human rights and freedoms, which is resulting in the loss of citizens' confidence in the justice system for the rule of law. Numerous problems in the judiciary of the Republic of Kosovo include, the dysfunction of the judicial authority in the entire country; the delay in solving of civil and criminal cases; the number of pending cases from previous years; low rate of execution of court decisions; statute of limitation of court cases; decisions and court proceedings against judges for corruption; non-implementation in practice of the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRRF) and non-interpretation of court decisions in accordance with the decisions of the European Court of Human Rights (ECHR).

Regardless of these failures of the judiciary proven in the previous years as well, in 2014, we have seen another extraordinary failure by the Constitutional Court of Kosovo (CCK) in handling a case referred by the Ombudsperson against the Decree of President Jahjaga for the extension of the mandate of three international judges of CCK. The ruling of the CCK at this case, regardless that its legal validity has already been disputed, on suspicion of falsification of official document – doesn't fulfill even a minimum of intellectual, legal and professional standards. This is a new development in 2014 and a very concerning one for the Court, which is the "final authority in the Republic of Kosovo for the interpretation of the Constitution" (Article 112, paragraph 1), including the interpretation of the provisions of the Second Chapter of the Constitution, Fundamental Rights and Freedoms.

All of these objective and subjective failures, of the judiciary and of the judges, led to that, that the people, have lost completely the confidence in the institutional justice - the judiciary, and take justice into their own hands by resolving their disputes outside the judicial system, often using violence . Due to this, often happened that a dispute becomes from a civil to a criminal one. These cases have been evidenced by submitting concrete proves in this report. Independence of the judiciary from the other two powers, the executive and legislative ones, in the spirit of the Constitution, it is an urgent necessity. Consequently, increasing at maximum level of the accountability of the judges, having no pardon for their failures and professional irresponsibility, it is of outmost imperative.

b. Structure and content of this Report

This report is disaggregated into four chapters. The first chapter presents an overview of the competencies, responsibilities and mandate of the OI. Likewise, the first chapter reiterates a recommendation that the Constitution has to be amended for the purpose of including three international instruments from the list of international instruments applicable in the Republic of Kosovo directly, the UN Convention on Economic, Social and Cultural Rights, the European Social Charter and the Convention on Rights of Persons with Disabilities. The recommendation for the first two instruments, which has been reiterated for several consecutive years by the Ombudsperson, up to date has been neglected utterly by the competent authorities for amending the Constitution, including the Assembly.

Chapter II provides a detailed summary of the Ombudsperson's work in relation to all fundamental rights and freedoms set forth in the Constitution. The chapter is broken down into three parts. The first part has been focusing on fundamental rights and freedoms, whereas the second and third ones address the rights which specifically are concerning with the protection of these rights, respectively, the right to equal protection of the rights and the rights concerning the judicial protection.

The first part of the second chapter starts with **the right to life**, disregard of which clearly demonstrates the shortcomings of the judiciary in Kosovo and from time to time severe consequences of these shortcomings. The Ombudsperson has received a number of complaints, during 2014, including a case in which a 12-years delay of a trial has resulted in a dispute between the parties which has taken the life of one person and has resulted in serious injuries of several other persons. For the Ombudsperson are also representing a particular concern, delays in the investigation of criminal cases, lack of effective and efficient investigations, and the delays of expertise for the cases submitted with regard to violation of the right to life.

Ombudsperson Institution during the reporting period has received and handled different complaints for alleged violation of **human dignity**. Ombudsperson, during 2014, has noted that a more widespread form of violation of human dignity it is the treatment of employees in the private labor market in Kosovo, which in some extreme cases takes slavery characteristics. More concerning it is the fact that amidst the most flagrant offenders are private security companies, maintenance and hygiene companies, which work for the state institutions.

Furthermore, the Ombudsperson considers that poverty (with over 10% of people in extreme poverty) in which a considerable number of families in Kosovo live, constitutes a violation of their dignity. It has to be emphasized also that the OI statistics indicate that the most vulnerable categories of the population, the poorest ones, are usually the most frequent and potential victims of the violation of human dignity and integrity, such as: pensioners, persons with disabilities, individuals and families with a severe socio-economic situation and in poverty, children, women and members of minority communities such as Ashkali, Roma and Egyptians.

With regard to the **right to freedom and security**, the main concern constitute the judicial detention decisions which sometime do last for years, due to illegal delays of the procedures until reaching a final decision. The Ombudsperson reiterates that efficient administration of justice it is obligation and responsibility of the competent authorities, which would ensure that the detention duration of a defendant does not exceed the time limits.

With regard to **prohibition of torture, punishment or cruel, inhuman or degrading treatment**, the Ombudsperson, during 2014, as every year, conducted regular monthly visits to all detention and correctional centers as well as to places where freedom of movement is restricted. These visits have included mental health and social care institutions, as well as the Asylum Centre. Whereas, majority of complaints received were mainly addressed against court decisions, the Parole Release Panel (PLK), health treatment, releases on weekends, transfers, extraditions etc.

The Ombudsperson notes that prison overcrowding and lack of adequate health treatment remain serious problems in places where freedom of movement is restricted. Notwithstanding, the opening of new prisons has affected in discharging other

correctional centers from overcrowding, renovations to numerous correctional centers, as well as incompleteness of the works, has made overcrowding the concern for this reporting year as well.

Furthermore, despite full commitment of the European Union (EU) and local institutions to improve health treatment for the prisoners, OI in 2014, has continued to receive complaints about inadequate health treatment in correctional institutions, such as lack of medications and other healthcare related matters. Also, it was noticed that mental health institutions, continue facing with lack of professional staff and lack of trainings for them, although there have been improvements in the regulation of infrastructure in general. A key step towards this it is the adoption of the Draft Law on Mental Health. Finally, in March of this year, the Government adopted the draft law, and the Ombudsperson urges the Assembly to adopt it as soon as possible.

Overall, the Government has respected the **freedom of movement** during 2014. However, inter-ethnic tensions, sporadic incidents, provocations and intimidation during this reporting period, have restricted freedom of movement of Kosovo citizens in some parts of the country and Ombudsperson requests continued commitment from the competent institutions to resolve these problems. Freedom of movement in northern part of Kosovo remains limited even nowadays.

With regard to the **right to privacy**, in the reporting period, OI has received a number of complaints of citizens and has opened *ex officio* cases in relation to violations of this right. These complaints are pertaining to public and private sector.

The ongoing failure of the Assembly to adopt a Draft Law on Regulation of the issue of telecommunications and electronic interception has continued in 2014, as in previous years, mainly due to lack of will of the Assembly to include in this draft law sufficient protection on the right to privacy. Assembly is currently reviewing the latest draft law on this subject. Ombudsperson urges the Assembly to act as quickly as possible.

With regard to the **right to marriage and family**, the cases submitted to OI during 2014 indicate that the implementation of this right leaves much to be desired. Ombudsperson, even during this reporting period, has received a number of complaints, which prove the repetition of almost the same problems as in the previous period. These problems have to do mainly with prolongation of divorce proceedings, lack of decision execution on alimony payments, failure to realize regular contacts of divorced parents with children, as well as delays of the proceedings to decide, with respect to the right of child custody and education. Therefore, disrespect of the right to marriage and the family, once again, proves the serious consequences of almost absolute failure of the Kosovo judiciary.

The issue of **freedom of religion, conscience and belief** gives further evidence of state neglect in 2014. This time we are dealing with the failure of the Assembly to adopt a draft law on amending and supplementing the Law on Religion Freedoms. The Ombudsperson considers that freedom of belief, conscience and religion cannot be adequately protected without the adoption of a new law. The need to solve this matter was highlighted by the Ombudsperson also in the annual reports of 2012 and 2013. The fact that the Assembly has not yet approved a new law, indicates once again irresponsibility in the issues of human rights.

There was no complaint filed with the OI, during 2014, which concerns to **freedom of expression**, however, this did not prevent the Ombudsperson to monitor respect of freedom of expression. Special attention was given to cases which were publicly reported for violation of freedom of expression as well as the language used. Since the media are in function of exercising the freedom of expression, they are seen as essential source of information, and electronic media platforms as well, through which already is developed interactive communication, including social networks too.

In the field of the **media freedom**, the Ombudsperson considers of outmost concern the fact that, in 2014, has been reported series of threats and attempts to put pressure on journalists in Kosovo. In October, within the media he works and while carrying out his duties, a journalist was attacked and endangered for his life. In September, threats against journalists of electronic portals, but also of the print media, or even the intimidation of journalists by the media owners themselves where they work, have also been considered serious and unacceptable. Serious violation of the media freedom in Kosovo is also considered the pressure from the officials of the EULEX Mission in Kosovo, against the journalist of "Koha Ditore", in an attempt to stop a report on corruption allegations on involvement of EULEX officials.

Furthermore, for Ombudsperson it remains a concern the disrespect of the Law on Labor, particularly with regard to the employment contracts of journalists in the media and the freedom of trade union organization, especially in Radio Television of Kosovo (RTK), as a public institution funded by the taxpayers. This issue is considered a direct pressure on the work of journalists and needs the attention of the competent institutions to make a more constructive environment for quality journalism and in the function of the correct and accurate informing.

With regard to the **freedom of association**, the Ombudsperson welcomes the adoption by the Assembly of the declaration of partnership between the Assembly and civil society, which aims at facilitating the participation of civil society organizations in the drafting process of legislation and monitoring of its implementation, as well as ensuring the support of the Assembly of Kosovo in the development of civil society in Kosovo. Furthermore, the adoption of the Administrative Instruction on functioning and organization of Non-Governmental Organizations by the Government in September 2014 marks a positive step. The Administrative Instruction defines the rules and procedures of registration, update of the data in the Public Register, termination and cancellation of non-governmental organizations (NGOs) from the Register of NGOs.

However, despite of these positive developments, the Ombudsperson during 2014 has received several complaints which relate to the infringement of the exercise of this right. For one of these complaints, while under review, the Ombudsperson has requested from the Ministry of Public Administration (MPA) necessary information for the investigation of the complaint, once again it is shown disregard of government officials to the OI work. The request for information was sent to the Ministry in September 2014. Up to date, more than six months, the Ombudsperson has not received any response.

The OI, in 2014, has also received several complaints from the representatives of trade unions, which concerned with violation of the right to trade union organization, as part of freedom of association. Due to this reason, the Ombudsperson, in September 2014, issued a statement to the media, through which he appealed to stop such actions by given institutions.

With regard to the **freedom of gathering**, in 2014, as in the previous years, there has been organization of a series of public gatherings and various protests by citizens, students, civil society organizations and various groups of interest. These gatherings and protests were organized in different cities of Kosovo, most of the cases organized in public places and out front of specific institutions. OI within its mandate has carefully monitored many of these gatherings and presents its assessment in this Report.

Also, in this Report, as in the Annual Reports for 2012 and 2013, the Ombudsperson reiterates the request for amendment of a section of the Law on Public Gatherings in order to harmonize it with international standards of human rights. This recommendation for legislative reform, as many other recommendations, has been completely neglected by the Assembly now several years.

With regard to **the right to elect**, early parliamentary elections on 8 June 2014, in general have been well organized, despite some shortcomings, mainly of a technical nature, however, which did not affect the election process. Overall, the Election Day was calm and without any incident. It could be said that these are the best elections held so far in the Republic of Kosovo.

The right to property was the subject of 90 complaints to the OI in 2014, which indicates that the institutional apparatus for resolving the property (real-estate) matters is not being adequate in order to cope with a range of complicated and sensitive issues. The complaints filed in are against the courts of all instances, including the Special Chamber of the Supreme Court (SPSC), against municipalities, against the Privatization Agency of Kosovo, against the Kosovo Property Agency, against publicly owned enterprises, against public prosecutor's offices and Kosovo Police. For the purpose of solving problems in this field, the Ombudsperson in this Report has produced a set of recommendations to the competent institutions.

With regard to **right to education**, complaints have been more than doubled to the Ombudsperson Institution during 2014. These complaints are directed against a wide range of the state institutions: the University of Prishtina (UP) "Hasan Prishtina", the Municipal Education Directorates (MED), municipalities, Ministry of Education, Science and Technology (MEST), Rector' Office of the UP "Hasan Prishtina", Ministry of Internal Affairs (MIA), Student Centre in Prishtina and Faculty of Education in Gjakova.

Of the received complaints, the Ombudsperson it considers as the most concerning the fact that in 2014, as in previous years, serious obstacles for people with disabilities have not been reduced. Support and improvement of conditions for these students as well as establishing the conditions for integration of children with disabilities in the regular education system must be a priority of MEST and of municipalities.

It is worth to mention also the *ex officio* case initiated by the Ombudsperson at the end of 2014, regarding the decision of the former Minister of MEST, Ramë Buja, for the registration of children of categories emerged from the KLA war in the UP. On the basis of a reasonable doubt that the decision was unlawful and unconstitutional, and also that the execution of the decision could cause irreparable damage to current students of the UP, the Ombudsperson requested immediate suspension of the decision, initially addressing this request to former Prime Minister Thaçi and former Minister of MEST Buja, and then the current Prime Minister Mustafa and current Minister of MEST, Arsim Bajrami. All these four officials have completely ignored the recommendation of the

Ombudsperson, confirming once again the excessive irresponsibility of the highest executive authorities in the issues of human rights.

In this reporting year, the Ombudsperson has noticed a diverse range of violations of the **right to work and exercise profession**. During this period, the Ombudsperson ascertains that in the public sector, and specifically in the private sector, there are different violations of the right under employment relationship, including discrimination, such as: violations of the employment procedures, unlawful employment termination, and violations regarding the length of working hours, overtime compensation, denial of the right to annual leave and maternity leave and non-execution of the right to salary.

Ultimately, despite that the protection and safety at workplace is guaranteed by the laws in force, during this period have been reported cases of the workers' death and injury at the workplace. For the Ombudsperson it is a very serious concern, particularly, lack of investigation of these cases by the Labor Inspectorate and investigation authorities, non-punishment of employers leaving out of insurance the workers and workplaces, as well as failing to ensure compensation to victims or their families after accident.

The Ombudsperson is also concerned because in this reporting period, children of minor age have been noticed, every day, carrying out different jobs which harm their health and dignity.

On the basis of the total number of complaints addressed to the OI in 2014, it is noted that there is a slight increase compared with the number of complaints filed in the previous year, with regard to **the right of access to public documents**. The Ombudsperson considers a serious shortcoming the fact that the Law on Access to Public Documents (LAPD), although gives jurisdiction to the Ombudsperson over complaints of violations of this law, does not expressly define other public institutions with executive power, which can oblige responsible institutions for such violations, to respect and execute the right of access to public documents. This leaves the complainer without a satisfactory solution in cases when public institutions neglect the recommendations of the Ombudsperson that the complaining parties obtain the requested documents. For instance, in December 2014, the Ombudsperson prepared a report with recommendations which were submitted to the Ministry of Agriculture, Forestry and Rural Development (MAFRD) with regard to denial of the right of access to public documents, confirming violation of the law. Up to now, the OI has received no response from the Ministry.

Undoubtedly, one of the most important issues that has to be emphasized and which is related to access to public documents, it is Ombudsperson's request and discovery of the documents of the preparatory works (*travaux préparatoires*) of the drafting of the Constitution of the Republic of Kosovo. These historical and highly important legal documents remained lost to the public and the legal community of Kosovo since the establishment of the Republic. Discovery of the preparatory works, the Ombudsperson qualifies as the most important achievement in the area of access to public documents.

Although the Constitution lists **the responsibility for living environment** in Chapter II on fundamental rights and freedoms, the environment and its protection have continued to be left outside of the Government priorities, as shown also by the scarce budget allocation. In particular, lack of interest by the Government of Kosovo, is causing problems to public health and quality of life of citizens of the Republic of Kosovo. Furthermore, environmental tax collected under vehicle registration, hasn't started yet to

be allocated for the field of environment. Inter-institutional cooperation of the authorities in charge of environmental protection is taking small steps. Because of this unjustifiable neglect, continuous environmental pollution, uncontrolled urban expansion, constructions without any criteria, disrespect of regulatory plans and construction norms, loss of agricultural land, air and water pollution, destruction of forests, inadequate management of waste, damage and the disappearance of biodiversity, lack of sufficient monitoring systems, noise, lack of respect of fundamental environmental principles, specifically public information and participation in the decision-making, are problems continuing also in 2014.

As it is said above, second and third part of the Second Chapter of this Report addresses the rights concerning specifically with the protection of fundamental rights, respectively the right to equal protection of rights and the rights to judicial protection.

With regard to the **right to equality before the law**, the Ombudsperson firstly notices that the Law Against Discrimination, despite the fact that it has undertaken through stages of supplementing and amendment, yet hasn't been able to be adopted by the Assembly of the Republic of Kosovo. The Ombudsperson has recommended amendments to this law also in previous annual reports. Based on the up-to-date experience, it is precisely due to the highlighted shortcomings, non-applicability of the Law Against Discrimination continues. So far, to OI it is known only one case of discrimination addressed in the courts. Therefore, the Ombudsperson reiterates his appeal to the Assembly to address this issue with proper seriousness, which has so far failed to do so.

From 1 January to 11 December 2014, 61 complaints of Kosovo citizens in the Department Against Discrimination (DAD) with the OI have been received, in which violations of the right to equality before the law are claimed. The largest number of complaints has to do with discrimination in the area of social, health, property and labor relations.

With regard to the **age based discrimination**, the Ombudsperson notes that, as reported in last year's report, the Ombudsperson Institution has registered cases concerning the agreement the Ministry of Labor and Social Welfare (MLSW), has signed with the Kosovo Energy Corporation (KEC), for employing 100 workers out of the social scheme. After the testing phase and after the notification of candidates that have been hired by KEC, they were re-notified that they could not start working since they don't fulfill the age requirement, under the agreement between them and MLSW.

In the previous annual report, the Ombudsperson reported that the Ministry has not responded to the letters of the Ombudsperson regarding this matter. Therefore on the 27 February 2014, the Ombudsperson published a report with a recommendation for MLSW. Despite its constitutional and legal obligation, the MLSW never responded to the recommendations of the Ombudsperson's Report.

With regard to the **persons with disabilities**, the Ombudsperson in 2014, as in previous years, has observed a number of still unresolved problems. It is worth to mention two issues in particular. Firstly, in the field of education, the physical access of persons with disabilities it is unsatisfying in public schools. In Prishtina, for instance, there are only two schools fulfilling the requirements for free access of children with disabilities to education, while the other school only partially fulfills them. The Ombudsperson considers this as a serious violation of the rights of persons with disabilities.

Secondly, the problem of free movement of persons with disability remains a problem even in other public institutions including the University Clinical Center of Kosovo (UCCK). Based on the information provided to OI from the NGO "Handikos", there are cases when the doctor was forced to get out in the courtyard of the hospital to check the patient, due to inability to enter the hospital. The Municipality of Prishtina requested from "Handikos" the list of persons with disabilities who live in collective apartments for regulation of free access infrastructure. However, situation of this group of society remains as before, because even today no action has been taken.

With regard to **the gender equality**, although the Republic of Kosovo has made progress in achieving equality, women as the most vulnerable category, continue to confront many challenges and unequal treatment and discrimination in many aspects. The long experience in the OI indicates that women, in most cases, complain about problems related to the right to work, economic status, health care, the right to inheritance and the domestic violence.

The Ombudsperson notes that, although in the Assembly of the Republic of Kosovo, the representation of women is 30% according to the gender quota, there is a disadvantage situation for women in the Government of Kosovo which came into power end of 2014 and that in its composition has only two women ministers out of total 21. This fact shows that there is a major predominance of men in the political process and the decision-making. For this reason, the Ombudsperson considers that gender quota must exist for a further period of time as part of the legislation of Kosovo, until a culture of participation of women in leadership positions is established.

The Ombudsperson also considers that gender equality implies a society in which women and men enjoy the same rights and have the same obligations in all spheres of life. However, women's rights have still remained one of the main challenges for the development of Kosovo society, especially regarding their right to inherit property.

The domestic violence continues to be an evident problem in our society. Only a small number of cases of domestic violence is reported to the competent authorities in order to address this issue, however there is a perception that in reality this number is much higher. Particularly in rural areas, the social position of women is clearly subordinate to that of men, and there is very little awareness of the concept of gender equality by the society. Also, in most cases the most frequent victims of domestic violence are children, women, and elders.

Although there is a solid legal basis for protection from domestic violence, it is necessary that in the Constitution of the Republic of Kosovo is included the Convention of the Council of Europe on combating violence against women and domestic violence, the so-called Istanbul Convention, which entered into force in August 2014. Such a call (appeal) is made in the Strategy for Enlargement of the European Commission.

With regard to the victims of sexual violence during the war, a rare step forward was marked in 2014. In the annual reports of the Ombudsperson of 2012 and 2013, the Ombudsperson requested the legal regulation of the status of victims of sexual violence during the war. He also asked that women and girls, victims of the war in Kosovo, must be provided legal and institutional support, with special focus on removing prejudices against them, with the aim of restoring human dignity to this part of our society.

The Assembly of Kosovo on 20 March 2014 adopted the Law on Amending and Supplementing the Law on the Status and Rights of Martyrs, Disabled, Veterans, Members of Kosovo Liberation Army, Sexual Violence Victims of War, Civilian Victims and their families, which establishes the legal terms for rehabilitation and compensation of victims of sexual violence during the war in Kosovo.

With regard to the **children's rights**, during the reporting year, the OI has received 54 complaints, mainly submitted by parents of children. In these complaints, are once more observed the considerable shortcomings of Kosovo judiciary, and the consequences are a vast number of complaints against the courts. These have to do with: delays in court proceedings to decide on child custody, alimony, request for recognition of the right to material support for families who have children under care with permanent disabilities. There have also been complaints about failure to enforce final decisions regarding the non-realization of personal contacts of children with the parent, but also non-payment of alimony, in most cases by the father of the child.

Two other challenges for Kosovo children must be necessarily emphasized. Firstly, violence remains a disturbing phenomenon in Kosovo's public schools. Despite the efforts of the MEST in this area, no evident progress has been marked. At the beginning of this reporting year, in the schools and close to schools, violent incidents occurred. Two of these incidents have resulted in death. Secondly, despite the progress made, the prevention of child trafficking and relevant protection of the rights of children, remain a challenge for Kosovo institutions. The institutions of Kosovo in all cases in which children are victims must seriously and with greater responsibility commit to adequate protection and help. This Report presents some recommendations in this regard.

With regard to the **right to social and health care**, this reporting year does not present a major difference, compared with previous years. General socio-economic situation in Kosovo continues to be difficult. The OI during 2014 has initiated four (4) cases for complaints concerning to violation of this right by health institutions, while the rest of the complaints (60) belongs to the institutions that provide services in the field of social welfare. These complaints mainly have to do with social assistance, pensions and housing.

Provision of services by health institutions in the Republic of Kosovo this year as well has continued to be deficient at all levels (primary, secondary and tertiary). Supply of medicines from the essential list continued to be insufficient and as a result patients are forced to buy them through private pharmacies.

With regard to health insurance, the adoption of the Law on Health Insurance in April of 2014, was seen as the hope to soften this serious situation and raised expectations of citizens for a modern health in Kosovo. But, more likely, there will be delays in its implementation for some time, due to lack of funds and failure to create health insurance fund.

From the investigations of other cases related to the right to health, the OI has noted that there are many cases where the sick are diagnosed with the disease who have no prospect of recovery and these patients, either stay in inadequate health institutions, or are released home, because in Kosovo is not established the medical discipline which is known as "Palliative Medicine". Setting from this fact, the Ministry of Health (MoH) in collaboration with other responsible institutions, should initiate the issue of establishment of this medical discipline, much needed for the citizens of Kosovo.

The OI has received several complaints related to the decision of the former Minister of MLSW Mr. Nenad Rashiq, through which were suspended the requests for exercising the rights arising from the *Law on the Status of Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims*. The OI after legal analysis of cases has determined that MLSW Minister was not delegated any authority for issuing any decision, by which would be suspended or hampered the law enforcement. For this assessment, the Ombudsperson informed the former Minister Rashiq and current Minister of MLSW, Arban Abrashi. None of them answered, despite all letters sent and re-sent by the Ombudsperson. In this case, the Government's silence shows how insignificant it considers the rights of those affected by war.

The LGBT community rights represent a rare case in which it can be said that there is a significant progress in Kosovo, with the support of the Government and the international community, although there are still serious problems with which the members of the LGBT community (Lesbian , Gay, Bisexual and Transgender) face every day.

As we have previously drawn attention in the OI reports, the reporting of violations of the rights of the LGBT community is one of main factors in monitoring the work of the state authorities in preventing these violations. It is necessary that the violations of the rights of the LGBT community are pointed out so that the investigations be carried out and the perpetrators of violations of these rights be punished.

The teenagers also face the problem of discrimination on the grounds of sexual orientation. Members of the LGBT organizations show examples of teachers themselves in schools harass and discriminate against the others on the basis of sexual orientation.

The significant progress as regards the situation of the **rights of communities and their members** has not been marked this year either. As in previous annual reports, in 2014 the non-majority communities in Kosovo, despite extremely favorable legal and constitutional framework, which guarantees the special collective and individual rights, by providing also support actions at local and central level, there are no expected developments when it comes to the implementation of this framework. In fact, all positive examples are reduced to only some individual cases and not to non-majority communities as a whole, which it is indispensable to be changed in the future.

When it comes to safety, there is a continuation of the incidents directed against minority communities, mainly of the members of the Serb community. Besides minor incidents there were more serious incidents such as arson, causing damages, writing threatening messages in the houses and properties of the members of minority communities, mainly Serbs, There has also been registered a significant number of thefts of the agricultural machinery and livestock, as well as a physical armed assault. In some municipalities, the incidents are repeated.

In the field of education, there is no significant progress either compared to the previous reporting period of the OI. There still exist two parallel systems of education, one according to the plan and program of the Ministry of Education, Science and Technology of the Republic of Kosovo and the other, which is in line with the program of the Ministry of Education of the Republic of Serbia.

During the reporting period, it is praiseworthy that for the first time was reached an open collaboration between local governments and educational institutions, which work

according to the plan and program of Serbia, which marks a step forward towards full cooperation in the future with the legitimate institutions of Kosovo.

As far as the members of the Roma, Ashkali and Egyptians community in particular, it must be emphasized that in this reporting period, as in all previous periods, they are facing a difficult situation in terms of socio-economic development.

When it comes to persons repatriated from the communities of Roma, Ashkali and Egyptians, their situation has not changed in a positive sense, in comparison with the situation described in the report of the OI of 2013. The employment opportunities are small, there was no improvement nor specifically produced a vocational training program for repatriated persons, while there is no adequate transitional educational program for children of repatriated persons before continuing regular education.

The third part of the second Chapter of this Report focuses on the rights of judicial protection. During this reporting year, the Kosovo judiciary, courts and prosecutor's offices together, have been followed by different type of difficulties, which have caused loss of trust in the justice system for the rule of law. As noted above, many problems in the judiciary of the Republic of Kosovo include non-functioning of the judicial competence in the entire territory of the country; the delay in adjudication of civil and criminal cases; the number of pending cases from previous years; low rate of execution of court decisions; statute of limitation of court cases; decisions and court proceedings against judges for corruption; non-applying in practice the norms of ECHR and non-interpretation of the court decisions according to the ECtHR decisions.

The Ombudsperson during this reporting year also received complaints against the Kosovo Judicial Council (KJC). After investigating the complaints of citizens, in some cases, it has found out that there were violations of human rights. Therefore, in order to eliminate these violations and to improve legislation in the field of human rights, the Ombudsperson has sent the relevant recommendations to KJC. It is a good sign for cooperation between the KJC and the Ombudsperson that in all these cases, unlike the disregard shown by the highest executive authorities, the Ombudsperson's recommendations have been implemented within reasonable time limits.

With regard to **the right to fair and impartial trial** during the reporting period, the OI has received 548 complaints from citizens and opened 180 cases for investigations, which include alleged violations of the rights to fair trial, particularly the right to trial within a reasonable time. In all cases opened, the OI has launched an investigation and requested information from the courts of different instances, in connection with the actions that have been taken to protect human rights. From the responses received from the courts, the Ombudsperson noticed that the Kosovo judiciary faces with a large number of pending cases. The number of unresolved cases, according to the KJC 2014 annual report on the work of the courts, is high and with tendency to increase. Furthermore, a number of complaints received from the citizens is related to the right to fair trial, which refer to the length of proceedings, due to non-functioning of the courts in the northern part of Mitrovica. This fact remains a major challenge in ensuring the rule of law.

With regard to **the rights of the accused**, in the previous annual reports and special reports, the Ombudsperson has repeatedly expressed his concern regarding the violation of this right. The violations of this right, which are even repeated, represent not only a concern to the Ombudsperson, but first of all, a serious violation of human rights.

During this reporting period, the OI has received one hundred forty eight (148) complaints about such violations. The complaints received evidence that the prolonged and unjustifiable detention continue to be a challenge for the criminal justice system. While reviewing these cases it was noted that the decision on detention often does not contain sufficient reasoning and other alternative measures for defendants are used a little or not at all.

The issue that has been raised in the previous reports and continues to be a concern is the receipt of numerous complaints regarding dissatisfaction with the protection provided, either by lawyers appointed ex officio, or by those appointed by them. The Ombudsperson considers that an effective mechanism at Kosovo Chamber of Advocates (KCA) must be provided so that irresponsible legal representatives are seriously investigated and brought to justice and face the consequences of violating the law.

With regard to **the right to legal remedies**, in 2014, the OI has received 255 complaints. The most frequent are the complaints against the judiciary, ministries, municipalities, Kosovo Police and publicly owned enterprises. The complaints are filed due to inefficiency of the legal remedy, i.e. due to non-review of the complaints within legal deadlines and lack of implementation of judicial and administrative decisions.

The numerous complaints were directed against judicial institutions, courts of all levels, as well as SCSC. The citizens' complaints deal with delays, sometimes for several years of the court proceedings, then for the non-execution of final court decisions and doubts on the objectivity of the judge in deciding the case. This is a serious indicator of the difficult situation of the judicial system, which has not yet managed to fulfill its legal obligations in relation to the citizens' guaranteed requests and rights to legal protection of their rights.

In addition to these complaints, the complaints were filed also against the ministries, administrations and municipalities and mainly deal with non-response to requests addressed to them - administrative silence, which include issues of various fields.

The Constitutional Court of the Republic of Kosovo, as noted above, "*is the final authority for the interpretation of the Constitution*" (Article 112, paragraph 1), including the interpretation of the provisions of second Chapter of the Constitution on fundamental rights and freedoms. Taking into account this important role, the Ombudsperson, since the last year's report, has emphasized that the discussion has to be opened in relation with the 6 months deadline, provided by the Law on Constitutional Court, within which the Ombudsperson may challenge a legal act before the CCK. The Ombudsperson proposes and requests the Assembly of Kosovo to amend this legal norm, i.e. Article 30 of the Law on Constitutional Court, removing all restrictions on the Ombudsperson, because this restriction in the deadline cannot be supported by the so far experience in the Republic of Kosovo and on the experiences of the countries in the region with legal and political similarities, nor on the experience of other European countries, who are distinguished for legal and political stability.

The Ombudsperson, during this reporting year, had also two other concerns regarding the Constitutional Court. Firstly, as discussed above, the Resolution of the Constitutional Court in the case referred by the Ombudsperson against the Decree of President Jahjaga does not meet even minimum intellectual, legal and professional standards. Secondly, the Ombudsperson expressed his concern about the continuous failure of the Government

and the Privatization Agency of Kosovo (PAK) to implement the decision of the CCK for compensation of former employees of Steel Pipe Factory - IMK Ferizaj, a decision that remains unexecuted since December 2010. In 2013, the Ombudsperson has recommended to the Government and PAK to execute the decision of the CCK, but the two institutions in question, have remained and continue to remain silent about this, confirming once again the irresponsibility and disregard of the state of Kosovo against human rights and freedoms.

After a detailed reporting for each right, the fourth Chapter of this Report gives some information about the activities developed under different sectors of OI, including its collaboration with national and international institutions. The fifth Chapter concludes the report with a statistical summary of complaints received in OI during 2014.

c. Instead of conclusion

Same as in the last year, the OI has continued to provide its services to citizens who need help, including provision of all opportunities for filing complaints in all forms of communication, at any time, and under any circumstance: directly to the offices of the Ombudsperson on every working day or even in Open Days, at the headquarters or regional offices of the OI as well as outside, in all municipalities of Kosovo, through regular mail and electronic mail, through family or defense counsel, via telephone or other forms.

As of 1st January to 31 December 2014, 2224 complaints and requests for advice or legal aid were submitted, by Kosovo citizens, indicating a 10 percent increase since 2013. 207 complainers have met personally with the Ombudsperson or Deputy Ombudsperson, during "Open Days", held twice a month in Prishtina, and at least once per month in other municipalities. These statistics are a positive sign for increasing awareness among citizens about the services provided by the Ombudsperson, but also another evidence of the long road that remains before us in the respect, protection and promotion of human rights and freedoms.

On the basis of all these cases submitted to the OI, from the requests and complaints of about 3000 people filed in to the OI, about their cases, in this report, the OI has issued 141 recommendations to various institutions in the Republic of Kosovo.

Although about 75% or 1,637 complaints submitted to the institution are declared inadmissible, the Ombudsperson and his staff are aware that individuals who come through the doors of the institution, whether with complaints that are inadmissible, often see the Ombudsperson as the last chance to solve their problems, but also as the last instance to present their dissatisfaction with the inactivity of the state institutions. Therefore, even in cases in which the institution lacks the power to act, and especially in these cases, the Ombudsperson listens to all those who feel the need to express themselves and to listen to their problems, without no difference. Everyone is received, carefully listened and assisted where possible, or advised where necessary. In this regard, the Ombudsperson Institution aims to be the most democratic institution of the Republic of Kosovo. Every citizen of the Republic of Kosovo is a priority of the Ombudsperson.

At the end of the executive summary of the 2013 Annual Report, the Ombudsperson stated that:

Observance of fundamental human rights and freedoms, and good governance, is an obligation of public authorities. Therefore, the Ombudsperson invites all responsible persons in public institutions not to ignore the citizen's complaints. Also, invites public authorities to take Ombudsperson's recommendations seriously and treat them as constructive contribution, because they present a good opportunity to learn from mistakes and omissions, and consequently improve the state administration in general.

Unfortunately, as shown in this report, a major part of public institutions, particularly the highest authorities of the state, did not accept the invitation. However, the Ombudsperson warmly thanks those officials, who in 2014 were shown responsible and willing to collaborate with the OI, in accordance with their legal obligations and constitutional, for the good of the country. This year and the next years, the Ombudsperson welcomes the continued cooperation with these officials, and invites all other officials, particularly those at the top of the state, to follow their good example, in order to open way for a more rapid and sustainable advancement of the human rights in the Republic of Kosovo.

First chapter

Ombudsperson Institution

The Constitution of the Republic of Kosovo (Articles 132-135) defines the Ombudsperson Institution (OI) as a constitutional category.³ Ombudsperson oversees, promotes and protects the rights and freedoms of individuals from unlawful and irregular actions or inactions of public authorities,⁴ but also other bodies and organizations exercising public authorization for their own account.⁵ Under the Constitution, the Ombudsperson has one or more deputies⁶ For the selection of deputies and employees of OI special attention is paid to the multiethnic composition and gender equality.

1.1. Ombudsperson Institution's Mandate

The Constitution of the Republic of Kosovo and the Law on the Ombudsperson has defined the mandate of the Ombudsperson to receive and investigate complaints from anyone, inside or outside the territory of the Republic of Kosovo, who claims that his rights and freedoms were violated by public authorities in Kosovo.

In its work OI is led by the principles of impartiality, confidentiality and professionalism, it is independent in exercising the duties and does not accept any instructions or intrusions from the bodies, institutions or other authorities exercising power in the Republic of Kosovo. All bodies, institutions and other authorities exercising a legitimate power in the Republic of Kosovo, are obliged to respond to requests of OI and to submit all documents and information required in accordance with the law.

In the framework of his constitutional powers ⁷ as well as legal,⁸ Ombudsperson investigates complaints received from any natural or legal person related to the alleged violation of human rights by the Constitution, laws and other acts, as well as international instruments of human rights, especially with the ECHR.

The Ombudsperson may also investigate on his own initiative (*ex officio*) if the evidence, facts, findings or knowledge acquired provide the basis for the violation of human rights. Likewise, the Ombudsperson uses mediation and reconciliation, and can provide good services to the citizens of the Republic of Kosovo abroad.

The Ombudsperson does not interfere in cases conducted in the courts, unless unreasonable delays or apparent abuse of power take place. He also does not deal with

³ Constitution of the Republic of \Kosovo, Articles 132-135

⁴ *Ib idem*, Article 132

⁵ *Law no. 03/L-195 on Ombudsperson*, Article 1

⁶ *Constitution of the Republic of Kosovo*, Articles 113, paragraph 2

⁷ *Ib idem*, Article 132

⁸ *Law no. 03/L-195 on Ombudsperson*, Article 15

investigation of cases dealing with disputes between private persons. However, the Ombudsperson can initiate matters at the CCK in accordance with the constitution and the Law on Constitutional Court.⁹

The Ombudsperson has also highlighted legal responsibilities, not only to investigate alleged violations of human rights, but also to get committed on resolving them; to make known human rights and to inform the Parliament, Government and other competent institutions of the Republic of Kosovo on matters relating to the protection and promotion of human rights and freedoms; to publish notifications, opinions, recommendations, proposals and its reports; to recommend promulgation of new laws in Parliament, amend and supplement the laws, as well as the issuance or amendment of legislation and administrative acts of the institutions of the Republic of Kosovo; to compile annual and periodic reports and others on the situation of human rights and freedoms in the Republic of Kosovo; to recommend harmonization of domestic legislation with international standards of human rights and freedoms and their effective implementation; cooperate, in accordance with the Constitution and legislation in force, with all organizations and local and international institutions that deal with protection of human rights and freedoms.¹⁰

Creation and development of a culture of good governance and management, which requires professional, efficient and effective, transparency, accountability and responsibility of public administration towards citizens that affects the strengthening and development of the rule of law are the main objectives of the Ombudsperson. The Ombudsperson is committed to enhancing public confidence in public administration, the judiciary and other public authorities.

Citizens can file complaints against public administration, according to a simple and free of charge procedure. Complaints addressed to the OI can be referred to the actions, inactions or decisions of public administration that by the applicants may be considered unfair or unfavorable. When reviewing such complaints, actions of OI's lawyers have to do with the provision of legal advice, with asking for data from the public administration, the courts and other relevant institutions regarding the complaints filed, as well as supervision of certain administrative and judicial proceedings.

The Ombudsperson is also a defender of the public authorities from unfounded and unsubstantiated criticism, of disinformation and illegal, intentional or unintentional actions.

In cases that require immediate actions, the Ombudsperson submits requests for interim measures, by asking legally that the competent administrative body undertakes or suspend a particular action, to prevent irreparable damage of complainants or their property.

If the requests for intervention and mediation efforts are not successful, the Ombudsperson may issue report, providing analysis and public exposure of violation of human rights or applicable laws, along with recommendations for public institution, to avoid violations. The reports are the latest tool of institution for advocacy, whereas the

⁹ *The Constitution of the Republic of Kosovo, Article 113, paragraph 2 and 135, paragraph 4; Law no. 03 / L-195 on the Ombudsperson, Article 15, paragraph 7; Law no. 03 / L-121 on the Constitutional Court, Article 29.*

¹⁰ *Law no. 03/L-195 on Ombudsperson, Article 16.*

copies of the report are submitted to the authority of the violation, the Assembly of Kosovo and other relevant organizations. According to the law, these reports can also be issued for the media.

To protect the rights of some groups of people considered most vulnerable in Kosovo, since years in OI function: Unit for children's rights, gender equality Unit and Non-Discrimination Team.

After the election of deputies of the Ombudsperson, under the OI's are established departments, which are run by the Deputy Ombudsperson, and other special units, according to certain fields.

Within the *Department against discrimination* operate these units: for children's rights; gender equality; against trafficking in human beings and against violence; for persons with disabilities; for the rights of communities; for social issues and the rights of LGBT persons.

Legislation department deals with coordinating the work related to the Assembly of the Republic of Kosovo; coordination of raising issues at the CCK; evaluating the compliance of laws and sub-legal acts; investigating complaints about access to public documents and annual and periodic reporting.

Executive Department deals with investigating complaints against the presidency and the government; investigating complaints against independent agencies; investigating complaints against public enterprises; environmental protection; National Mechanism for Prevention of Torture (NMPT) and customer protection.

Judiciary Department deals with the investigation of complaints against the judiciary; against prosecution office; against Kosovo Judicial Council (KJC); Kosovo Prosecutorial Council (GCC) and the investigation of complaints against the Kosovo Judicial Institute (KJI) and Kosovo Bar Association (KBA).

Meanwhile, the *Public Relations Department* deals with cooperation with civil society; cooperation with international organizations in Kosovo; cooperation with donors; publications, conferences and trainings.

1.2. Access to Ombudsperson Institution

OI expects citizens every working day, who claim that their rights have been violated. They are expected by the legal advisers of OI, who handle cases with care, confidentiality and professionalism, by carefully gathering all the evidence, information, documents and registering all their allegations of violations of human rights.

In order to facilitate the access of the citizens of Kosovo to OI, except the Main Office in Prishtina, OI has regional offices in Ferizaj, Gjakova, Gjilan, Mitrovica, Peja, Prizren and Gračanica. Also, within the Regional Office in Mitrovica OI operates in its sub-offices in the north of the city. OI consists of professional staff serving the citizens and addresses their requests and complaints, based on the legal mandate. Citizens' complaints

can be lodged each working day (Monday to Friday) starting from 8:30 to 16:00 in OI offices. But for emergencies, citizens can also come after working hours.

For easier access of citizens are organized 'Open Days' by the Ombudsperson and his deputies. They are organized in Prishtina (twice a month) and in other Kosovo municipalities (once a month). Regional offices inform the citizens of the respective municipalities for open days through publication of dates in these municipalities, through local media and via the OI official website.

Other forms of access are via mail, phone, fax and electronic mail, which is being used more and more and which, in most cases currently being used for the submission of complaints from citizens living abroad. In OI's Headquarters in Pristina there is a free of charge telephone line for all applicants.

OI's officials conduct regular visits to all prisons and in places where people with limited freedom in Kosovo are kept. To enable direct communication with detainees, in cooperation with the authorities of Kosovo Correctional Service (KCS) and the prison authorities in Kosovo, the OI since 2004, in all prisons and detention centers in Kosovo in visible places put the mailboxes, which are opened only by Representative of the OIs. This practice has proved that the boxes located in prisons, or in places where persons are deprived of freedom, have helped many detained putting the first contact with the Ombudsperson. Such boxes are also located in offices and centers of Mental Health, which facilitates access of patients in OI. These offices and centers are visited regularly every month by OI representatives.

1.3. Implementation of international arrangements and instruments

Protection and respect of human rights and freedoms is the duty of every state. They must comply with international arrangements and instruments on human rights, and to ratify and implement them.

The Republic of Kosovo has incorporated in its Constitution a majority of international arrangements and the most important instruments for human rights and fundamental freedoms which are also directly applicable in Kosovo. In case of conflict, they have priority over provisions of laws and other public institutions of Kosovo.

According to the Constitution of the Republic of Kosovo is guaranteed explicitly direct application of international instruments, such as the following: *Universal Declaration of Human Rights; The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the International Convention on Civil and Political Rights and its Protocols; The Framework Convention of the Council of Europe for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child, and the Convention against Torture and Other Cruel Punishment, Inhuman or Degrading.*¹¹

¹¹ *Constitution of the Republic of Kosovo*, Article 22.

These international instruments are of particular importance in the field of protection of human rights and fundamental freedoms, because they are directly applied in cases where there are shortcomings or gaps expressed in national legislation of Kosovo.

OI has observed serious violations of these instruments in certain cases. Complaints filed in the OI during 2014, indicate that they mainly deal with the right to orderly trial.¹² Overloading of the courts with old unresolved cases and delays in handling new cases, as well as the failure to execute final decisions for several years are hampering the work of the judiciary in Kosovo and thus Kosovo citizens are being infringed the right to a fair, orderly, impartial and within reasonable time limits.

Even though the Republic of Kosovo is not a signatory of the Protocol, it has a constitutional obligation to apply directly to the Convention against Torture and Other Cruel Punishment, Inhuman and Degrading. The Ombudsperson reiterates that the implementation of the provisions of the Optional Protocol of the Convention against Torture and Other Cruel Punishment, Inhuman and Degrading will enable monitoring the implementation of the most comprehensive, effective and efficient institutions holding the detainees and convicted. In this direction were undertaken activities by the Working Group, which acts as precursor of NMPT,¹³ which establishment is foreseen in this Protocol.¹⁴

Once again, the Ombudsperson reiterates his concern about the exclusion of the UN Convention on Economic, Social and Cultural Rights and the European Social Charter in the Constitution of Kosovo. The right to adequate housing, the right to work and those arising from employment relationship, the right to health insurance and a range of other social rights and economic ones, are only some of the rights contained in this Convention, and which still continue to lack adequate legal protection in Kosovo. Therefore, the inclusion of this Convention in the Constitution of the Republic of Kosovo is necessary even as additional guarantee for the citizens of Kosovo, respectively for the protection of their economic and social rights.

Likewise, the Ombudsperson reiterates that under international instruments on fundamental human rights and freedoms which are directly applicable in the Republic of Kosovo, should also be included the Convention on the Rights of Persons with Disabilities. Although this convention's norms are significantly included in other international instruments applicable in the Republic of Kosovo, its inclusion is necessary, because this Convention is the most comprehensive international instrument for human rights, specially dedicated for persons with disabilities, this category composes about

¹² ECHR, Article 6, paragraph 1: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

¹³ As a result of the OI cooperation with some local NGOs (Council for the Protection of Human Rights and Freedoms - CDHRF and Kosovo Rehabilitation Centre for Torture Victims - KRCT), in May 2011 formed Joint Working Group, by which was signed a cooperation agreement.

¹⁴ *Optional Protocol of the Convention against Torture and Other Cruel Punishment, Inhuman and Degrading Article 3* "Each State Party shall establishes, designates or maintains at the domestic level one or several visiting bodies for the prevention of torture and cruel treatment or punishment, inhuman or humiliating."

10% of the total population of the country, aiming the full integration in all social, political and economic fields of Kosovo.

Recommendations:

- *In the Constitution of the Republic of Kosovo, to be included the UN Convention on Economic, Social and Cultural Rights, and the European Social Charter.*
- *In the Constitution of the Republic of Kosovo, to be included the Convention on the Rights of Persons with Disabilities.*
- *All institutions of the Republic of Kosovo to get engaged on full respect and implementation of international instruments, as expressly required by the Constitution of the Republic of Kosovo.*

Second chapter

First part – Fundamental rights and freedoms

2.1. The right to life

The right to life, as a fundamental right and the first condition for the existence of other rights is guaranteed by the Constitution of the Republic of Kosovo¹⁵ and the ECHR.¹⁶

During 2014, OI has received 7 complaints regarding the violation of the right to life.¹⁷ Out of these, in the process of investigation there still are 5 complaints, while for 2 cases the review has been completed. In two other cases have been opened ex officio investigations. One of the cases is about a suicide of one convict in prison.¹⁸ In this case, the obligatory actions of the authorities with the means at their disposal to prevent suicide of prisoner are the matter for investigations.¹⁹

2.1.1. Consequences of inaction respectively delays in court

A concerning phenomenon for the Ombudsperson is also judicial delay of property disputes resolution, which in some cases have been resulting in violations of the right to life.²⁰ The complainant had filed a claim for ownership confirmation and returning it to him, at the Municipal Court in Prizren (now the Basic Court) on 22 April 2002²¹. On the 24 July 2014, the party files a complaint to OI, about the delay of the proceeding for review of his case since April 2002 until the date of filing of the complaint to OI (completion of this report)²², outlining that, due to the 12-year non-solving of the dispute by the court, the parties in dispute about the disputed property, on 29 June 2014

¹⁵ *Constitution of the Republic of Kosovo*, Article 25

¹⁶ ECHR, *Article 2, paragraph 1*.

¹⁷ OI, cases: A. No. 18/2014, A. no. 68/2014, A. no. 154/2014, A. no. 177/2014, A. no. 337/2014, A. no. 420/2014, A. no. 422/2014.

¹⁸ OI, *ex officio case* A. no. 422/2014.

¹⁹ *Administrative Instruction for the Treatment of Prisoners in Correctional Institutions, Article 38.1* "Persons found to be with mental disorders will not be kept in prison, but as soon as possible in agreement with the relevant health institutions will be relocated to countries suitable for mental illness "; and see *manuals of Human Rights, no. 8. A guide to the implementation of Article 2 of the ECHR, Douwe Korf, the Right to Life, p. 19. Keenan versus United Kingdom, in which the state was accused of not sufficiently protecting a mentally ill person from suicide.*

²⁰ OI, *case* A. no. 337/2014

²¹ Complaint registered in the Municipal Court in Prizren, on 22 April 2002

²² ECHR, Article 6, paragraph 1: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time [...]". The same principle is also in Article 10.1 of the *Law on Contested Procedure*, which states that: "The court shall be bound to carry out proceedings without delay and minimize costs as well as to make impossible any misuse of the procedural rights set for the parties according to this law."

get in to a fight with one another and as a consequence a person is killed and several others get seriously and slightly injured.²³

With regard to the case, on 11 August 2014 the Ombudsperson sent a letter to the Basic Court in Prizren, to understand the reasons for the delay of the case. From the response of the President of the Court, dated 21 August 2014, the Ombudsperson was informed that on 6 March 2013, the judge of the case set the preparatory hearing, but from that time until now, the judge did not undertake any other action on this case.²⁴

2.1.2. Lack or delay of investigation

For the Ombudsperson of particular concern do present the delays in the investigation of criminal cases and the lack of effective investigation of cases presented, in connection with the violation of the right to life.

Even in this reporting period OI has received several complaints which concern to violation of this right and the lack of an effective investigation by the responsible authorities with regard to the delay of investigation, tracing, detecting proceedings and identifying the perpetrators of the murder and surrendering them to justice. Violation of the right to life and death cases for various reasons such as road traffic accidents²⁵, murder and body injuries, are criminal offences, the perpetrators of which, in many cases manage to avoid responsibility and not get disclosed by responsible authorities.

One of the challenges facing our society is the phenomenon of blood feud, a custom inherited from the past and action which is in contradiction with the principles of modern society and the rule of law. In this regard an important role has the law enforcement, especially by the criminal police, prosecution office and the court, specialized with relevant qualifications, which are responsible for preserving order and enforcing the law regardless of obstacles.

Regardless the circumstances, manner and the situation of violation of the right to life, authorities have no right to avoid legal obligation, as provided by Article 2 of the ECHR to ensure the development of an independent and effective investigation in cases of infringement of the right to life. Ombudsperson finds that the lack of effective investigation of murder cases and of the court decision, obstructs the relatives of the victim to address the court to seek for compensation for violation of the right. Therefore, it is the obligation of the authorities to provide the citizens with appropriate legal tools for realization of compensation for the damages in cases of failure of public institutions responsible for the investigation, uncovering the offenders and bringing them in front of the justice. The legal system in Kosovo will continue to be inefficient until such mechanisms shall be established.

Recommendations:

²³ See Ruling on imposing the detention to parties for ownership dispute by the Basic Court in Prizren Ppr. nr. 133/2014, dated 18 July 2014.

²⁴ *Law on Contested Procedure, Article 420.2, which states: "The main hearing will be held, as a rule, within thirty (30) days from the date the preparatory session ended".*

²⁵ Information received from the Directorate of Road Traffic Division in the Police of Kosovo, on 4 December 2014. Only from traffic accidents in Kosovo in the period 1 January to 30 November 2014 in Kosovo have been 116 deaths

Kosovo Correctional Service

- *No people with mental disorders should be kept in prison, but in agreement with relevant institutions, send them to appropriate institutions for such persons.*

Kosovo Prosecutorial Council

- *Prosecution authorities, in close cooperation with the police, conduct prompt, thorough and objective investigations, within the legal time limits, by sending the cases to the court, with complete and proven evidence and facts.*

2.2. Human dignity and personal integrity

Human dignity and personal integrity right are guaranteed by the Constitution of the Republic of Kosovo²⁶ and as such are interrelated to each other, because human dignity is an inherent part of the human being and his/her personality.

2.2.1. Infringement on human dignity

OI has received and treated during the reporting period various complaints about alleged violations of human dignity.

One of the complaints on which the OI has opened investigations is the case of one mother in Mitrovica. One of the branches of political parties in Mitrovica, for political purposes without the consent of the mother, had published photos of her son in the social network Facebook, thus violating the dignity and privacy of the child in this case. Representative of OI through continuous contacts and communication through letters, requested from the Personal Data Protection State Agency (PDPSA) that in accordance with the law the party in question is sanctioned, so that in the future such cases are not repeated. Representative of the OI, also through contacting with representatives of the political party, has demanded that these photos be removed from the social network Facebook. From the response of the political party, it has revealed that after application and mediation of the Ombudsperson, published photos have been removed from the social network.²⁷

Another form of violation of human dignity is the treatment of employees in the private labor market in Kosovo, which in extreme cases takes characteristics of slavery. OI investigations on such a case, have found out violations of a range of human rights from a private security company in Kosovo. A worker employed in the company since 2010, had worked for 7 days a week in shifts, day and night, no days off, violating his right to work, the right to annual leave and no payment for night shifts. After 4 years of work experience in this company, he was dismissed without any reason and without any notice.²⁸

²⁶ *Constitution of the Republic of Kosovo, Articles 23 and 24*

²⁷ *OI, case A. no. 152/2014.*

²⁸ *OI, case A. no. 453/2014.*

Based on these data and interrelating to the Universal Declaration of Human Rights (UDHR), which states that *"Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity"*²⁹, The Ombudsperson considers that in this concrete case, in addition to violation of the Law on Labor which stipulates the determination of the working hours, the right to daily break, weekly and annual leave and the right to remuneration for work finished during working hours and after the working hours³⁰, here we are dealing with the violation of human dignity of the employee and many other employees who work in private companies and do not enjoy even the basic rights provided for by the applicable laws in Kosovo.

This phenomenon unfortunately is present in the majority of private economic operators in Kosovo, taking advantage most harshly in this manner from the economic crisis and the high unemployment rate on one hand and the lack of the responsible institutions of the state up to invisibility, respectively, Inspectorate of Labor, to control the respect and enforcement of legislation to work in Kosovo, on the other hand. Representative of the OI, through meetings with representatives of the Inspectorate of Labor has requested to undertake measures against representatives of private companies in order not to repeat these cases in the future.

In order to prevent violation of human dignity and of human rights, the Ombudsperson is committed to have a more practical and active approach. Therefore, regular visits conducted to the places where people deprived of liberty throughout Kosovo is indivisible part of his work as well as periodic visits to the House for Elderly Persons and No Family Care (Asylum) in Prishtina. These visits serve to make sure that in these places human dignity is defended and respected according to international standards applicable in Kosovo.

Protection of human dignity, represent a particular concern, of the families living in poverty. Based on the statistics in Kosovo, in poverty live approximately 29.7%, while in extreme poverty live around 10.2%³¹. According to this, life in harsh economic conditions leaves much to be desired for a dignifying life for this category of Kosovar society.

2.2.2. Personal integrity

With regard to the right to Personal Integrity, OI has also received several complaints. A case of a complainant is distinctive, who during a medical visit in one of the private hospitals in Kosovo, under suspicious circumstances has been undertaken a surgery without her consent,³² violating her right to undergo no medical treatment against her will.³³

The Ombudsperson reiterates that based on the Constitution of the Republic of Kosovo, everyone has the right to make decisions about reproduction, the right to have

²⁹ UDHR, Article 23, paragraph 3.

³⁰ *Labor Law, No. 03/L-2012, Article 20, 28,30 and 32*

³¹ Statistical Agency of Kosovo (SAK), the Statistical Yearbook of the Republic of Kosovo in 2014, published in May 2014, in: <http://esk.rks-gov.net> (12/12/2014).

³² LAP, case A. nr. 310/2014.

³³ *Constitution of Republic of Kosovo*, Article 26, paragraph 3.

control over his/her body, the right to be subject to no medical treatment against his/her will and the right take part to no medical or scientific experiments without his/her consent. ECHR has also outlined that the decision to force a person to undergo medical treatment without his/her consent, violates his/her integrity.³⁴

The most vulnerable categories of the population are usually most frequent and potential victims of violation of human dignity and integrity, such as: pensioners, persons with disabilities, individuals and families with difficult economic and social conditions and under poverty, children, women, members of minority communities, etc.

Ombudsperson, as in previous reports, recalls that during this reporting period as well the status of Kosovo pensioners present a particular concern. According to complaints filed with OI, this matter is serious. Pensions which Kosovo's pensioners receive from the state, further on resemble to social assistance and not a right earned from the work and regulated by law. Financial and material compensation for their social contribution over the decades that pensioners in Kosovo receive, but also the money the beneficiaries of social assistance receive, do not guarantee a dignified life for these categories of Kosovar society.³⁵

A challenge the citizens and institutions of Republic of Kosovo are also facing further on is the protection of human dignity of the people with disabilities. Ombudsperson, as in previous reports, recalls and reiterates that also during this reporting period, the situation of this category in the Republic of Kosovo has continued to be very difficult and without any improvements. Of particular concern for the Ombudsperson presents non-implementation of legal infrastructure, which as its primary purpose has alleviating the discrimination of this category of people.³⁶

Violation of human rights, violation of dignity and personal integrity occurs in more unfavorable situations for the individual, particularly when he/she is powerless to protect, seek and fight for his/her own rights.

The Ombudsperson considers that obligation of the state it is not only the guarantee under constitution of the non violation of human dignity and personal integrity. This is a good initiative only, insufficient for a democratic society. Therefore, the state's obligation should be the respect and protection of human dignity by all means and under all circumstances.

2.3. The right to freedom and security

This right is guaranteed by the Constitution of the Republic of Kosovo³⁷ and other international acts such as the International Convention on Civil and Political Rights³⁸ and the ECHR.³⁹

³⁴ ECHR, *Glass v. United Kingdom*, Application no. 61827/00, Judgment, 09.03.2004, në: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61663> (9.12.2014).

³⁵ OI, Annual report 2013, p. 27 and 110.

³⁶ *Ibidem*, p. 27.

³⁷ *Constitution of Republic of Kosovo*, Article 29

³⁸ *International Convention on Civil and Political Rights*, Article 9

³⁹ ECHR, Article 5.

ECHR outlined the importance and aim of Article 5 of the ECHR.⁴⁰ ECHR has placed this Article in the first row of the fundamental rights, which protects the physical safety of given individual. According to this court, the main purpose of this Article it is to prevent from deprivation of freedom in un-justified and arbitrarily manner.⁴¹

During this period, the Ombudsperson has not received complaints about deprivation from freedom unlawfully and arbitrarily. Representatives of the OI have conducted a number of visits to prisons, detention centers and custody centers in police stations. From interviews conducted with people under custody, there have been allegations of violations of the right to freedom and security in some cases, referring to the decisions on detention and illegal delay of court proceedings until rendering a final decision.

The cases which has been analyzed and monitored by OI refer to the length of detention. In these cases the detention is taking up to four (4) years and the very same cases are still being handled by the competent court up to the moment of reporting.⁴²

The Ombudsperson reiterates that effective administration of justice is the duty and responsibility of the competent authorities, which will ensure that in given case the length of detention of the indicted person does not exceed the legal limits. The duration of detention must be in full compliance with national and international laws for protection of human rights.

The Ombudsperson also reiterates that detention measure should only be imposed in cases when it is necessary, and the decision for detention must be legally well justified, since such justification is necessary and important for the defendant in order to exercise his right to challenge that decision. This requirement is also in line with decisions of the ECHR, which has outlined that in each case, the legal ground for imposing a detention measure must be clear and the courts must emphasize the reasons for imposing such measure.⁴³

It is also the responsibility of the competent authorities to guarantee the safety of persons who are under their custody and who are being kept on hold in detention centers and prisons.

During the reporting period, at Dubrava Correctional Center (CC) a convicted person was raped in the cell he was being held.⁴⁴ Ombudsperson reiterates the obligation of competent authorities to guarantee the safety of persons who are under their custody. Whereas, in these cases they are obliged to conduct effective and independent investigation in order to shed the light onto the cases.

Recommendations:

- ***Kosovo Judicial Council should undertake necessary measures to ensure the effective administration of judiciary, in order to avoid any unnecessary***

⁴⁰ ECHR, *McKAY v. The United Kingdom*, Application no. 543/03, Judgment, 3 October 2006, nē: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i={%22dmdocnumber%22:\[%22808945%22\],%22itemid%22:\[%22001-77177%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i={%22dmdocnumber%22:[%22808945%22],%22itemid%22:[%22001-77177%22]}) (8.12.2014).

⁴¹ *Ibidem*.

⁴² OI, cases A. no. 442/2014 and A. no. 197/2013.

⁴³ GJEDNJ, *Danalehi v. The Republic of Moldova*, Application no. 25664/09, Judgment, 17.12.2013, nē: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126353# {%22itemid %22:\[%22001-126353%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126353# {%22itemid %22:[%22001-126353%22]}) (8.12. 2014).

⁴⁴ OI, *ex officio* case A. no. 422/2014.

delay of detention and that the detention cases are to be treated within a reasonable timeframe.

- *Ministry of Justice, respectively Kosovo Correctional Service should undertake all measures for the safety of persons who are under their custody in holding and detention centers and prisons, based on their legal obligation.*

2.4. Prohibition of torture

2.4.1. Visits to places where persons are deprived of their freedom

In 2014, the Ombudsperson, in accordance with its constitutional and legal mandate to prevent torture,⁴⁵ has conducted regular monthly visits to all correctional facilities and detention centers as well as in places where freedom of movement is restricted.

OI has visited mental health and social care institutions, as well as the Asylum Centre.⁴⁶ These places do not represent the classic facilities for deprivation of liberty, however OI has visits these places in accordance with the competences set forth in Article 4 and 20 of the Optional Protocol of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴⁷

Visits to these institutions have taken place in cooperation with departments and employees, while OI officials had unlimited access to all areas where persons deprived of their freedom were held, and had complete freedom in choosing the persons with whom it had conversations.

2.4.2. Complaints of persons deprived of liberty

During 2014, OI has conducted 161 monitoring visits to prisons, detention centers, holding centers and other institutions where freedom of movement is restricted.

Complaints have been received through boxes installed in these centers, by mail, telephone calls, family members, lawyers or even through social workers of those institutions. Complaints of an urgent nature mainly are processed immediately, via e-mail or phone as well as directly through the correctional facility management. Opening of the complaints boxes is carried out during regular visits to these institutions.

Most of the complaints received were largely addressed against court decisions, the Conditional Release Panel (CRP), health treatment, rejection of the release for the weekend, transfers, and extraditions.

⁴⁵ *Constitution of the Republic of Kosovo, Article 27: "No one shall be subject to torture, punishment or cruel, inhuman or degrading".*

⁴⁶ Ombudsperson has visited the Refugees Asylum on 20 June 2014, on the International Refugee Day. In the center were placed 9 people. This center meets the highest European standards for asylum seekers.

⁴⁷ OPCAT was adopted on 18 December 2002 in the 57 session of the UN General Assembly, Resolution A / RES / 57/199 and entered into force on June 22, 2006.

2.4.3. *Conditional release*

CRP has continued working on handling the cases of applications for eligibility to parole release. OI's continued concern with regard to the composition of the panel of three regular members and the fourth one substitute⁴⁸ has proven to be right, since there were evidenced cases where certain members of this panel are faced with the situation, where both the judge and the prosecutor had to be excluded due to the conflict of interest. Therefore, it was decided to appoint two additional members, so-called passive, who will be engaged in cases of conflict of interest.⁴⁹

CRP held 34 sessions, during which 234 cases have been examined and defined according to the list received from correctional centers. During this period 56 persons have been conditionally released by CRP, while under the supervision of Kosovo Probation Service (KPS) have been 88 persons released from prison on parole, of which 32 cases were carried over from previous years. Two cases were females, of which, one has successfully completed program of care while the other one remains on the program of care.

Out of overall number, in 2014, 36 persons have completed successfully the supervision, whereas 50 cases remain still under the supervision of KPS. During the reporting year, 2 cases did not follow-up successfully supervision obligations for which CRP has revoked the decision for release on parole. In the Program on Care after Release, 38 minors have participated, of whom 11 have been transferred from previous years. Out of this number, 17 have completed successfully the program, whereas 21 others remained under care (supervision).⁵⁰

During the reporting year, OI has received a number of complaints against decisions of CRP, due to the small number of releases, non-information on time about the decision, drafting of the decisions, which often have no sufficient justification on rejection reasons. This, as it seems, caused resentment among prisoners, and therefore OI opened investigation on the complaint submitted through the petition signed by 93 prisoners. Regarding the complaint, a letter has been sent to the KJC under which supervision CRP works.⁵¹

OI has also opened investigation on the complaint filed in by petition, signed by 63 other prisoners, against CRP⁵². The prisoners have complained that their rights are being violated as set forth under Article 3 of the Criminal Code of the Republic of Kosovo

⁴⁸ OI, *Annual Report 2013*.

⁴⁹ KJC appointed the backup Chairman by Decision no. 01/196, on May 14, 2014, only in cases when the Chair is excluded from the hearing, under Article 22 of Regulation no. 01/39, on the organization and functioning of the Conditional Release Panel. Likewise, KJC Decision no. 129 on September 16, 2014, appointed the backup Chairman, where the two chairmen are excluded from the hearing, pursuant to Article 22 of Regulation no. 01/39 for CRP.

⁵⁰ OI has provided information from Mr. Armend Mustafa, head of the Division for Measures and Alternative Sanctions in IAK.

⁵¹ OI, case A. nr. 443/2014.

⁵² OI, case A. nr. 553/2014

(CCRK)⁵³, for failure to apply the provisions which are more favorable. The complainers pretend that they were sentenced according to the law that was in force before the entry into force of CCRK of 2013,⁵⁴ for which they are denied the right to line-up at the conditional release panel, after having served half of the sentence, as it has been envisaged at the time they were sentenced.⁵⁵

2.4.4. Health care

With the support of the EU, opening of the Institute of Forensic Psychiatry in Kosovo (IFPK)⁵⁶ has taken place, in which will be treated people who have committed various criminal offenses and who need along with psychiatric - forensic expertise at the same time undergo mandatory treatment in this institution.

This institute has a capacity of 36 beds, 12 of which are for forensic psychiatric expertise, while 24 others for compulsory treatment, where a total of 12 people are placed, 6 in evaluation ward and 6 in mandatory treatment ward.⁵⁷ Persons placed at the Institute, come with a court order and since they can be dangerous both to themselves and the staff the security guards have been hired. IFPK currently is operating within the University Clinical Hospital Service, but works are in progress to transfer the Institute under the Ministry of Health.

During the reporting period, implementation of the agreement for transfer of competences from the Ministry of Justice (MoJ) to the Ministry of Health (MoH) has begun.⁵⁸ Administrative Instruction on the Functioning of Prison Health Service⁵⁹ has been issued, and the work on drafting the protocols is in the process, which is the key point for the success of the transfer from the MoJ to MoH. Integration of Istanbul Protocol, as a document for the prevention and documentation of torture and maltreatment in detaining facilities, by prison health service, it is being developed by MKPT Institution of Denmark (Dignity Institute), in collaboration with KRCT.⁶⁰

⁵³ *Criminal Code of Kosovo, no. 04/L-082 entered into force on 1 January 2013, Article 3, paragraph 2*: "In the event of a change in the law applicable to a given case prior to a final decision, the law most favorable to the perpetrator shall apply."

⁵⁴ *Ibid, Article 94, paragraph 2*: "A person convicted of a criminal offense which punishable by at least five (5) years imprisonment, can be released on parole after" having served two-thirds (2/3) of the sentence imposed [...]"

⁵⁵ Provisional Criminal Code of Kosovo, no. 2003/25, Article 80, paragraph 2, "A convicted person who has served half of the sentence of imprisonment can be released on bail and be released from prison on condition that he does not commit another criminal offense before expiration of sentence".

⁵⁶ On 13 May 2014, the IPFK opening took place, whereas completion with professional staff started from 4 August 2014 and who completed all necessary training and are ready to work.

⁵⁷ On 27 October 2014, the Ombudsperson visited IPFK and met with its director, Mr. Gani Halilaj. IPFK building meets the highest European standards for work and treatment of patients

⁵⁸ On 13 June 2013, the Cooperation Agreement was signed between the Ministry of Justice and Health for transfer of competences for providing health care services in correctional institutions from the Ministry of Health MD.

⁵⁹ Administrative Instruction 05/2014, approved in the meeting 201 of the Government of the Republic of Kosovo, with decision no. 02/201, dated 22 October 2014.

⁶⁰ Interview conducted by KRCT Executive Director, Ms. Feride Rushiti, during the workshop "The integration of the Istanbul Protocol for prison medical staff", in collaboration with Jens Modvig, the Danish NPM / Dignity Institute, dated December 11, 2014.

During this period for which it is being reported there are finalized contracts for all of planned supplies (medicines, office, hygiene, etc.). Training of staff on the use of Health Information System is completed, as well as the issue of consultants, who will be paid according to realized norm is regulated.⁶¹ Also, the Stationary of High Security Prison (HSP) in Gërdovc, with 11 health workers (2 doctors, 6 nurses, 1 psychologist, 1 dentist and one part-time psychiatrist) has been made functional. Management of patients imprisoned in the chain of health institutions has been regulated by the Information Circular.⁶² Whereas, still remains a concern the non-functioning of safe rooms at UCKK.

However, OI has received a number of complaints against health treatment in correctional institutions, for lack of medicines, inadequate treatment and other issues related to healthcare. In all cases of complaints, OI has opened investigation on such cases and has requested from responsible institutions to provide medicines which are necessary under the law.⁶³

2.4.5. Overcrowding

Even in the previous annual reports, the Ombudsperson has consistently highlighted the problem of overcrowding centers where persons deprived of their liberty are placed and has requested from the institutions to find solution for this issue. Opening of High Security Prison (HSP) ⁶⁴ as well as of Kosovo Forensic Psychiatric Institute (KFPI) will reflect in reducing of the congestion. However, renovations to many correctional centers, as well as failure to complete the works for the construction of the Detention Centre (DC) in Pristina and Gjilan, have made the issue of overcrowding to remain a concern for this reporting year as well.

In the reporting period, the situation of the population of correctional centers has been as follows:

⁶¹ Interview conducted with Mr. Milazim Gjocaj, director of the Prison Health Department, dated 11 December 2014.

⁶² Information Circular 03/2013 for imprisoned patients treatment in public health institutions, dated 27 November 2013.

⁶³ OI, case A no. case. 420/2014, appealed against Dubrava Prison, dated 16 September, 2014, filed by the wife of the prisoner, who claimed that her husband, who is serving a sentence in Dubrava Prison, is not being treated with appropriate drugs and that his life is in danger. The prisoner was suffering from heart disease, after having operated valves of the heart. On 17 September 2014, the prison management, through email and telephone, was informed about the case and concerns presented by the wife of the prisoner. On that day, the prisoner is sent to Peja Regional Hospital for treatment after his condition worsened. On 19 September, 2014, OI representatives visited the prisoner in Peja Hospital, where the doctor on duty informed that his condition is very serious and requires proper treatment. For all this was informed the prison management, who promised that the prisoner will be placed in hospital for further treatment. On 25 September 2014, OI was informed that the prisoner is placed in the prison hospital and that the doctors' recommendations of Peja Hospital are being taken into consideration. On 1 and 24 October 2014, Representative of the OIs visited the prisoner in prison, who stated that now he is satisfied with the treatment that is being done by prison medical staff.

⁶⁴ On 18 December 2013 the official opening of the High Security Prison (HSP) in Gërdovc of Podujeva took place.

- Correctional Centre in Dubrava, as one of the centers with the largest capacity of accommodation, this year as well is faced with the problem of overcrowding, due to the renovations that have taken place and due to the fact that in some cell-blocks, such as cell-block 8, where prisoners of higher risk are placed, there was no possibility to place other prisoners.
- Correctional Centre in Lipjan is refurbishing cell-block O, where women are to be placed who currently are placed in the cell-block for minor offences offenders. There are 43 women placed, among them two minors.⁶⁵ In other cell-blocks there are 45 minors. Nine prisoners convicted of minor offenses are held to work while others have been transferred to other centers.⁶⁶
- Correctional Centre in Smrekovnice, which is semi-open type, has a capacity of 200 persons in cell-blocks and 16 persons in the admission rooms or the so-called transitional. Here are 201 persons placed.⁶⁷
- High Security Prison in Gërdovc, which has a capacity of 390 persons, the first admission of prisoners has made on 31 May 2014, and currently counts 82 prisoners.⁶⁸
- Detention Center in Lipjan, which has a capacity of 170 persons, has more than two months that it has under renovation the B and C wing of the facility, and this forced to deal with overcrowding, of 96 persons placed.⁶⁹
- Detention Center in Mitrovicë with a capacity of 55 persons has 39 persons placed.
- Detention Center in Prizren, with a capacity of 92 persons, holds 97 people, while some renovations and paintings they had have just completed recently.⁷⁰
- Detention Center in Peja has a capacity of 80 persons, plus 6 in isolation, has 71 persons placed plus 1 currently sent to KFPI. This center is doing some work in the bathrooms, which do not represent an obstacle for the functioning, but the center doesn't fulfill the conditions, as there is very little natural light for persons placed and the staff.⁷¹
- Detection Center in Gjilan has a capacity of 94 persons, while it has 84 persons placed. OI has consistently recommended the construction of a new center for Detention Center in Gjilan. During the reporting year we were informed that the structural works for building this center are being finalized.⁷²
- Detention Center in Prishtina has a capacity of 65 persons, while 67 people are placed. The construction of a new detention center has started, and by the end of the reporting year is expected to have completed structure constructions.⁷³

⁶⁵ Minors are placed with the adults, which constitutes violation of human rights and Law no. 04 / L-149 for the execution of criminal sanctions, which in Article 33, paragraph 6, is stated that: "Adults are not placed in correctional facility, or in a part of correctional facility, with minors."

⁶⁶ Lipjan Correctional Centre Director, Mr. Hestet Loku, provided to OI the statistics on 15.12.2014.

⁶⁷ Correctional Center Smrekonica Director, Mr. Xhevdet Maçastena provided information to OI, on 15 December 2014.

⁶⁸ High Security Prison Director, Mr. Rasim Selmanaj, provided information to OI on 15.12.2014

⁶⁹ Lipjan Detention Centre Director, Mr. Arif Beqa provided information to OI on 15.12.2014.

⁷⁰ Prizren Detention Center Director, Mr. Ilir Gutaj, provided statistics to OI on 15.12.2014.

⁷¹ Peja Detention Center Director, Mr. Ibërdemaj Isuf provided statistics to OI on 15 December, 2014

⁷² Gjilan Detention Center Director, Mr. Sefik Sylejmani provided statistics to OI on 15.12.2014..

⁷³ Prishtina Detention Center Acting Director, Mrs. Besa Sahiti, provided statistics to OI on 15.12.2014.

Overcrowding and systematization of the prisoners, has been a constant concern to OI. As provided for by Article 15, paragraph 3 of the Law on Ombudsperson,⁷⁴ OI has opened an investigations based on recent media reports that in Dubrava prison a suicide and rape was committed⁷⁵. Regarding the case of suicide on 24 September 2014 OI conducted a visit in Dubrava Prison, where talked with the prison management and conducted interviews with persons who were in the room with the deceased, who committed suicide in the bathroom of his room, on 19 September 2014. OI has also visited the injured, respectively the rape victim, who was attacked by other prisoners, with whom he was sharing the room. During that visit, OI has met with Dubrava hospital doctor.

OI was informed that the case is currently being investigated by the Basic Prosecutor's Office in Peja, and requested a forensic examination of the case. Also KCS has established two *ad hoc* commissions, which are currently conducting investigations with regard to the case and the OI will be notified on the results of the investigation.⁷⁶

For the Ombudsperson non-systematization at the time of placing the prisoners in a correctional facility presents a concern, which not only can have consequences, but also constitutes a violation of human rights guaranteed under national and international laws and has been one of the recommendations that is constantly repeated by OI. In the present case, the prisoner - the rape victim was sentenced to only 20 days in prison, while he was placed in a room with prisoners with long sentences (of 3, 6 and 17 years). OI considers that non observance of the criteria for systematization and placement of prisoners constitutes violation of human rights, as set forth under the Law on Execution of Criminal Sanctions.⁷⁷

2.4.6. Mental Health Institutes

There are currently 16 institutions in Kosovo which are dedicated for accommodation of persons with mental disabilities. These institutions are managed by the MoH, where

⁷⁴ *Law Nr. 03/L-195 on Ombudsperson*, Article 15, paragraph 3, "The Ombudsperson has the power to investigate whether to respond to complaint filed or on its own initiative (*ex officio*), if from findings, testimony and evidence presented by submission or by knowledge gained in any other way, there is a base and it results that the Republic of Kosovo institutions have violated human rights and freedoms.

⁷⁵ *OI, ex-officio* case, A, no. 422/2014

⁷⁶ OI has talked with the Prisons General Director, Mr. Emrush Thaçi, on 16 December 2014.

⁷⁷ *Law no. 04 / L-149 on execution of penal sanctions*, Article 33, paragraph 3, "The placement of a convicted person in a particular correctional facility or in a particular unit of a correctional facility should take into account his or her age, the type of sentences, their weight of sentences and the fact that he or she was previously sentenced, his or her physical and mental health, any special treatment requirements, the location of the current or permanent residence of his or her family and security, as well as reasons pertaining to education or work that might be relevant for his or her social re-integration and other criteria determined with secondary legislation which shall be issued by the Minister ". Article 182, paragraph 1, "The sentenced persons with imprisonment due to a minor offence shall serve their sentence in the correctional institution separated from people held in pre-trial detention."

persons with chronically mental illnesses⁷⁸ are placed and institutions managed by the Ministry of Labor and Social Welfare (MPMS), intended for accommodating persons with mental retardation or delay in development.⁷⁹ For placement of people in these institutions, so far there are no relevant laws regulating the conditions and criteria for restricting the freedom of such persons, whereas the Law on Mental Health, which addresses this category it hasn't been approved yet by the Assembly of the Republic of Kosovo.

Mental health institutions, continue to face with lack of professional staff and lack of their training, although there have been improvements in the regulation of overall infrastructure.

Given the information and the findings during multiple visits in all these institutions, the Ombudsperson, for the purpose to improve the overall situation, it considers necessary to give recommendations for MoJ, KCS, MH, MLSW, some of which remain the same since the last year.

Recommendations:

Ministry of Health

- *To build Safe Rooms in UCCK, in which will be placed convicted persons in need of medical treatment.*

Ministry of Justice

- *Place minor women separately from the adult ones in Lipjan Correctional Centre.*
- *Make categorization and placement of convicted and detained persons, according to the nature of the offence, risk and age.*
- *Provide training for the staff of institutions, where detained persons are kept (social workers and other staff), for the purpose to enhance their knowledge on human rights.*

Assembly of the Republic of Kosovo

- *Approve the Law on Mental Health as soon as possible.*

CRP, KCS and KPS

- *Strengthen cooperation between CRP and KCS and KPS staff to provide better services, through the organization of joint workshops.*
- *Inform detainees about their rights and obligations, as well as how to file complaints.*
- *Increase the number of professional staff for mental health institutes and provide the necessary training for them.*

⁷⁸ Institutions managed by the MoH are: Center for Integration and Rehabilitation of the chronic psychiatric patients in Shtime; Integrated Community Houses (ICH) in Bresje (Municipality of Fushe Kosove), in Ferizaj, Gjilan, Mitrovica, Gjakova, Peja and Prizren.

⁷⁹ Institutions managed by MPMS- are: Special Institute in Shtime, Community House for Persons with Mental Disabilities in Shtime, House Children with Mental Disabilities in Shtime; Community-based Houses (KBA) in Ferizaj, in Kamenica, in Vushtrri, in Decani and Gracanica; and House for Elderly Persons and without Family Care (House of Elders) in Pristina

2.4.7. Working Group of the National Mechanism on Torture Prevention

*Working group*⁸⁰ has continued its cooperation in this reporting year as well, conducting regular joint visits to places where persons deprived of liberty are placed. In accordance with the methodology of work, during regular visits, the Working Group initially, informs on its plan the person in charge of the institution where the deprivation of liberty is carried out, and afterwards conducts investigation in places where such persons are held, checks the records, and conducts direct and individual conversations with persons deprived of their liberty, without the presence of officials.

The Working Group has conducted joint meetings in order to assign the tasks, fundraising, develop activities, conduct trainings, seminars and conferences, lobbying, advocacy, etc.

The Working Group continues cooperation with the OSCE as well as the Helsinki Committee of the Netherlands, with which they are developing the project "Improvement of prison conditions and reintegration of convicted juveniles". The project started end of 2013, is implemented in Kosovo, Albania and Macedonia, and will be concluded in early 2016.

On 28 March 2014 the *Working Group* conducted a visit to the ISS, following the publication of information in the media,⁸¹ about the mistreatment of a resident person. Director of the Institute announced that after the allegations made in the media, he requested to conduct forensic expertise as well as investigation by the competent prosecution office⁸², and asked for help to shed the light into this case.⁸³

OI has contacted the Prosecutor's Office in Ferizaj regarding this case and was informed that investigations are opened and that the case is in regular investigation procedure.⁸⁴

On 23 and 24 June 2014, the *Working Group* has carried out a second re-check visit to the Dubrava and Lipjan Correctional Center as well as in Lipjan Detention Center, in order to follow-up the recommendations from the previous year, as well as analysis of actions against persons deprived of liberty. The report contains recommendations that are directed to the visited responsible institution and to the respective ministry.

On 26 June 2014, the *Working Group* held a press conference where it presented the findings of the monitoring, which will be published in the report.

On 29 October 2014, the *Working Group* held the training, with the topic: "The fundamental principles of documentation of torture and inhuman acts," organized by

⁸⁰ OI, KRCT and CDHRF signed the Cooperation Agreement on 10 May 2011, which includes the establishment of the Working Group, which will perform the obligations arising from the Optional Protocol to the Convention against Torture and will lobby for the creation of the Mechanism on Torture Prevention in Kosovo.

⁸¹ The newspaper "Koha Ditore", dated March 27, 2014, published the article "*Patients in the Special Institute in Shtime allegedly sexually abused by staff, beaten and abused*".

⁸² Interview with Director of SISH, Mr. Xhemajl Dugolli, on 28 March 2014

⁸³ *Law no. 03 / L-195* on the Ombudsman, Article 15, paragraph 8, "the Ombudsman shall exercise its powers with mediation and conciliation".

⁸⁴ On 21 November 2014, OI representatives met with Acting Chief Prosecutor of Basic Prosecution Office in Ferizaj, Mr. Rasim Maloku.

KRCT in collaboration with Denmark Dignity NMPT Institute, which serves to monitors, to identify violations of the medical staff.

On 16 December 2014, the *Working Group* held its last meeting for 2014 for the purpose of coordinating the activities and work plan for the following year.⁸⁵

2.5. Freedom of movement

Freedom of movement is a fundamental human right and means free and unhindered movement inside and outside borders of the country, equally for all. The Constitution of the Republic of Kosovo guarantees this right to all residents of the state, throughout the territory, without restrictions and unlawful interference.⁸⁶

Freedom of movement during this reporting period is generally respected, with all inter-ethnic tensions, sporadic incidents, provocations and intimidation during the reporting period, in some parts of the country (in the north of Kosovo) have contributed to the violation of freedom of movement.

There are still places where Serbs cannot move freely, cannot visit their property nor sacred places or objects, as it was the case in the village of Mushtisht and in Gjakova.⁸⁷

During this year, there has been a number of incidents and attacks against the returnees, burning and theft of their property, particularly in the municipality of Klina and Istog.⁸⁸ Also, during this year, there were attacks and incidents in Vitia, in which several members of the Serb community have been caused bodily injuries, as well as verbal provocations with ethnic motivations were addressed to priests of Serbian Orthodox Church (SOC).⁸⁹

Also, provocations directed against members of the Serb community by writing graffiti on the walls of Serb houses in Rahovec and Fushë Kosovë,⁹⁰ as well as incidents in which targets were Serb monastery in Deçan and Peja Patriarchate, constitute concern.⁹¹ In these cases Kosovo Police has intervened, but OI has no information that any of these cases has been solved and that their perpetrators are brought to justice.⁹²

Despite the fact that the Municipal Community Safety Councils (MCSC) have held regular meetings (except North Mitrovica, Leposavic, Zubin Potok and Zvecan), to

⁸⁵ The meeting was held with the support of the OSCE, in Pristina on 16 December 2014.

⁸⁶ *Constitution of the Republic of Kosovo, Article 35.1.* "Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence." *Law on Citizenship. 03 / L-034, Law on Dwelling and Emplacement No. 02 / L-121, Law on Foreigners no. 03 / L-126, Law on Travel Documents no. 03 / L-037*, adopted on 19.06.2008 in the version amended by the *Law on Amending and Supplementing the Law on Travel Documents no. 03 / L-217*, adopted on 11.12.2010.

⁸⁷ Information taken from the website of the Ministry for Communities and Return (MCR), the news section, <http://www.mkk-ks.org/?page=3,12,748> (15.12.2014).

⁸⁸ *Ibid.* <http://www.mkk-ks.org/?page=3,12,802>; <http://www.mkk-ks.org/?page=3,12&offset=70> (15.12.2014).

⁸⁹ *Ibid.*, <http://www.mkk-ks.org/?page=3> ; <http://www.mkk-ks.org/?page=3,12&offset> (15.12.2014).

⁹⁰ *Ibid.*, <http://www.mkk-ks.org/?page=3,12,798>; <http://www.mkk-ks.org/?page=3,12&offset> (15.12.2014).

⁹¹ *Ibid.*, <http://www.mkk-ks.org/?page=3,12,775> (15.12.2014).

⁹² *Ibid.*, <http://www.mkk-ks.org/?page=3,12,748> (15.12.2014).

encourage municipal officials, Kosovo Police and civil society, to work together on local security issues, even during this reporting period there have not been achieved satisfactory results in this regard.⁹³

The Ombudsperson notes that the competent authorities on security issues have not responded adequately and warns, as it has done several times up to now, that such similar incidents affect negatively the freedom of movement. Therefore, competent authorities should make more efforts in preventing and stopping such incidents and attacks and respond quickly, responsibly and decisively on shedding the light on them and punish perpetrators of such acts adequately in order to ensure freedom of movement throughout territory of Kosovo. It is indispensable to work more on the security of citizens in Kosovo and in building so much needed confidence on government institutions.

2.5.1. Implementation of the agreement on freedom of movement

In accordance with the Freedom of Movement Agreement (Agreement) from the dialogue with Serbia,⁹⁴ Kosovo's citizens during this reporting period, were able to move and travel freely inside or through the territories of the two countries, using only ID cards, whereas children under 16 years of age only with the birth certificate. However, Kosovo's citizens still cannot travel with the passport of the Republic of Kosovo.

However and in spite of having three and a half years from concluding the Agreement, until the end of the reporting period the citizens have further been paying higher and different taxes for their vehicles when entering from Kosovo to Serbia and vice versa. The Ombudsperson reiterates that it is a necessity that payment for people who drive vehicles is cancelled as quickly as possible with the conclusion of the agreement between Kosovo and Serbia.

2.5.2. Freedom of movement in northern Kosovo

During 2014, as in the previous years, freedom of movement in northern part of Kosovo, mainly for Albanian residents, but also for some of the residents of other non-Serb communities, continues to be difficult and unstable.

Restriction of freedom of movement and the difficult security situation in northern part of Kosovo remains now 15 years, having serious consequences for the overall stability of security in this part of the territory of the Republic of Kosovo.

During 2014, the freedom of movement in the north of Kosovo was obstructed by some occasional incidents. During this year there have been 8 explosions (7 explosions with explosive for military purposes in the northern part of Mitrovica and 1 explosion in Zvecan). These explosions have caused material damage to private property, cars and

⁹³ Consultative bodies provided by administrative instructions, adopted by the Ministry of Internal Affairs (MIA) and the Ministry of Local Government (MLG).

⁹⁴ The agreement on freedom of movement reached in July 2011 between Kosovo and Serbia.

businesses. Also during this year there have occurred in total, 5 inter-ethnic incidents, four of them in the northern part of Mitrovica and 1 in Zvečan.⁹⁵

Besides the abovementioned incidents, on 19 May 2014, is broken and demolished by unknown persons the primary school "Aziz Sylejmani" in Miners Hill neighborhood in north of Mitrovica, writing in the blackboards of classrooms Serbian nationalist symbols and consequently, parents and children are reluctant to continue school because they felt unsafe in this neighborhood.⁹⁶ The school in question, since 1999, operates as separate school from primary school "Aziz Sulejmani" in Mitrovicë and consists of two containers, where a total of 21 Albanian pupils attend this school, from first to ninth grade.

During this year have also continued provocations and obstruction of work by individuals and organized groups of people, against the reconstruction of Albanian houses and apartments in their private properties in the neighborhoods of northern Mitrovica. One of these cases occurred on 2 July 2014, when dozens of Serbian people have obstructed and disrupted construction works of Albanian houses in the neighborhood "Kroi i Vitakut," in north of Mitrovica, making it impossible to the Albanian residents of these neighborhoods the construction and return to their private properties.

In this part of Kosovo there are still three barricades, which prevent freedom of movement physically. Two of them are located in Mitrovica, in the two roads linking the south with the northern part of Mitrovica, respectively the one on the main bridge of the Ibar River and the other one in "Knjaz Milosh", near the technical school in the north of Mitrovica. These barricades impede the free movement of citizens from the Bosnian neighborhood in the northern part of Mitrovica. Third barricade is located at the place so called Vodica, respectively at the exit of the road from Leposaviq to Mitrovica.⁹⁷

The Republic of Kosovo and Republic of Serbia signed an agreement for normalization of neighborly relations in 2013,⁹⁸ which means also elimination of all barricades and ensuring freedom of movement. On 18 June 2014, citizens' groups of Serb ethnicity from north Mitrovica, removed the barricade from the main bridge on the river Iber in Mitrovica. However, only a few hours later, they again put another barricade, bringing concrete vases with flowers and pine trees and named it "Peace Park". This action was undertaken by the Mayor in north Mitrovica (elected in local elections in November 2013, organized for the first time by the institutions of Republic of Kosovo) Mr. Goran Rakic, in the presence of representative of the Republic of Serbia in Kosovo Gjuriq, together with citizens of that part of the city. Also, they started building the square "Car Lazar", by making in this way even more difficult to the citizens the freedom of movement. All this happened under the observation of the Kosovo Police, EULEX members and other observers.

⁹⁵ *Information from Mr. Besim Hoti*, Deputy Director of Regional Police Directorate Mitrovica - North, on 10 December 2014.

⁹⁶ *Interview with Mr. Flamur Gacaferri*, Principal of the Lower Secondary School "Aziz Sulejmani" on 20 May 2014.

⁹⁷ *Ibid: Information from Mr. Besim Hoti*, Deputy Director of Regional Police Directorate Mitrovica - North, on 10 December 2014.

⁹⁸ *Law no. 04 / L-199 Law on ratification of the first international agreement of principles governing the normalization of relations between the Republic of Kosovo and the Republic of Serbia, Article 1.*

In the sign of revolt, in response to the construction of the so-called "Peace Park" and square "Car Lazar", on 10 and 11 July 2014, in two different parts of the city of Mitrovica, in "Bosniac Neighborhood" and at the entrance of village of Suhodoll, Albanian citizens blocked the streets, putting concrete vases with a diameter of 1.5 meters, and naming them as "Adem Jashari square" and "KLA square".

Albanian citizens of villages Koshtovë, Cerajë and Bistrica of the municipality of Leposaviq, even after 15 years from the end of the war in Kosovo, continue to have restricted freedom of movement. However, what is positive and should be emphasized is that during this year there hasn't been recorded and reported on any incident. Kosovo Police considers that the freedom of movement in these villages is better.⁹⁹

In general, the security situation and freedom of movement in all municipalities in northern Kosovo inhabited by Serb majority: Zubin Potok, Leposaviq, Zveçan and the northern part of Mitrovica, is still not good at all and, depending on political circumstances, can become very dangerous. Albanian citizens still have difficulties with regard to freedom of movement. Particularly, there is still a permanent danger for people who use the Albanian language, or when in this part of the territory drive their vehicles with plates wearing RKS or KS mark. Of course, after the talks in Brussels, there are signs, which show that things more or less are improving, but, unfortunately, the situation is still unstable. On the other hand, the Agreement signed as regards to the vehicle plates is still not being implemented in northern Kosovo.¹⁰⁰

Integrated management in accordance with the agreement on integrated border management, in six temporary border crossings still works without major problems.

2.5.3. Travelling to EU

When talking about the travelling of Kosovo citizens into EU member states, visa regime is still in force, even though the Republic of Kosovo has entered in the visa liberalization process with the EU in the midst of 2012 Kosovo still remains the only country in Europe without visa liberalization and free movement in the Schengen area. It still remains unclear when free movement in the Schengen area to the citizens of Kosovo will be enabled.

⁹⁹ *Information from Mr. Besim Hoti, Deputy Director of Regional Police Directorate Mitrovica - North, on 10 December 2014.*

¹⁰⁰ According to the agreement on freedom of movement, the use of plates RKS or KS is only allowed to the vehicle owners residing in Kosovo. Ministry of Interior of the Republic of Kosovo from 01.11.2011 has continued with the opportunity for the registration of vehicles with KS and has introduced a new policy function for vehicles with registration plates of the FRY or Serbia, which are registered between 06.10.1999 and 31.10.2011, allowing in this way the owners of those vehicles to register with KS or RKS plates. But it remains to be verified those vehicles through INTERPOL, therefore temporary plates are issued up to the end of the verification, which deadline has been extended. MIA from 18.12.2011 implements new policy in which people were allowed to change their driving licenses FRY / Serbia issued between 10.06.1999 and 31.10.2011 with Kosovo driver's license. Furthermore, this decision was allowed to applicants to add additional categories in their driver's license of Kosovo, if the same were taken by the Serbian authorities in Kosovo during the period 10.06.1999 and 31.10.2011 or if legalized by the Serbian authorities outside territory of Kosovo. This decision will remain in force until 31.12.2014, when the deadline expires for such applications.

Recommendations:

- *The Government of Kosovo, in cooperation with the responsible authorities should take all legal measures to prevent ethnically motivated incidents in Kosovo, and act efficiently on shedding the light on such incidents and the perpetrators of these offences to be brought to justice.*
- *The Government of Kosovo should take appropriate measures for exemption from insurance of the vehicles at the border crossings as well as from double payment of motor vehicles insurance.*
- *The Government of Kosovo, in cooperation with the responsible authorities, should undertake all measures provided by the law for the removal of all barricades and obstacles on the road, including the so-called "Peace Park" on the main bridge of the Ibër River, the so called square "Car Lazar", as well as the so called squares "Adem Jashari" and "KLA", to enable free movement of people and goods in northern Kosovo.*
- *The Government of the Republic of Kosovo, the Kosovo Police and other responsible institutions, should undertake all actions under legal obligation to guarantee the life, property, health and public safety, for all citizens of the Republic of Kosovo, in the entire territory of the Republic Kosovo.*

2.6. The right to privacy

Anyone is entitled to the right of respect of private and family life, home and his correspondence. These are four dimensions of personal integrity,¹⁰¹ which are protected by Article 8 of the ECHR and Article 36 of the Constitution of the Republic of Kosovo.

In the reporting period, OI has received a number of complaints of citizens and has opened cases on its own initiative - *ex officio*, with regard to allegations of violations of the right to privacy. These complaints are related to public and private sector.¹⁰²

The Ombudsperson has expressed its concern regarding the information that the management of the regional hospital in Mitrovica "Dr. Sami Beqiri" has distributed to the hospital blocks the personal data of employees and patients, by publishing an notice on the announcement board of the hospital on 24 October 2014.¹⁰³

It is important to note that with regard to the right to privacy, the PDPSA, under the decision published, temporarily has banned to the Gynecology and Infertility Hospital "Bahçeçi" personal data processing, since there is a lack of internal regulatory bylaws, no classification of personal data, for not undertaking measures to maintain confidentiality

¹⁰¹ Ivana Rogana, "Protection of the right to respect private and family life under the European Convention on Human Rights" *Manuals for human rights of the Council of Europe, published by the Council of Europe, Strasbourg 2012, p 9.*

¹⁰² OI's interview with Chief State Supervisor of PDPSA, Mr. Rushdi Jashari, on 28 October 2014.

¹⁰³ OI conducted on interview with the operational director of the regional hospital in Mitrovica, Mr. Ixhmet Rexhepi, on 03. 11. 2014.

and preventing the destruction of personal data as well as no designation of competent persons responsible for securing the files.¹⁰⁴

2.6.1. The right to healthy environment and the right of housing

The right to a healthy environment and the right of housing takes a special place in the legal provisions of the ECHR and in the Constitution. The Ombudsperson has received complaints from citizens and has opened *ex officio* cases, in relation to environmental pollution from waste disposal and sewage flow in the inhabited areas.¹⁰⁵ The Ombudsperson has expressed concerns about the right to a healthy environment, drawing attention to the risk of spreading the diseases from pollution due to waste disposal and unbearable odor,¹⁰⁶ as well as from pollution of drinking water, by violating thereby the right to privacy.¹⁰⁷

The phenomenon of violation of the right to housing, as a right to privacy, in the cases of diggings with the start of construction works close to the private houses, by endangering landslide and damage of houses, it is also concerning.¹⁰⁸

The complaints from citizens about the danger posed by electric poles, located near their houses, were also received this year. The Ombudsperson expressed his concern and has concluded that the right of privacy to the property of the citizens has been violated and has taken actions in terms of its defense.¹⁰⁹

2.6.2. Control and interception of communication

The year 2014 also marks the lack of the Law governing the interception of communication. The lack of this law leaves sufficient room for misuses.

From the information received from the Kosovo Police, as cases of the right to privacy have been recorded a total of 36 cases: 13 cases of violation of the secrecy of correspondence and computer databases (Article 202 of CCRK), 4 cases of unauthorized interception (Article 204 CCRK) and 19 cases of unauthorized taking photos and other recordings (Article 205 CCRK).¹¹⁰

¹⁰⁴ Decision no. 83/2014, dated 26 November 2014, webpage of PDPSA, www.amdp-rks.org (27.11.2014).

¹⁰⁵ OI, cases A. no. 161/2014 and A. no. 394/2014, regarding sewage flow through the applicants settlements.

¹⁰⁶ OI, case A. no. 104/2014, complaint of citizens of the municipality of Peja, on preventing contaminated waste disposal from chips factory which building is close to residential houses. The OI found violation of the right to privacy and to a healthy environment. The OI contacted Peja municipal authorities to solve this problem. This case is being processed.

¹⁰⁷ OI, case A. no. 299/2014, violation of the right to privacy in the case of potable water which smelled in a neighborhood in Lipljan, with a cemetery near residential houses.

¹⁰⁸ OI, case A. no. 515/2014.

¹⁰⁹ OI, cases A. no. 68/2014, A. no. 88/2014 and A. no. 362/2014.

¹¹⁰ Response of the Information Office of the Directorate of General Police of Kosovo, in the request of OI, Prishtina, 2 December 2014.

The Ombudsperson has also expressed great concern about the violation of privacy by the use of digital technology and social private networks, interceptions, the publication of telephone messages, publication of photos in the Facebook social network, as well as threats made through social networks. This phenomenon is causing problems to the citizen in the family, in the workplace and in the living environment,¹¹¹ especially with the publication in the media of personal data and violation of privacy.¹¹²

Recommendations:

- *Government of Kosovo should proceed as soon as possible for approval of the Law on Interception of Telecommunications in the Assembly of the Republic of Kosovo.*
- *Responsible institutions should take actions to protect the right to privacy, especially from pollution of environment and illegal constructions.*

2.7. The right to marriage and family

The right to marriage and to family as one of the fundamental rights, presents a multidimensional spectrum of rights. In the first place, it regulates the marriage relationship (their equality) their economic property relations (property rights) and the relationship between parents and their children (parental care).

The cases reported to the OI also this year indicate that the implementation of this right in Kosovo, as a democratic society, leaves much to be desired. The Ombudsperson, during this reporting period as well, has received a number of complaints that prove the repetition of almost similar problems as in the previous period regarding this right due to various conflicts within the family. In most of the cases, the parties address to the courts to resolve these conflicts that are accompanied with the delay of the divorce proceedings, non-enforcement of decisions on alimony payments, failure to execute regular contacts with children of divorced parents, as well as delay of the proceedings to decide on the right over child custody and education.

Although the causes of procedural delays in the courts and responsible institutions derive from many factors, none of these factors can justify such a condition in this regard. Waiting for years for the execution of a judgment for alimony, or of a divorce judgment, do represent significant flaws regarding the exercise and implementation of the law on marriage and family.

A case reported to the OI, a typical example of delay of the court proceedings, where the complainant addressed the former District Court in Peja, on 13 October 2010, with a claim for dissolution of marriage. Because of the delay, the complainant did manage to receive the judgment to dissolve the marriage in June 2014.¹¹³ In fact, the competent court did not deal at all with regard to the child custody and education, as well as the issue of alimony, because these issues were previously imposed by the court in

¹¹¹ OI, case A. no. 517/2014.

¹¹² OI, case A. no. 475/2014.

¹¹³ OI, case A. no. 559/2013.

Switzerland. On the other hand, just the court proceeding to dissolve the marriage lasted 4 years.

Such an action by the court is in contradiction to ECHR, which guarantees that: “*In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time [...]*.”¹¹⁴ Likewise, this is also contrary to the determination of the provisions of the Law on Contested Procedure, which stipulates, “*The court shall be bound to carry out proceedings without delay and minimize costs as well as to make impossible any misuse of the procedural rights set for the parties according to this law.*”¹¹⁵

2.7.1. Role of Centre for Social Works

In the current situation, the Centers for Social Work (CSW), also, deal with family problems, which do have sufficient legal competences and responsibilities regarding the custody, adoption, creation and execution of arrangements for the realization of contacts between parents and children, making proposals to the courts for a child custody and child education to a given parent.

At a time when the phenomenon of domestic violence and the issue of divorce indicates growth trends, specifically of the factual divorce, where children usually remain with one parent, because of deteriorated relations between them, in most of cases they avoid legal obligations, by not respecting the parent-child contacts.

The issue of the contact between the parent and child, in the preliminary phase of divorce, it is accompanied naturally by major problems due to the fact that the CSWs are not responsible for the issuance of an administrative decision that would oblige the spouses to behave in accordance with it, regarding the issue in question, because regarding such an issue a court decision is required. The more the divorce proceedings last at the court, the question of alimony, contact of parent with children, etc., i.e. the implementation of the marriage and family right, remain problematic.

At the OI there has been a case of a complainant where “*she managed to meet her children only once within five years*”,¹¹⁶ while their custody was exercised by their aunt.¹¹⁷ This proves that the situation is very concerning. Although it concerns for the families in enmity, the inability of the mother to contact with her children, regardless of tragic character and the hostility of the two families, is unjustifiable.

This case and similar cases evidence the inefficiency and inability of the competent institutions in meeting the legal demands of the complainant and similar requests, and which falls in contradiction with the Convention on the Rights of the Child (CRC), according to which:

“*States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.*”¹¹⁸

¹¹⁴ ECHR, Article 6, paragraph 1.

¹¹⁵ Law No. 03/L-006 on contested procedure, Article 10.

¹¹⁶ Statement of social worker in CSW in Drenas, on 5 December 2014.

¹¹⁷ OI, case A. no. 116/2014.

¹¹⁸ Convention on the Rights of the Child, Article 9, paragraph 3.

This is also contrary to the Law on Family of Kosovo, where it is provided: “*Children have the right to grow up in a family with parents. Children not living together with both parents, have the right to regularly meet the parent they are not living together with.*”¹¹⁹

One of the competencies of the CSWs it is to make a proposal concerning the entrustment of children to custody and education to a given parent, which CSWs provides it to the courts as professional institutions. A serious problem in these situations present the cases when the divorce subjects come from different municipalities, and because of territorial jurisdiction, for providing the court with the opinion on the entrustment of the child to custody and education, two CSW decide, bringing the different proposals to the court.¹²⁰

Based on the analysis of the cases submitted to the OI we may conclude that the worst phase in a divorce period is the factual divorce, where the issue of alimony and the issue of child custody remain unregulated and conflicting. There are some prior actions by the CSWs that in fact, are awaiting a court decision and therefore the procedural delays by the judiciary makes it very difficult the period of the factual divorce, by overloading in this case also the work of the CSWs.

2.7.2. Problems with payment of alimony

In cases the court renders the decision on divorce of the spouses, at the same time also determines the obligation on alimony payment. However, in most of the cases, the parties do not voluntarily fulfill the obligations according the court decisions, therefore, regarding the payment of alimony, as well as the realization of parent’s contact with children, the parties are again obliged to go to the court about these issues.¹²¹

A case submitted to the OI evidences that the Basic Court in Prizren, Ferizaj, and in Prishtina needed 6 years only to determine the competence, regarding this case.¹²²

However, there are encouraging cases in this regard as well. There was a case submitted to the OI regarding the termination of a common-in-law relationship, where from the findings it was concluded that there was a coordination and interaction between institutions such as; police, prosecutor’s office, CSW, OI, court, and the termination was executed of the alleged common-in-law relationship, claimed to have been held by force by the former spouse, who was convicted for a criminal offense committed against the complainant and her family. The court also entrusted the child custody and education to

¹¹⁹ Law No. 32/2004 on Family, Article 125, paragraph 2.

¹²⁰ Statement of CSW clerk in Ferizaj given on 5 November 2014. “*naturally that this decision making of two CSWs is the matter of the competence and as such is principled, but not for the claiming parent for acquisition of this right, represents CSW contradictory actions bringing non-objective decisions, whereas the courts in most of cases decide base d on the proposal for protection and education of children.*”

¹²¹ The OI, case A. no. 471/2014. At the OI a case was submitted where the complainant has made a complaint against the Basic Court in Prishtina due to procedural delays of the case, concerning the payment of alimony, whereas the court set the court hearing regarding this case with a delay of three years.

¹²² OI, case A. no. 522/ 2013.

the complainant. From the findings of the OI, we can conclude that this case was treated well and within a reasonable time.¹²³

The divorce, as a multidimensional problem, becomes even more complicated and difficult also for the fact of lacking a modern legal practice, as well as the existence of a quite traditional approach regarding this phenomenon. In many cases, this is reflected in the meetings of parents with children as well, which took place in the CSW facilities. From the analysis of some of the cases received in the OI, it results that such facilities has not been always characterized by sufficient security and are children-friendly.¹²⁴

Inadequate and out of time treatment of the cases of divorce of spouses, by respective institutions are of particular concern for the Ombudsperson. In such cases usually the victims are the innocent children. Without their fault, they have to live separately from one parent. Unfortunately, they become often the subject of negative energy of their parents, which certainly affects negatively their development, education and well-being in the future¹²⁵

From all this, the Ombudsperson considers that in the matters of the Marriage and Family Law, many factors and institutions play important role, but the prevailing role in this regard is played by the judiciary, as it is the ultimate decision making.

Recommendations

- *The courts, when adjudicating the divorce cases, should be more expeditious and give priority to the cases concerning the divorce disputes, entrustment of children and alimony.*
- *The court and CSW should take actions regarding the execution of decisions concerning the payment of alimony and realization of the parent-child contacts.*

2.8. Freedom of belief, conscience and religion

Freedom of belief, conscience and religion, as one of the fundamental human rights, is guaranteed by the Constitution of the Republic of Kosovo and the ECHR. Since the old Law on Freedom of Religion No. 02/L-31 doesn't define clearly the right to religious freedom and belief, this law is in the process of supplementation and amendment. The Ombudsperson emphasized the need to resolve these issues, in the annual reports of the OI for 2012 and 2013.¹²⁶

¹²³ OI, case A. no. 612/ 2013.

¹²⁴ *Ibid.* The complainant has submitted her problems regarding the enforcement of the judgment of the court. When she sent the child to the CSW for meeting with his father, he took the 22 months of child from his hand aggressively and therefore the child now has fear. This case the complainant had reported to the police

¹²⁵ OI, case A. no. 128/ 2014. Claimant, apart from irregular execution of Judgment for contacts with her children, she complains against her former spouse, because during the contact with her children, they do not at all speak to her because of pressure exerted by him, that the oldest son ignores his mother and asks from the claimant to not request meeting them, because children are being manipulated by their father, etc.

¹²⁶ LAP, *Annual Report for 2012*, p. 40 and *Annual Report for 2013*, p.63.

Upon adoption of these amendments the legal status of all religious communities would be regulated in the most appropriate manner, different treatment of religious communities would be avoided and equal opportunities to exercise the right to freedom of religion, belief and conscience of all religious communities would be provided.

The necessity of adoption of the law on restitution of property is one of the problems which is put to attention by the representatives of all religious communities in 2014. Respectively, based on the declarations of personalities of all religious communities¹²⁷, during the period of a few decades after the Second World War, the property of religious communities has been nationalized in various ways, while the issue of their restitution, has not been initiated in a comprehensive manner to date.¹²⁸

2.8.1. Maintenance of cultural heritage and cemeteries

Maintenance of cultural heritage is a problem pointed out during 2014 by religious communities, because in Kosovo there is a large number of a religious building that are part of the cultural heritage, and are not sufficiently protected from destruction.¹²⁹ The obligation for the maintenance of cultural heritage is provided by the Constitution¹³⁰

The attention by all religious communities has been paid to maintenance of cemeteries in Kosovo, old ones, inactive and active. A request has been forwarded to the competent ministries by the representatives of religious communities, and who requested from all local authorities in Kosovo to provide space for cemeteries.

2.8.2. Public information and inter-religious cooperation

One of the existing problems it is insufficient public information and lack of a sufficient number of signs with information regarding the locations of the objects of cultural and religious heritage in the roads of Kosovo, which directly affects the strengthening of awareness and information of the society over the importance of cultural heritage, and as a result diligence against it.

Cooperation between the religious communities during 2014 in Kosovo was very good. "Week of Tolerance"¹³¹ was held during May 2014. Some progress in improvement of cooperation between religious communities, but also between religious communities and the state it is also the announcement about the establishment of the Secretariat/Council for Religious Communities. The function of this Council should have been the collection and systematization of the data from the field, their publication and cooperation with other authorities.

¹²⁷ The OI representative participated in the Conference on inter-religious dialogue on 30 October 2014 in Prishtina.

¹²⁸ On the issue of the adoption of Law on restitution, see the part for protection in this report.

¹²⁹ *Conference on inter-religious dialogue* on 30 October 2014 in Prishtina

¹³⁰ *Constitution of Kosovo*, Article 9.

¹³¹ Ministry of Foreign Affairs, *news* „Inter-religious Conference gathers global religious leaders and civil society leaders to mark the beginning of the Tolerance and Reconciliation Week”, 23 May 2014, in <http://www.mfa-ks.net/?page=3,4,2345&offset=82> (15.12.2014).

2.8.3. Status of religious communities in Kosovo

2.8.3.1. Islamic Community of Kosovo (ICK)

The main problem, which needs solution, is the Law governing the legal status of religious communities, which has not been adopted yet. Lack of the law still causes problems in the event of registration of property, in resolving the tax issues. ICK is a signatory to the joint letter by which the religious communities during 2014 have addressed to the Assembly of Kosovo with a request to accelerate the process of the adoption of the law¹³²

The ban on wearing scarves in the schools has been a problem that continues for years. Regarding this issue, the OI has consistently drawn attention to and provided recommendations. However, this issue was solved differently at various levels, having no unified approach in this regard.

In September 2014, in an action undertaken by the Kosovo Police, a number of people, including members of the ICK, have been arrested, under suspicions of organizing and participating in the fights abroad. In such cases, the proceeding before the prosecution authorities must take place without undue delays and with special care.¹³³

2.8.3.2. Kosovo Tariqa Community

The representatives of the Kosovo Tariqa Community (Dervish) expressed to the Ombudsperson their dissatisfaction for unequal treatment in comparison with other religious communities and their non-inclusion in the draft law on amending and supplementing the Law on Religious Freedoms in Kosovo, as well as for their exclusion to discussions that preceded the preparing of this draft.¹³⁴ This has been arranged in the changes made in the latest draft. Kosovo Tariqa Community has a long historical tradition, a significant number of believers and represents a part of Kosovo's cultural heritage.

2.8.3.3. Orthodox Church in Kosovo (OCK)

Lack of the law on regulation of the legal position it is being manifested in various areas of life of the OCK, whereas one of the outlined problems it is the issue of construction of new religious objects and the issue of maintenance of old active objects.¹³⁵

¹³² The OI representative participated in the Conference on inter-religious dialogue, on 30 October 2014, in Prishtina.

¹³³ Police of Kosovo, News "Police of Kosovo conducts wide police operation at a country level" 17 September 2014, in: <http://www.kosovopolice.com/?page=1,26,4476> (15.12.2014).

¹³⁴ OI, case A. no. 189/2014. Complainant expressed dissatisfaction with unequal treatment of Kosovo Tariqa Community in the draft law of the Law on religious freedom in Kosovo, as well as with their non-inclusion in the discussions that preceded the compilation of the draft law.

¹³⁵ The OI representative participated in the Conference on inter-religious dialogue, on 30 October 2014, in Prishtina.

Among the incidents that have caused OCK's dissatisfaction and have upset this community are the inscriptions in the Deçani Monastery.¹³⁶ The incident in the event of attempt of the Serb believers to visit the cemetery on the occasion of the "Holy Lady" in the village Mushtisht of Suhareka municipality it is also concerning.¹³⁷ These events have been condemned by all religious communities. Kosovo Police reacted quickly in all cases. The functioning of the liturgy in the churches has been restored, as well as the life of the parish in Vushtrri and Ferizaj. No family has returned in Ferizaj yet, but the local priest with its family lives in Ferizaj and the church is functioning.¹³⁸

2.8.3.4. Other religious communities

The issue of adoption of the amendments to the Law on Religious Freedoms in Kosovo is very important for the members of the Catholic faith. **The Catholic Church** was very active in inter-faith cooperation in Kosovo during 2014.

The main problem of the **Protestant Evangelical Church** in Kosovo remains unresolved issue of the cemetery for their community. They have requested from all municipalities in Kosovo to allow the space for construction of the cemetery for their community. However, this issue has not been arranged yet.

The Jewish Community has always been an active member in inter-religious cooperation in Kosovo. During 2014, they have been involved in major events related to the promotion of interfaith cooperation. The issue of the amendment of the Law on Religious Freedom have had the attention of the Jewish religious community too.

2.9. Freedom of expression

The freedom of expression in Kosovo is guaranteed directly by the Constitution of the Republic of Kosovo, Article 40, but it is also protected by the UDHR, Article 19, as well as the ECHR, Article 10, which are directly applicable in our country. Freedom of expression means free opinion without interference as well as obtaining and providing information and ideas, regardless of frontiers and no interference by public authorities.

However, the exercise of freedom of expression is not unlimited. The state has a legitimate right to take actions to limit freedom of expression, when it is necessary "[...]to prevent encouragement or provocation of violence and hostility on grounds of race, nationality, ethnicity or religion."¹³⁹ The ECHR clarifies that "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial

¹³⁶ Ministry on Returns and Communities, News "Jevtić: Graffiti in Deçani concerning" in: <http://www.mkk-ks.org/?page=3,12,772> (15.12.2014).

¹³⁷ *Ibidem*, News, "Jevtić: Prevention of displaced Serbs to visit the holy shrines in Mushtishte and Gjakova, act directed against the return process", 28.8.2014, in: <http://www.mkk-ks.org/?page=3,12,748> (5.12.2014).

¹³⁸ *Ibidem*, News, "Jevtić: After long years, fifty people in Serbia displaced from Ferizaj again in the liturgy in the temple in Ferizaj", 30.8.2014, in: <http://www.mkk-ks.org/?page=3,12,757> (15.12.2014).

¹³⁹ *Constitution of the Republic of Kosovo*, Article 40, paragraph 2.

integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."¹⁴⁰

During 2014, there are no complaints referred to OI, which concerns with the freedom of expression, however this did not prevent the Ombudsperson to monitor respect of freedom of expression. With special attention were followed the publicly reported cases of violation of freedom of expression as well as the language used. Since the media are in function of the freedom of expression, they have been seen as essential source of information, as well as electronic media platforms, through which, has been developed already an interactive communication, including the social networks.

The opportunities provided by internet serve favors to freedom of expression, but also provide opportunities for misuse. The lack of a legal basis for the functioning and structuring of electronic portals continues to pose a rising problem as far the reliability of information it concerns, as well as identification of responsibility for the disseminated information. These communication gaps often served as environments where the freedom of expression was abused, questioning the purpose, but also the accuracy of information.

Whether the language used is acceptable or not, it is evaluated on the basis of several indicators: the context in which it is said, by whom and in what form it is said, how it is disseminated and what are the chances that the language used promotes hate.¹⁴¹ Therefore, it results that in many cases, the public discourse of communication has been intolerant, threatening and denigrating.

The OI has no information that the language used against specific groups or individuals could have been done in an organized manner, but underlines that this does not diminish the necessity of adequate treatment of any form of hate language (speech), violation of privacy, and of misuse of the personal data.

2.10. Media freedom

The Constitution of the Republic of Kosovo, under Article 42, guarantees the media freedom and pluralism.¹⁴² In the same article, the censorship and obstruction to dissemination of information or ideas through the media it is prohibited, but also, in accordance with paragraph 2 of Article 10 of the ECHR, legitimizes the state intervention, in case where this is done to prevent the promotion of violence on the basis of racial, national, ethnic or religious hate.¹⁴³

Media freedom is inevitably related to freedom of expression. Together, they ensure the active role of the citizen to the public life and democratic processes. Despite their

¹⁴⁰ ECHR, Article 10, paragraph 2.

¹⁴¹ For more see, *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, Conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR, in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012, in: http://www.ohchr.org/documents/issues/opinion/seminarrabat/rabat_draft_outcome.pdf (10. 12.2014).

¹⁴² *Constitution of the Republic of Kosovo*, Article 42, paragraph 1.

¹⁴³ *Ibid.*, paragraph 2.

significant role, a number of journalists, during 2014, have been targets of attacks and threats.

In October, within the media he works and while carrying out his duties, journalist Milot Hasimja was attacked and endangered for his life. In September, threats against the journalist Artan Haraqia of the portal "Indeksonline" as well as threats against journalist Visar Duriqi of "Gazeta Express" and Liridon Llapashtica, of the newspaper "Zëri", have also been considered serious and unacceptable. Serious violation of the media freedom in Kosovo it is also considered the pressure from officials of the EULEX Mission in Kosovo, against the journalist of "Koha Ditore" Vehbi Kajtazi, in order to stop a reporting on suspicions of involvement in corruption of EULEX officials. Threat of journalist Zekirja Shabani by the owner of the newspaper he worked to, it is also unacceptable.

It must be emphasized that there was no direct complaint to the OI with regard to violation of media freedom, therefore, the report refers to the cases reported publicly. To be even more precise, the OI has addressed to the Kosovo Police with the request to be informed about the cases of attacks on journalists during 2014. In their response, received by e-mail, it is stressed that a total of 20 cases concerning to the media freedom have been reported. Of them, 15 cases are threats, 2 cases of body injuries, 1 case registered as an assault, 1 case of an attack against an official person while carrying out official duties and 1 case of breach of public order.¹⁴⁴

Non-observance of the Law on Labor it remains a concern for the Ombudsperson, in particular with regard to the employment contracts of journalists in the media, specifically in RTK. This issue is considered a direct pressure on the work of journalists and requires the attention of the competent institutions to make a more constructive environment for quality journalism and in the function of the correct and accurate informing.

The situation created in RTK between the management and the Independent Trade Union of this public media it is also concerning. The failure to respect the decisions of the Labor Inspectorate represents a special concern. This concern is specially high since RTK is a public institution having special responsibilities in the implementation of laws.

The same national and international instruments that protect the media freedom and freedom of expression oblige also the state to protect the rights of individuals from the abuse of media power.

The Ombudsperson warns the media, but also lawyers, police and prosecution that when acting under their competences, not turn into the instruments that violate the privacy and dignity of individuals. Not less worrying are cases where individuals personal issues, initiated by the media and through the media, become subject to public debates, without having a general interest that would justify such a violation of the right to privacy.

Financial instability and non-disclosure of financial sources of the media, seriously puts into question the reliability of information disseminated through them, and therefore, purpose of the information. The lack of a law on the organization and functioning of the media, it is also seen as a separate problem.

¹⁴⁴ Response received from the Information and Public Relations Office of the Police of Kosovo, on 9 January 2015, at 15:10 upon the request sent by the OI, on 9 January 2015, at 14:05.

2.11. Freedom of association

The right of every citizen to establish an organization without obtaining any permission, to be or not to be a member of an organization and to participate in the activities of an organization, it is guaranteed by the Constitution of the Republic of Kosovo¹⁴⁵ and by the ECHR¹⁴⁶. Freedom of association in the Republic of Kosovo is regulated under the Law no. 04/L-57 on Freedom of Association in Non-Governmental Organizations.

During this reporting year OI has received several complaints which relate to the violation of the exercise of this right. One of the cases for which the OI has initiated investigations, it concerned to a complaint of the representative of the Kosovo Association of Architects against the Department for Registration and Liaison with NGOs, Ministry of Public Administration (MPA).¹⁴⁷ The representative of the association complained that the department in question, in spite of its legal obligations, did not implement the final decision of the Commission for Review of Appeals of NGOs on updating the data of the association.¹⁴⁸ On 22 September 2014, the OI has sent a letter to the Minister of MPA, from whom it requested to be informed about the reasons for non-implementation of the aforementioned decision. However, by the time this report was published, the OI has not received any response from the Minister of MPA.

One of the forms of exercising freedom of association by citizens, guaranteed by the Constitution of the Republic of Kosovo, it is the freedom of trade union organizing.¹⁴⁹ The OI in 2014, has received several complaints from the representatives of workers trade unions, concerning with the violation of the right to trade union organization. The representatives of trade unions claimed that they faced with illegal actions and threats for dismissal from their jobs, only for the fact that they had raised their voice against the injustice committed to workers (union members) in the institutions where they were working. For this reason, on the 23 September 2014, OI has issued a press release, through which appealed that such actions should be stopped from given institutions¹⁵⁰

However, if we refer to the overall environment in relation with exercising the right to freedom of association in Kosovo, the OI notes that there have been some positive developments in terms of institutional commitment that the civil society be part of decision making in public policy and in legal aspects. On the 3 April 2014, Assembly of Kosovo adopted a declaration on partnership between the Assembly and civil society, which aims to facilitate the participation of civil society organizations in the process of drafting the legislation and the participation of civil society organizations in the activities

¹⁴⁵ *Constitution of the Republic of Kosovo*, Article 44.

¹⁴⁶ ECHR, Article 11.

¹⁴⁷ OI, case A. no. 237/2014, Complaint was filed for non-observance of the law by MPA.

¹⁴⁸ *Regulation no. 02/2012 on establishment and functioning of Appeal Review Committee of NGOs*, Article 5 item 4: "Decision of the Commission for Review of Appeals of NGOs is final in administrative procedure".

¹⁴⁹ *Constitution of the Republic of Kosovo*, Article 44, item 2, "Freedom to establish trade unions and to organize for protection of interests is guaranteed".

¹⁵⁰ OI, Statement for the media, in: **OMBUDSPERSON'S STATEMENT REGARDING THE FREEDOM OF MEDIA IN KOSOVO-1295** (15.12.2014).

of monitoring the implementation of laws, as well as ensuring the support from the Assembly of Kosovo in the development of civil society sector in Kosovo.¹⁵¹

A positive development worth to mention it is also the approval of the Administrative Instruction for the functioning and organization of non-governmental organizations, by the Government of Kosovo, in September 2014.¹⁵² This Administrative Instruction determines the rules and procedures of registration, updating of records in the public register, termination and de-registration of non-governmental organizations from the register of NGOs.

Recommendations:

- *Ministry of Public Administration should implement the decisions of the Commission for Review of Appeals of NGOs, in accordance with Regulation no. 02/2012 on the establishment and operation of the Commission for Review of Appeals of NGOs and the Law no. 04/L-57 on freedom of association in NGOs.*
- *Ministry of Public Administration should enforce the Law no. 03/L-195 on the Ombudsperson and the Constitution of the Republic of Kosovo, which requires that public institutions must respond timely to the letters and requests of the Ombudsperson and to cooperate with him regarding the issues raised.*
- *Public institutions should respect the right of every citizen to freedom of association, including the freedom of trade union organization.*

2.12. Freedom of gathering

During 2014, OI hasn't received any complaints regarding the right to freedom of gathering. During this year, as in previous years, a series of public gatherings and various protests by citizens, students, civil society organizations and various groups of interest has been organized. These gatherings and protests have been organized in different cities of Kosovo, in most of cases they were organized in public places and in front of specific institutions. It is for appraisal that most of these gatherings and protests have been followed unimpeded by various media in the country. Within its mandate, the OI has carefully followed some of public gatherings and protests organized during this year.

2.12.1. Students' protests in front of Rectorate

From 5 to 7 February 2014, the OI has monitored the protests organized by the students of the University of Prishtina (UP) in front of the Rectorate of the UP in Prishtina.¹⁵³ Students' demands in this protest were the immediate resignation of the Rector of the UP and the commencement of the investigations about malpractices in the UP. These students' demands were supported by some civil society representatives who participated

¹⁵¹ *Assembly of the Republic of Kosovo*, in: <http://www.kuvendikosoves.org/?cid=1,128,6318> (15.12.2014).

¹⁵² *Government of the Republic of Kosovo*, in: <http://www.kryeministri-ks.net/?page=1,9,4437> (15.12.2014).

¹⁵³ *OI, Report from monitoring of protest*, 5 February 2014.

in the protest. During the monitoring of the protest, it was noted an increased presence of Kosovo Police members, media representatives, as well as members of KFOR, who were observing the protest.

On 7 February 2014, the situation between the protesters and police officers was tensed after the protesters had tried several times to enter the courtyard of the Rectorate and this situation forced the police officers to use spray and tear gas to disperse the protesters.¹⁵⁴ During these protests, the police arrested several dozen protesters, who were visited by representatives of the OI.¹⁵⁵

After, careful monitoring of these protests, and the situation created between the protesters and Police of Kosovo on 7 February 2014, the Ombudsperson reacted through a statement to the media, drawing attention that: “*Situation created and fierce confrontation in front of Rectorate building is due to the lack of mandatory debate within the academic world.*” On this occasion, the Ombudsperson suggested that “*The debate removed to the street should return within university world in order to find reasonable solution and in compliance with academic universal standards.*” Given that the situation tended to further escalation, the Ombudsperson, based on constitutional and legal competencies, expressed “*readiness to mediate in order to overcome the stalemate created between the students and governing authorities of University of Prishtina, if both parties agree upon*”.¹⁵⁶

2.12.2. Protest of former employees of socially owned enterprises

On the 6 February 2014, upon request of the representatives of the Union of Independent Trade Unions and several former employees of SOEs, OI has monitored the protests held in front of the City Theatre in Gjilan.¹⁵⁷ The main demands of the workers were: compensation for unpaid salaries, acceleration of the payment of 20%, the request for the establishment of a social fund from the liquidation fund by the Assembly of the Republic of Kosovo, and other demands.

Similar protests by workers of former socially owned enterprises with such demands have been continuously organized during 2013 as well and other previous years. It should also be mentioned that the workers from abovementioned enterprises, in order to realize their demands, in some cases, over the past years, have entered on hunger strike where they were visited by the Ombudsperson as well.¹⁵⁸ Workers of these enterprises have also during 2014 held a hunger strike in front of the Government of Kosovo in Prishtina.

¹⁵⁴ OI, *Report from monitoring of protest*, 7 February 2014

¹⁵⁵ OI, *Report from monitoring of protest*, 7 February 2014: ”In this protest were detained 31 protesters. From conversations with some of the detainees, the police behavior was correct, they were provided medical assistance and were familiar with their rights. Their injuries were of light nature, mainly from spray and tear gas.”

¹⁵⁶ LAP, Statement for the media 7 February 2014, in: OMBUDSPERSON’S STATEMENT REGARDING THE PROTESTS HELD IN FRONT OF RECTORATE PRISHTINA UNIVERSITY-383 (12.12.2014).

¹⁵⁷ OI, *Report from monitoring of protest*, 6 February 2014.

¹⁵⁸ LAP, *Press release*, 18 June 2013, in: **PRESS RELEASE REGARDING HEALTH SITUATION OF THE STRIKERS OF HUNGER STRIKE IN PRISHTINA**1235 (13.01.2015).

2.12.3. Protest of non-governmental organizations

On the 22 June 2014, the OI has monitored the protest organized by several NGOs in Mitrovica.¹⁵⁹ During the observation of the protest, besides the presence of the Kosovo Police, there have been seen also numerous KFOR and EULEX forces. At the beginning, the protests were peaceful, but over the time the situation escalated when people broke through the police lines and began to behave in a violent manner. On this occasion, the protesters began to throw stones, break windows of business premises and burned down several vehicles in the parking lot of the Municipality of Mitrovica. In response to this situation the police started to throw teargas at protesters in order to disperse them.¹⁶⁰ The OI has concluded that during the arrests by the police no violence had been used.

2.12.4. Protest of War Veterans Organization

On the 4 December 2014, the OI has monitored the protest organized by the Association of War Veterans (OVL) of the Kosovo Liberation Army (KLA) held in front of the Rectorate of UP.¹⁶¹ Watching with great concern the tendency of deterioration of actions by war related organizations, particularly after the issuance of the Decision by the Minister of MEST, Mr. Ramë Buja, on 3 December 2014, the Ombudsperson reacted through a media release, via which informed all stakeholders and the public that it has initiated *ex officio* investigations regarding the events over the UP.¹⁶² At the same time, apart from the request to stop all actions that could seriously harm the UP, the Ombudsperson addressed an urgent request to former Prime Minister and former Minister of MEST, that based on their legal competences, suspend the implementation of the decision of the Minister of MEST, until the completion of investigations by the Ombudsperson, initiated *ex officio*.¹⁶³ The same request was addressed to the new Prime Minister Mr. Isa Mustafa, as well as the new minister of MEST, Mr. Arsim Bajrami. Unfortunately, none of these officials, even after the legal deadline for a reply ended, responded to the urgent request of the Ombudsperson.

In some particular events, this protest was characterized by an extremely tense situation

¹⁵⁹ OI, *Report from monitoring of protest*, 22 June 2014.

¹⁶⁰ OI, *Report from monitoring of protest*: According to information obtained by the spokesperson of the police station in Mitrovica, the consequences of the protest were: 13 prisoners, six burned vehicles, two journalists, 13 policemen and 10 injured citizens who have sought medical help.

¹⁶¹ OI, *Report from monitoring of protest*, 4 December 2014, "Their request was the resignation of Rector of the UP, due to rejection for registration of students according to the lists provided by the categories emerged from war"

¹⁶² OI, *Press release*, 3 December 2014, in: <http://www.ombudspersonkosovo.org/sq/lajme/OMBUDSPERSON'S STATEMENT REGARDING ENROLMENT OF KLA FIGHTERS' CHILDREN IN PRISHTINA UNIVERSITY-1304> (13.01.2015).

¹⁶³ OI, Ombudsperson's Statement regarding the registration of children of categories derived from the KLA war at the University of Prishtina, 3 December 2014, at: http://ombudspersonkosovo.org/repository/docs/K%C3%ABrkesa_drejtuar_ministrit_Buja_651117.pdf, 2 December 2014, at: http://ombudspersonkosovo.org/repository/docs/K%C3%ABrkesa_drejtuar_Kryeministrit_Tha%C3%A7i_289071.pdf, 2 December 2014

and serious threats against the Rector of UP by the protesters. There were threatening actions, which were not accompanied by violent actions by protesters or police.

In conclusion, the Ombudsperson, as in the Annual Report of 2012 and 2013, reiterates the request and recommendation for amendment of a part of the Law on Public Gatherings, respectively paragraph 3 of Article 12, which, leaving a portion of the competence in the hands of appointed “trustee” by the organizer of the gathering, to: “[...]apprehend and deliver to the police a participant or other person circulating nearby the location of the public gathering if he/she disturbs the order, if he/she carries weapons or dangerous objects or signs prohibited.” This recommendation has never been implemented.

As in previous reports, the Ombudsperson continues to draw attention that Article 12, paragraph 3 of the Law on Public Gatherings does not comply with the principles of Article 11 of the ECHR, nor the practice of the ECHR. In relation to this, the Ombudsperson reiterates the request and recommendation to supplement and amend this law, in order to harmonize it with European standards.

Recommendations:

- *The Kosovo Police, as a constitutional institution for the protection of public order and safety, must necessarily establish communication contacts with the organizers of public gatherings to preliminarily planning and briefing them and due to public safety.*
- *All organizers of gatherings should inform law enforcement authorities in advance with regard to holding gatherings in accordance with the law.*
- *To amend the Law on Public Gatherings, respectively Article 12, paragraph 3, in order to be in full compliance with Article 11 of the ECHR on freedom of assembly and association, and the practice of the ECtHR.*

2.13. Right to vote

The right to vote includes the right to elect and to be elected and represents one of the fundamental human rights, which is guaranteed by the Constitution of the Republic of Kosovo,¹⁶⁴ as well as by the most important international instruments on human rights.¹⁶⁵ Kosovo continues to stagnate even further in terms of electoral reform. Same as the local elections of 2013, the parliamentary elections held on 8 June 2014 took place without conclusion of electoral reform, process which began almost four years ago.

2.13.1. Observation of parliamentary elections in the Republic of Kosovo

Pursuant to the Law no. 03/L-073 on General Elections in the Republic of Kosovo,¹⁶⁶ holding of the elections and administration of the elections for the Assembly of the

¹⁶⁴ *Constitution of the Republic of Kosovo*, Article 45.

¹⁶⁵ UDHR, Article 21.3; *International Pact of Civil and Political Rights*, Article 25 (b); *Protocol no. 1 of ECHR Article 3*.

¹⁶⁶ *Law no. 03/L-073 on General Elections in the Republic of Kosovo*, Article 2.

Republic of Kosovo and the relevant election legislation, are governed by known and acceptable principles in the parliamentary democracies.¹⁶⁷

Members of the Assembly of the Republic of Kosovo, in the session held on 7 May 2014 have decided to dissolve the Parliament, thus enabling development of early parliamentary elections in the country.¹⁶⁸

2.13.2. Undeclared calm electoral campaign

The election campaign of political entities has taken place in the period between 28 of May to 6 of June 2014. Overall, the election campaign was conducted in a peaceful atmosphere and without incidents and refraining from hate speech. However, the political entities have conducted undeclared campaigns even before the beginning of the election campaign.

2.13.3. Running of elections

Early parliamentary elections were held on 8 June 2014. The OI monitored the process of Election Day with 14 mobile monitoring teams throughout the territory of Kosovo (including the municipalities of North Mitrovica and Zvečan, as well as the village of Çabër of Zubin Potok), exemption to the municipalities of Leposaviq and Zubin Potok, excluding the village of Çabër). *Monitoring teams of OI have visited 146 Polling Centers (PC) and 393 Polling Stations (PS)* from the total of 798 PCs with 2366 PSs in 38 municipalities of the Republic of Kosovo.

Early parliamentary elections of 8 June 2014 were generally well organized, despite some of shortcomings, mainly of a technical nature, but which did not affect the smooth running of the voting process. Generally, the Voting Day passed peacefully and without incident. It can be said that these are the best elections held so far in the Republic of Kosovo.

2.13.4. Specific cases of recorded violations

The persons held at the *Institute of Mental Health (IMH) in Shtime* were unaware of their actions, therefore did not understand the voting process and were unable to fill in the ballots. Some of them even couldn't hold the pen in their hand and the ballots were filled in as imposed by their escort or trustee (guardian). A total of 60 patients were eligible to vote.

Same as in the local elections of 2013, repetition occurred of the known case of discrimination in PS 1315/01D in Lipljan, also during this year's parliamentary elections,

¹⁶⁷ The elections for the Assembly of Kosovo are held on the basis of the free, general, equal, direct and secret vote in accordance with the rules of this law and the CEC rules

¹⁶⁸ Based on Law no. 03/L-073 on Local Elections in the Republic of Kosovo, President of the Republic of Kosovo, Mrs. Atifete Jahjaga, on 8 May 2014 announced the holding of early parliamentary elections on 8 June 2014.

which was designated as a polling station for “Ashkali”, although it was noticed that they voted in other polling stations as well, however, such a discriminatory separation of citizens of the Municipality of Lipjan on ethnic grounds is unacceptable.

The mobile monitoring teams of OI, during the monitoring of the elections have noted that:

- Almost in all PS (on help desks) there were *ballots with Braille's alphabet* (for the blind). However, the mobile monitoring teams of the OI have evidenced cases where these ballots were missing: PS 1512 (primary school "Sveti Sava" in village of Plemetinë, Municipality of Obiliq), PS 2201X (primary school "Emin Duraku" in Shtime), PS 1311E (primary school "Braça Aksiq" in Lipjan) and PS 3016A (Gymnasium “Hamdi Berisha” in Malishevë).
- Unlike local elections of the last year, in these parliamentary elections *the ultraviolet verification lamps* have been operational.
- This time, *the providers of ballot papers* (members of the polling station councils - PSC), who at the same time sprinkled the voters’ fingers with invisible ink, have casted their vote firstly in order to avoid any possible problems to vote (which was evident in the past elections, since in the absence of gloves their fingers were sprayed with this color and then had problems to vote).
- In the *Final Voter Lists* (FVL) yet there are a number of names of *deceased persons*, although in lower numbers than previous times. There have been such cases in all of municipalities.
- *Persons with disabilities* (in wheelchairs) in a number of cases couldn’t have unhindered access to polling stations due to lack of relevant slopes in the facilities that have been determined as the PS, as well as those who had their polling station in the upper floors of PS.
- There have been such cases *when police officers guarding the PS*, particularly in the PS in the villages, could not vote (only conditional voting), because they were not replaced by other police officers. They have gone to the PS in the early hours of the morning and stayed there until the end of the votes counting. Also, the staff of the Correctional Centre in Lipjan, as well as the correctional officers at the Detention Center in Gjilan and health personnel on duty of the Regional Hospital “Isa Grezda” in Gjakovë has been able to vote only conditionally. It must be emphasized that the election rules of the Central Election Commission (CEC) did not set forth any solution for such cases.
- In *the Correctional Center in Dubravë*, Municipality of Istog, in the VFL figured only 393 persons. The voting started at 9.00 hrs and there was only one booth, which was insufficient, since there were delays in voting process, therefore the monitoring mobile team of OI recommended to talk to MEC in Istog to bring one more voting booth, which was brought at 13.50 hrs.
- In *the Correctional Center in Lipjan* with 131 prisoners, 45 of them couldn’t use the right to vote, as they were not in VFL due to lack of IDs.
- In *the Regional Hospital in Gjakova* the voting process was not held. For the reasons that there was no mobile team of the Municipal Election Commission

(MEC), the voting right could not be exercised, either by patients, or by health personnel on duty.

Based on the shortcomings found during the monitoring of the parliamentary elections by mobile monitoring teams of the OI, the Ombudsperson issues the following

Recommendations:

- *CEC should reconsider the possibility of appointing, at the polling stations or PC, PSC members where they vote or closer to the PC where their polling station is.*
- *PSC members carrying out the role of ballot handlers and also spray the voters' fingers with invisible ink should be provided with gloves, in order to avoid spraying of their fingers with this ink so that they vote without problem.*
- *Law enforcement authorities should initiate criminal proceedings and bring to justice all those who caused incidents and have hindered the voting process.*
- *CEC should correct Final Voter Lists by removing all the names of deceased persons and update the list with the names of new voters who turned 18.*
- *Create proper conditions for all persons with disabilities (especially those in wheelchairs) to have unhindered access to all PCs and polling stations where they vote. In cases when this is not possible or requires more time to be realized, these persons should be made possible to vote in their homes and apartments from relevant mobile teams of CEC and MEC, in accordance with relevant Election Rule of CEC.¹⁶⁹*
- *To regulate with relevant legal provisions, the exercise of voting rights for persons, who on the Election Day, respectively, during the voting process, are on duty.*
- *Improve communication with voters outside Kosovo, so that they are supplied on time with ballots, to be given sufficient time to return the voting ballot, in order that they are able to exercise their right to vote, in accordance with the relevant Election Rule of CEC.¹⁷⁰*

2.14. The property right

The right of property in Kosovo is guaranteed by the Constitution of the Republic of Kosovo,¹⁷¹ UDHR,¹⁷² and ECHR and its Protocols.¹⁷³ Also, property rights in the

¹⁶⁹ *Election Rule no. 04/2013* Voting of persons with special needs and circumstances, Article 3.

¹⁷⁰ *Election Rule no. 03/2013* Voting out of Kosovo, Articles 3-5.

¹⁷¹ *Constitution of the Republic of Kosovo*, Article 46.

¹⁷² UDHR, Article 17.

¹⁷³ ECHR, Protocol 1, Article 1.

Republic of Kosovo are also regulated by a number of laws adopted by the Assembly of Kosovo.

By 31 December 2014, the OI has received 369 complaints concerning to the protection of the property, 95 of which have been investigated.

Complaints were filed against the courts of all instances, including (SCSC, against municipalities, Privatization Agency of Kosovo (PAK), the Kosovo Property Agency (KPA), public companies, public prosecutions and Kosovo Police.

During the reporting year, there are 21 complaints that have been investigated against the regular courts in relation to court proceedings in reviewing the property cases. The complaints were concerning mainly to delays of the court proceedings. The delay of the court proceedings is addressed in details in the report section which talks about the judicial protection of the rights. However, the delays in the resolution of the court cases related to property, as well as the execution of final decisions by the courts directly affect the property rights of citizens.

The delay of resolution of the property cases of the citizens by the courts, on one hand directly affects property rights and on the other, it makes them unreliable for the citizens of Kosovo. This jeopardizes not only the justice but also the security of citizens, because it forces the individuals to solve property disputes outside the framework of the judicial system, by self-judgment. Unfortunately, such cases are present in Kosovo.

2.14.1. Complaints against municipalities

The complaints against municipalities are related to illegal constructions, complaints against the municipal cadastral offices for not registering property rights or technical problems during registration, property damage, expropriation, compensation, usurpation of public spaces.

Most of the cases investigated and closed, had to do with the complaints in which the complainants have not exhausted legal remedies, or delays in their review by the municipalities.

The OI has addressed to the municipalities in all cases where there were delays or failure to respond to the applicants' requests, whereas the applicants have been advised, where it was possible and permissible, to use available legal remedies.

2.14.2. Complaints against Privatization Agency of Kosovo

Privatization Agency of Kosovo (PAK) is the successor of the Kosovo Trust Agency (KTA), which was established by UNMIK Regulation 2002/12 and subsequently amended by UNMIK Regulations 2005/18, 2008/16 and 2008/27. In addition to these regulations, UNMIK has also issued other auxiliary acts under which the KTA administered and privatized publicly owned enterprises, socially owned enterprises and social property in Kosovo.

The Assembly of Kosovo on 21 May 2008 adopted the Law on Privatization Agency of Kosovo 2008/03-L-067, which abolished UNMIK Regulation 2002/12 and its

amendments. The Assembly of Kosovo, on 31 August 2011, has adopted another law for the Privatization Agency of Kosovo 2011/04-L-034, which repeals the Law 2008/03-L-067.

Complaints submitted to the OI, against PAK deal with the following issues: lists of employees for 20% of the proceeds from privatization of socially owned enterprises; privatization of the social property, which in the past have been property of natural persons; delays in compensation of salaries of the employees of the privatized enterprise and the amount of the 20% of privatization; delays in the approval of applications for purchase of apartments where there is a right of residence, a process which is led by the agency.¹⁷⁴

The first two issues occur as very concerning, and therefore, it is necessary to provide an assessment, despite the fact that the privatization process is in an advanced stage. This assessment is done for the reason that the issues related to these complaints either have been completed, or the procedures about them are being conducted at the Agency or SCSC.

1. The process of distributing the 20% value from the proceeds of privatization of socially owned enterprises implemented by the Privatization Agency of Kosovo in accordance with section 10.4 of UNMIK Regulation 2003/13 *on the transformation of the right of use to socially-owned immovable property*, as amended by UNMIK Regulation 2004/45 *“For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.”*¹⁷⁵

As emphasized, the OI has received a number of complaints for the reason of non-inclusion in the workers list who benefit from 20% of privatization proceeds, of which a group complaint with a total of 292 complainants, former employees of the SOE "Ramiz Sadiku" who complain on discrimination grounds. However, here it is not the case of discrimination verified by SCSC, but alleged discrimination by complainants. Respectively, these complainants as discriminatory qualify the fact that, according to Article 10.4 of UNMIK Regulation 2003/13, the worker must be on the payroll at the time of privatization or liquidation and have not less than three years of service in the Socially Owned Enterprise. The complaints submitted to OI are related to the non-inclusion in the workers list those who were retired or whose employment contract have been terminated before the privatization or liquidation of SOEs, what the complainants consider discriminatory.

Taking into consideration the large number of complaints, as well as the requirements specified by UNMIK Regulation 2003/13, OI considers that these

¹⁷⁴ According to the *Law No. 04/L-061 on sale of apartments*, for which PAK receives requests for purchase of apartments in social property.

¹⁷⁵ SCSC during the review of a number of complaints found that during the compilation of lists of employees had lists exceptions for certain categories of workers.

requirements should be reviewed. The fact that the requirements are set by UNMIK Regulation 2003/13, which is still in force and as such cannot be subject to constitutional evaluation, due to expiration of the 6 months deadline for the Ombudsperson according to the Law on Constitutional Court, makes the situation even more difficult.

2. Complaints continue to be submitted with regard to the privatization of the properties (real estates), which at the time of the privatization were registered as socially owned property, but which in the past could have been privately owned properties by natural persons.¹⁷⁶ These properties, in the years 1950-60 have been taken by the owners through the process of nationalization, confiscation, expropriation and other forms of force, without any compensation to the owners. However, these properties upon their privatization have been registered in the name of socially owned enterprises and as such have undergone the process of privatization.

Many citizens have admitted that their properties which are in the process of privatization were taken without compensation during the years 1950-60, and therefore they submitted their complaints to SCSC to prove their right to the property. In case the ownership of natural persons of privatized property is proved, neither cannot be returned to its owner nor privatization decision is cancelled,¹⁷⁷ however the owners take a part from the sale of property since from the amount of sale of the property are deducted administrative taxes as well as the 20% to be distributed to SOE workers.

UNMIK legislation had given authority to KTA, whereas the Law on Privatization Agency of Kosovo, adopted by the Assembly gives the agency the authority to privatize and liquidate socially owned enterprises, regardless of the validity of the earlier transformation of private property from individuals to socially owned enterprise and regardless of the fact whether this transformation is done in a discriminatory manner.¹⁷⁸

Privatization of disputed properties without having determined who the owner by decision of SCSC is may result in a violation of the right to property, turning the privatization of property into an illegal expropriation. Ombudsperson considers that violations of the rights to property in cases of privatization of the socially owned enterprises have come as a result of the lack of a law on property restitution, which should have been approved prior to the commencement of the privatization process of SOEs.

3. With regard to the complaints over the delays in salary compensation of privatized enterprise workers and delays on 20% share distribution of the value

¹⁷⁶ OI, cases A. no. 7/2014, A. no. 16/2014, A. no. 46/2014, A. no. 156/2014.

¹⁷⁷ The report of the Organization for Security and Cooperation in Europe (OSCE), the Department of Monitoring / Rule of Law Division, Department of Legal System Monitoring, Privatization in Kosovo: Judicial Review Issues Kosovo Trust Agency by the Special Chamber of the Supreme Court , May 2008.

¹⁷⁸ *Property Rights in Kosovo: A Haunting Legacy of a Society in Transition*, February 2009, Written by Edward Tawil for *the International Center for Transitional Justice*.

of privatization, OI had a meeting with the Privatization Agency of Kosovo to find out the reasons of these delays.¹⁷⁹

According to agency officials, the delays in compensation of salaries of employees of privatized enterprises are as a result of inability for appointment of members of PAK Board of Directors by the Assembly of Kosovo and that payments will be made as soon as the Board is established¹⁸⁰. As for the delays on the distribution of 20% share from the privatization value, agency officials have explained that this happens because if a complaint is filed to SCSC against the final lists of employees benefiting from 20% of the proceeds from privatization of socially owned enterprises, then a certain amount of the 20% share is put on hold until SCSC decides on the complaint, whereas the share which is not disputed is dispersed proportionally to the beneficiaries. For Ombudsperson the delays in the distribution of 20% share upon justification that PAK Board of Directors haven't been completed yet is unjustifiable and as such constitutes violation of workers' rights under the law.

4. During the meeting with the agency officials it was also raised the issue of delays in approving requests for privatization of apartments where there exists the right of housing. Agency officials have claimed that this delay too is as a result of the absence of PAK Board members. PAK officials have taken the opportunity to inform OI that the sale of these apartments is one of the most successful projects of the agency, whereby out of 1,000 requests 600 have been approved so far.

2.14.3. Kosovo Property Agency

Kosovo Property Agency (KPA) was established by Law no. 03 / L-079 *amending UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property*, adopted by the Assembly of the Republic of Kosovo. KPA has inherited certain legal obligations by Housing and Property Directorate (HPD), which are still unfulfilled.

OI has constantly received complaints against KPA, but in considerably smaller numbers compared to previous years. However a number of complaints in previous years, concerning with the obligations of the agency inherited from HPD, remain open. Complaints against KPA have to do with:

1. Non-implementation of the final decisions of the Housing and Property Claims Commission (the Commission) on properties in the northern part of Mitrovica.¹⁸¹
2. Non-implementation of final decisions of the Commission on restitution of the right to housing in socially owned apartments which have been lost as a result of discrimination, according to the conditions set forth under Article 4.5 of the

¹⁷⁹ Meeting with Mr. Visar Hoxha, Head of the Division of Legal Department of PAK, 17.11.2014.

¹⁸⁰ OI, case A. no. 23/2014

¹⁸¹ OI, cases A. no. 48/2012, A. no. and A. no. 176/2012, 125/2013.

UNMIK Regulation no. 2000/60.¹⁸² This, it concerns with the cases when the right to compensation is recognized, but having no ability to recognize the right of repossession of apartments upon which the validity of the right to housing has been lost due to dismissal from work in the 1990s, as a consequence of imposition of discrimination measures.

OI maintained communication with agency officials to provide information regarding the number of cases concerning the two issues mentioned above, and also about the agency's efforts to solve these cases. KPA informed OI that:¹⁸³

1. The Agency is obliged to execute the Commission's decision. Agency during the implementation of the Commission's decisions, upon submission of the request of successful claimants may put properties under administration, and also can carry out the release of properties. In the northern part of Mitrovica, the procedure of properties' administration or their release it lasts more than in other parts of the country, since in this part the agency haven't had the support of law enforcement authorities for a long time in the execution of the decisions. However, in March of this year, law enforcement authorities began to support the agency. OI was informed that in the northern part of Mitrovica the agency has a total of 390 properties under administration and 27 executed evictions.
2. In relation to claims for compensation for the loss of right to housing as a result of discrimination there are 143 decisions of the Commission which should be executed. Execution of the decisions it is carried out in such a way so that the persons who have lost the right to housing as a consequence of discrimination should be compensated. Execution of these decisions hasn't started yet. The Agency has drafted criteria and procedures necessary for the calculation of the amounts of compensation, as per Section 4 of UNMIK Regulation 2000/60, however an amount of 3.2 million euro of funding is required for execution of these decisions. An agency official admits that the agency is making continuing efforts to ensure these funds.

Regarding the issue of property in the northern part of Mitrovica, the Ombudsperson considers that the property administration by the agency in the entire territory of Kosovo, presents a temporary measure and on a voluntary basis for property administration for the reason of the inability of property right holders to restitute factual possession over properties which have been lost as a result of the war of 1998 and 1999. This could be interpreted as establishing an indirect possession and as a form of balance between individual interests (property right of individuals in this case) and general interest (security of displaced persons in cases for security reasons cannot return to their properties). However, based on the practice of the ECHR, the Ombudsperson considers that this balance, for the owners of successful claimants from the northern part of

¹⁸² Section 4.5 of *UNMIK Regulation 2000/60* on Residential Property Claims and Rules of Procedure and Evidence of the Housing Department for Housing and Property Directorate and the Housing and Property Claims Commission states: "Any person with a certificate under section 4.4 shall be entitled to fair compensation proportionate to the amount stated in the certificate, to be paid from such funds as may be allocated in the Kosovo Consolidated Budget or any fund set up for this purpose under the present regulation".

¹⁸³ Electronic communication with Ms. Elhame Gorani, through Ms. Florije Kika, KPA Acting Executive Director, on 24, 25 and 26 November 2014.

Mitrovica is not achieved, due to the fact that the postponement of the execution of final decisions of the Commission presents additional burden to the owners or holders of any property right to these properties, taking into account that since 1999 they have been evicted from their properties and are in a state of uncertainty about the possibility of restituting possession. Moreover, they cannot receive any compensation for losses resulting from their inability to return the possession over the property¹⁸⁴. The Ombudsperson considers that obstruction to possession, either direct possession with restituting factual possession or indirect ownership through realization of a rent, for such a long period of time represents a violation of property right.

Regarding the delay of the execution of final decisions of the Commission for compensation, the Ombudsperson during the reporting year has issued a report with findings and recommendations.¹⁸⁵

As in the case of property of the northern part of Mitrovica, also with regard to compensation, in question it is the delay or lack of execution of the final decisions of the Commission. Consequently, Ombudsperson would like to remind here that the execution of the decisions must be an integral part of the procedure of "trial" and that the enforcement of final decisions guarantees the rule of law.¹⁸⁶

However, the Ombudsperson considers, with regard to execution of decisions of the Commission for restitution of possession in the northern part of Mitrovica, that in the first place infringement haven't derived from the agency but from lack of support of the law enforcement authorities and the government which did not provide necessary security conditions. Whereas, with regard to the compensation according to the decisions of the Commission, the Ombudsperson considers that the infringement has derived from the government which did not provide financial support for the execution of Commission decisions.

OI has investigated five complaints, of which one of a group of fifteen complainants, whose complaints are related to the non-response or inadequate response of the Kosovo Police in the protection of their property. After investigating the cases, the complainants have been advised to address to the competent authorities.¹⁸⁷

OI has investigated two property complaints against public prosecution offices, one against Basic Prosecution Office - Department of Prizren ¹⁸⁸ and the other one against the Basic Prosecution Office in Gjakova¹⁸⁹. The complaint against the Basic Prosecution Office in Prizren concerns to the procedure with regard to the destruction of movable property, whereas the complaint against the Basic Prosecution Office in Gjakova concerns to the destruction of immovable property and theft.

¹⁸⁴ Case *Immobiliare Saffi against Italy*, Application no. 22774/93, par. 49-59.

¹⁸⁵ OI, Report with recommendation on the case A. no. 171/2013, procedural delays from the Kosovo Property Agency for compensation, based on the final decision, on 21 February 2014.

¹⁸⁶ *Hornsby against Greece*, Application no. 18357/91, par. 45.

¹⁸⁷ OI cases A. no. and A. no. 343/2014. 341/2014.

¹⁸⁸ OI, case A. no. case. 267/2014.

¹⁸⁹ OI, case A. no. 269/2014.

2.14.4. Complaints against Public Companies and KEDS

During this reporting year, OI has investigated three complaints against public companies, two of which, after the opening of the investigation by OI and addressing them, have been resolved positively for parties and are closed.¹⁹⁰

Against KEDS (Kosovo Company for Distribution and Supply with Electricity) there are 8 complaints submitted, of which 7 have been investigated and closed. Complaints against KEDS are related with the installation of electric poles on private property without the consent of the owner, control of property by KEDS employees without any notice, damage to electrical equipment, installation of electric conductors, by causing obstruction to possession, errors during installation and registration of electric meters and non-response to the complaints of the parties.

OI acting according to competences determined by the law, in cases where KEDS has not responded to complaints of complainants, requested from KEDS to respond to the parties, and where applicable advised parties to utilize available legal remedies.

Recommendations:

For the Assembly of the Republic of Kosovo:

- *Abrogation of UNMIK Regulation 2003/13 on the Transformation of the right to use immovable property in social ownership, as amended by UNMIK Regulation 2004/45, issuing a law which shall regulate the transformation of socially owned property and establishing fair and balanced criteria for inclusion of workers in the list of employees who benefit from the privatization of SOEs.*
- *Review the issuance and adoption of the law on restitution of properties nationalized during the 1950s and beyond, taking care of the balance of interests, and according to the best practices of regional and European countries.*

For the Government of Kosovo:

- *Establishment of conditions for the restitution of possession of property lost as a consequence of the 1998-1999 war and provision of the necessary support for the Kosovo Property Agency in the execution of decisions for restitution of property.*
- *Financial support for the Kosovo Property Agency or its successor agency, for execution of decisions on compensation, under the conditions specified under section 4.5 of UNMIK Regulation 2000/60.*

2.15. The right to education

The Constitution determines the obligation of public institutions to ensure equal opportunities for education to each person accordingly to his/her abilities and needs.¹⁹¹ This guarantees the ECHR with its Protocols, also.¹⁹²

¹⁹⁰ OI, cases A. no. 76/2014 against Water-supply Company in Ferizaj and A. no. 115/2004 against the Company "Southern Hydro Region" in Prizren.

During 2014, OI has received a total of 56 complaints regarding the right to education.¹⁹³ Of them 26 were investigated, while 30 complaints have been declared inadmissible. In comparison with 2013 there is an increase of complaints in the field of education. Investigated complaints were directed against UP "Hasan Prishtina", MEDs, MEST etc.

2.15.1. Pre-university education

Overall inclusion to quality education of the children, ensuring overall inclusion of children with special needs in education, improvement of school infrastructure, as well as the prevention, combating and referral of violence in schools, remain some of the most important objectives in the field of education, implementation of which requires continued commitment of Kosovo institutions.

Institutions must ensure the quality of education, the right of children and young people for education in a safe environment and free of violence, free of insults or other forms of discrimination. To create a safer and more convenient environment in educational institutions, as well as to prevent negative phenomena, the Government of the Republic of Kosovo has issued a Regulation which establishes procedures for resolving cases of violence in schools and referral to other responsible institutions.¹⁹⁴

Although the Ombudsperson has recommended in the last year's report the implementation of this regulation, after many visits to educational institutions and based on the cases of violence that occurred during 2014 in educational premises, around or near them, it is noted that this regulation has not been sufficiently implemented.¹⁹⁵

Although the educational process in pre-university institutions begins on 1 September¹⁹⁶, we are witnesses that in many schools, due to the delayed renovations, educational process started late. Also, the beginning of the heating season remains a challenge for educational institutions, since during this school year, due to lack of fuel or material for heating, in many schools students have been forced to attend the educational process at low temperatures, and as a result, some schools interrupted the educational process after protests of students and parents.

Some municipalities have had problems with the recruitment of teachers due to the reforms in pre-university education. The announced vacancies, but also the requirements of recruitment, in some municipalities were in violation of the law, and in some cases even containing discriminatory requirements.¹⁹⁷

¹⁹¹ *Constitution of the Republic of Kosovo*, Article 47 paragraph 2

¹⁹² *Ibid*, Article 22 paragraph 2.

¹⁹³ Statistics from, 1 January until 15 December 2014

¹⁹⁴ *Regulation of the Government of the Republic of Kosovo, no. 21/2013* on Protocol for Prevention and Referral of Violence in Pre-University Education Institutions.

¹⁹⁵ The Ombudsman's statement on the murder of student in Mitrovica, on 01.28.2014..

¹⁹⁶ Law no. 042 / L-032 for Undergraduate Education in the Republic of Kosovo, Article 2, paragraph 1:37. "The school year - the period beginning on September 1 of one year and ending on 31 August of the following year, ...".

¹⁹⁷ *MED Prishtina, Vacancy dated 09.24.2014*, "An applicant may apply mostly to three (3) job positions, therefore you are recommended to apply only to one job position."; MED, Gjilan, *Minutes of interviewed-Part II*, "Local candidate, the candidate who lives in the locality where the school is located , 1 point (this requirement applies only in villages), and other criteria" Candidate resident of the

2.15.2. University education

This academic year UP has been accompanied by major challenges at the beginning of this year, after protests organized by various student groups, and the situation reached its peak with the resignation of the rector and a part of the Governing Council. This tense situation continued almost throughout the year. University was in the center of attention. Following the election of the current rector, an impression was created that the situation will start to improve and that the problems in the UP, finally, will begin to be addressed in order to be solved.

However, after the decision of the MEST's Minister and demand of the associations emerged from war for registering in the UP the candidates according to the lists submitted by these associations, and after the protests of the associations in question, again UP found itself at a crossroad. It is an obligation of all, the society and the state institutions, to undertake all legal actions to preserve the autonomy of UP, as the highest public institution of education - science.

About this case, the Ombudsperson emphasizes that interference from outside must be stopped and to respect the autonomy of UP. This is valid specifically for the Government of Kosovo, MEST and all persons and public institutions, natural and legal persons, associations emerged from war, and student associations, that are attempting to influence the independent management and development of UP.

Even in other public universities,¹⁹⁸ although long time passed since their opening, it is noted that their management continues with Acting Rectors and Vice-Rectors, a phenomenon which negatively affects to the management of public universities.

The decision of the Government of the Republic of Kosovo, to discount prices of some of services for the students, has created advantages (facilities) for the students and their families, has provided better opportunities of studying for all, however this should not create and be accompanied by budget problems in the university institutions. Actually, the education as a separate area already is under-funded in Kosovo and needs much greater financial and material support than now.

Situation in UP, it is explained the best by the statement of former Minister of MEST, who before handover of the post, said: "[...] *the situation at the University of Prishtina "Hasan Prishtina" hasn't been stabilized, even though during his mandate the university has changed three rectors.*" as well as "[...] *I'm sorry for the future minister [...] that this hot potato is left into his hands*".¹⁹⁹

No doubt that developments in UP and around it have diminished the already shaken trust of this institution which it enjoyed in public opinion and, to an extent, even his reputation in the region and wider (last international ranking of UP is at the position of 4937 in the world, from a total of 20,000 worldwide universities in competition).

Municipality of Gjilan, 5 points"; MED, Year, *candidate evaluation form*, "Local candidate (candidate who lives in the locality where the school is located 1 point).

¹⁹⁸ Information obtained at: <http://www.upgj.org/>, University "Kadri Zeka" in Gjilan, <http://www.uni-gjk.org/> University of Gjakova "Fehmi Agani" and <http://www.umib.net/>, University of Mitrovica "Isa Boletini" (12/12/2014).

¹⁹⁹ Press conference, on 10.12.2014.

Therefore, governing bodies must strongly commit to restoring the trust of the public over UP.²⁰⁰

2.15.3. Right to education of children with disabilities

In the previous annual reports Ombudsperson has also recommended to ensure most appropriate conditions for students with disabilities in the education system in Kosovo. We are all witness, that this category of students enjoys these rights with difficulties. Specifically, it has problems with providing transportation for the students with special needs but also for other students for which municipalities have legal obligations to provide transportation due to the distance of the school.²⁰¹ Supporting and improving conditions for these students as well as to create conditions for integration of children with disabilities in regular educational system must be a priority of MEST and of municipalities.

Unfortunately, inclusion of the students with disabilities in Kosovo's education it is still low. In special schools, in joined classrooms and students with assistance (help) in the school year 2013/2014, a total of 1,239 pupils have been included.²⁰² In Kosovo there are identified around 6,100 children with special needs, however it is assumed that this number is even greater but are not registered.²⁰³

2.15.4. Complaints on education of children with disabilities

After a complaint of a student with disabilities, regarding his inability to attend classes in a secondary school due to lack of transport, the Ombudsperson mediated to resolve the case. After many conversations with municipal responsible persons and MEST responsible persons, the responsible institutions have provided transport and student continued to attend the educational process.²⁰⁴ In this case there is neglect from the responsible institutions at municipal level for implementing the laws in force and violations of the right to education are ascertained, since according to the law the municipal authorities are obliged to provide free transport for children with disabilities.²⁰⁵

OI has received a complaint on behalf of a Bosnian community family, which for two children with disabilities has requested the opening of a Bosnian language parallel in the Resource Center "Mother Theresa" in Mitrovica. The professional Commission has evaluated learning capabilities of children, in which case has found that children can attend school in Bosnian language in lower secondary school "Bedri Gjinaj" in

²⁰⁰ *Work Program of the Rector of UP, 17 September 2014, p. 1.*

²⁰¹ *OI, cases A. no. 525/2013 and A. no. 528/2014, complaint due to non-providing transport for students.*

²⁰² *MEST, Kosovo Education Statistics, 2013/2014, in: http://www.mashtgov.net/advCms/documents/Statistikat_e_arsimit_ne_Kosove_2013_14.pdf page 43, graphic 25 (9.12.2014).*

²⁰³ *MEST, started awareness campaigns for education of children with special needs, in: <http://www.mashtgov.net/advCms/channels/news/newsPrint.php?id=1,3009> (9.10.2014).*

²⁰⁴ *OI, case A. no. 515/2013.*

²⁰⁵ *Law on Pre-university Education in the Republic of Kosovo, Article 40, paragraph 4.*

Mitrovica.²⁰⁶ The complaint was solved at the best interest of children with Ombudsperson's mediation.²⁰⁷

After a mother's complaint for her child with disabilities, students of class VII²⁰⁸, because his classroom was set out on the second floor, he could not attend the classes, OI has mediated. Following IO's action, there have been immediately taken appropriate measures by MED and the school management. His classroom was removed from the second floor to the ground floor and the student continued to attend classes. Public institutions are obliged to provide appropriate support based on the needs of the students, whereas while making decisions, they should always prioritize the best interest of the child and take into account their needs.²⁰⁹

2.15.5. Ex officio case against MEST

The Ombudsperson has opened an investigation on its own initiative regarding the impacts on human rights, stipulated by the Constitution and the laws in the field of university education, of the decision no. 178 / 01B of the Minister of MEST, 13 November 2014. This decision concerns with the registration of children of categories emerged from the KLA war at the UP "Hasan Prishtina". From the information provided by the Rector of UP "Hasan Prishtina"²¹⁰, it is outlined that UP has no conditions for increasing the number of students since there is lack of academic staff, as well as of laboratories and other facilities necessary for educational and scientific work.²¹¹ With regard to this issue, having met the substantial criteria for recommending a suspension, for the reason that *"the execution of an administrative decision may have irreparable consequences for the natural or legal person"*,²¹² the Ombudsperson directed to the former Kosovo Prime Minister and former Minister of MEST, respectively to current Prime Minister and Minister, with the request for interim measure for suspending the execution of the Decision no. 178/01B of the Minister of MEST, until investigation is concluded. After failing to cooperate and comprehending the seriousness of the case, the Ombudsperson, through a press release, has expressed its concern about the growth of recent tensions over University of Prishtina. The Ombudsperson emphasizes that any illegal interference on the running of the regular educational process, is considered totally unacceptable.²¹³

²⁰⁶ *Ibid*, Article 41, paragraph 3.

²⁰⁷ OI A. no. case. 483/2013, the request for opening the classes in the Bosnian language learning in the Resource Center "Mother Theresa" in Mitrovica.

²⁰⁸ OI, case A. no. 2/2014

²⁰⁹ *Law on Pre-university Education in the Republic of Kosovo*, Article 40, paragraph 2.1 and 2.2.

²¹⁰ OI, the case ex officio no. 518/2014. In February 2015, the Ombudsperson has issued a report with recommendations to the parties and relevant institutions regarding this issue. By the end of this report, except the Rector of UP "Hasan Prishtina" no institution has responded to the recommendations of the Ombudsperson. Government of Kosovo and the relevant Ministry (MEST) have failed fully to cooperate with the Ombudsperson on this issue.

²¹¹ The letter of the Rector of UP "Hasan Prishtina" sent to Ombudsman, in which he confirms that *"eventual increase of the number of students would burden the educational process which is taking place in the absence of infrastructure and laboratory space"*.

²¹² *Law on the Ombudsperson*, Article 16, paragraph 5

²¹³ *Ombudsman statement, dated 3 December, 2014, in: <http://www.ombudspersonkosovo.org/sq/lajme/>*

2.15.6. Complaint of Ashkali community representatives

Ombudsperson has accepted the complaint of the Ashkali community representatives,²¹⁴ who complained against the Rector of UP "Hasan Prishtina". They claimed that there are 44 seats reserved for candidates from the Ashkali community, who wish to study at UP. According to them, a total of 12 candidates have applied for this academic year of which only 5 have been admitted. They said that they have met the Deputy Minister of MEST and the Rector of UP but have not found any support. During the meeting, Ombudsperson had with the Rector on 14 November 2014, was raised the issue of registration of Ashkali candidates in UP. Rector explained that candidates belonging to minorities have a fixed quota of seats in UP. However, in no case candidates who do not meet the minimum requirements, or fail to pass the threshold of 30% of the admittance test could be registered.

Ombudsperson finds that the requirement that candidates of these categories are admitted regardless of the shown admittance test results or regardless of their abilities, is unacceptable, since under the constitution and laws applicable in Kosovo, all are equal before the law, and the constitution determines the obligation of public institutions to ensure equal opportunities of education to each person accordingly to his/her abilities and needs.²¹⁵ Quotas for certain categories, doesn't mean admission automatically on the basis of group background with benefits, but primarily constitutes an act of good will to favor certain social groups in case they belong to the most vulnerable groups, due to certain circumstances in the past, but even now.

Recommendations:

- *Municipal responsible institutions should undertake all necessary measures for the improvement, maintenance and upgrading of the physical infrastructure of schools before the start of the school year.*
- *Municipalities should allocate a separate budget to provide transportation for children with special needs.*
- *All relevant institutions should implement thoroughly the Protocol for the Prevention and Referral of Violence in Pre-University Education Institutions.*
- *MED during compilation of vacancies and employment criteria, should draft criteria which do not fall in conflict with the law, so that all candidates are treated equally before the law.*
- *MEST in cooperation with other responsible institutions should engage for establishing a register for all children with special needs in Kosovo.*
- *Holders of higher education in Kosovo, instead of acting rectors and vice-rectors, should elect as soon as possible rectors and vice-rectors in public universities.*
- *The Government of the Republic of Kosovo and MEST respect the autonomy of the holders of higher public education.*

²¹⁴ OI, case A. no. 522/2014.

²¹⁵ *Constitution of the Republic of Kosovo, Article 47, paragraph 2; Higher Education Law, Article 2, paragraph 1.3.*

2.16. The right to work and exercise of profession

The right to work and exercise profession is one of the fundamental human rights guaranteed by the Constitution of the Republic of Kosovo,²¹⁶ as well as by most important international instruments applicable in the Republic of Kosovo.²¹⁷

2.16.1. Complaints registered in OI

Claiming that the right of employment relationship has been violated, in 2014, OI has registered 379 complaints from citizens. Of these, 297 complaints have been decided as inadmissible, whereas 82 of them have been opened for investigation.

The Ombudsperson notes that the complaints received either for public sector or private concern with: claims of alleged violations of employment procedures; illegal termination of employment relationship; duration of working hours; overtime compensation; not using the right to annual leave or maternity leave; not exercising of the right to salary.

In one of the complaints received by the OI, against MDE in Gjakova, regarding a vacancy announced by MED for a job vacancy in the subject of biology teacher at gymnasium "Hajdar Dushi" in Bishatzhin,²¹⁸ the complainant claims that he was the only candidate who met the criteria under the MEST Administrative Instruction 09/2014, and therefore pretends that MED has intentionally mistaken his name on the lists published for the interview, including in the short list the non-existent person, in order to make it impossible for the complainant to participate in the interview. Such an approach of MED leaves room for suspicions in the recruitment process.²¹⁹

OI has registered an applicant's complaint against Technical Secondary School "Mithat Frashëri" in Gurrakoc, Municipality of Istog, due to termination of employment relationship with this school, without any prior notice. Based on the complainant's allegations, he worked in the Technical Secondary School "Mithat Frashëri" in Gurrakoc, in separate classes in Rudina of Dubrava, from 2002 until 4 September 2014, when his employment relationship has been terminated without any prior notice, an action which clashes with the legal procedures of employment relationship.²²⁰

2.16.2. Protection and safety at work

Although the protection and safety at work is guaranteed by the two laws in force: Law on Labor²²¹ and the Law on Safety and Health at Work,²²² during this period have been

²¹⁶ *The Constitution of the Republic of Kosovo*, Article 49.

²¹⁷ *Ibid*, Article 22.

²¹⁸ OI, case A.no. 486/2014.

²¹⁹ *Administrative Instruction 09/2014 of MEST, Article 8, paragraph 2* "The vacancy should be equal for all targeted candidates, without any discrimination, as required by this law and other acts in force".

²²⁰ OI, case A. no. 542/2014.

²²¹ *Law on Labour no. 03/L-212*, Article 42, paragraphs 1 and 2

²²² *Law on safety and health at work, no. 04 / L-161*

evidenced cases of the workers' deaths and injury in the workplace. For the Ombudsperson it is a serious concern, particularly, lack of investigation of the cases by the Inspectorate of Labor and investigative organs, as well as impunity of employers due to non insurance of workers and job positions. During the reporting period, according to official data in Kosovo, 8 people have lost their lives in the workplace, while 52 others have suffered injuries.²²³

Recommendations:

- *Inspectorate of Labor should monitor implementation of the provisions of the Law on Labor and the Law on Safety and Health at Work and undertake appropriate legal measures to protect the health of workers.*
- *Ministry of Labor and Social Welfare together with the Inspectorate of Labor should undertake measures to prevent the phenomenon of child labor, by developing concrete programs for their return to regular learning process.*

2.17. The right of access to public documents

Constitution of the Republic of Kosovo guarantees the right of access to public information with the exception of restrictions stipulated by the law,²²⁴ whereas LAPD clearly defines the rights of citizens to access public documents.²²⁵

Right of Access to Public Documents includes the right that everyone has to know the contents of the documents produced and held by public authorities, sets and decides rules for the well-functioning and transparency of public administration in relation with the public about its activities.

Free circulation of information is an important tool for building trust between institutions and citizens, to create transparency of actions, efficiency and effectiveness of public administration, mutual awareness of citizens, for services that expects from administration, and of administration for its duties to provide services to citizens.

2.17.1. Flaws of the Law for access to public documents

Even in the last year report it was outlined that the LAPD contains shortcomings that make it a difficult law to be applied. The law does not clearly specify which is the competent court or other public institutions to deal with the cases concerning denial of the right to access public documents. Article 10 of the Law in which are emphasized the cases of non-response of the public institution, it is stressed only that *"Refusal of the application of the applicant as well as the failure by the public authority to reply within the prescribed period of time shall be considered as a negative reply and shall entitle the applicant to initiate the procedure before the Ombudsperson Institution, other public institutions, competent court, in accordance with the Law into force."*

²²³ Interview with Mr. Basri Ibrahim, Chief Inspector of MLSW of the Republic of Kosovo on 12 December 2014.

²²⁴ The Constitution of the Republic of Kosovo, Article 41.

²²⁵ Law no. 03 / L-215 on Access to Public Documents (LAPD), Article 4.

Besides that it recognizes the right of the applicant "[...] to initiate proceedings to the Ombudsperson Institution, and other public institutions, competent court in accordance with applicable law," the law does not expressly state which are 'other public institutions' with executive power, which can oblige responsible persons within these institutions to respect and implement the guaranteed right of access to public documents.

List of exceptions of the right of access to documents, which is summarized in Article 12 of the LAPD, also constitutes an extremely elastic limit, which leaves a relatively large room for arbitrary interpretation to the person responsible at the respective institution.²²⁶ In this case, the possibility of arbitrary interpretation is so great that any request for public documents may be attributed a limitation. Restrictions on exercising this right are very concrete, with extremely flexible limits in a negative sense.

Based on the practice of these years, it seems that it continues to be very discouraging for people who turn to the courts to exercise their right to access public documents due to delay of court proceedings. From data and information on Ombudsperson's disposal there is no court decision in 2014 in Republic of Kosovo regarding the any case concerning access to public documents.

2.17.2. Deadlines for responses and delays of responsible institutions

The number of complaints submitted to OI, regarding the denial of access to public documents for 2014 was 40. Out of this total number of complaints, 28 cases have been investigated, while other complaints were declared inadmissible at the phase of review, pursuant to the Law on Ombudsperson. Based on the total number of complaints addressed to OI in 2014, it is noted an increase compared to the number of complaints submitted in the previous year.

Ombudsperson during this reporting year, notes that in most cases the institutions are late in responding within the time limits prescribed by the law.²²⁷ From various

²²⁶ *Ibid*, "1. Each applicant has the right to access public documents. Limitation of this right is exercised proportionately and only for defense purposes:

- 1.1. national security, defense and international relations;
- 1.2. public safety;
- 1.3. prevention, investigation and prosecution of criminal activities;
- 1.4. disciplinary research;
- 1.5. inspection, control and supervision by public institutions;
- 1.6. privacy and other legitimate private interests;
- 1.7. commercial interests and other economic;
- 1.8. economic policies, monetary and exchange policies of state;
- 1.9. equality of parties in court proceedings and the effective administration of justice;
- 1.10. environment, or,
- 1.11. discussions within or between public institutions regarding the review of any issue

2. Access to information contained in a document may be refused if their disclosure undermines or is likely to undermine any of the interests mentioned in paragraph 1 of this Article, unless there is no higher public interest to make the disclosure."

²²⁷ LAPD, Article 7, paragraph 8 "public institution shall, within seven (7) days from the time of filing the application, have to issue a decision on access to the document requested or provide a written response to justify the full or partial refusal and inform the applicant of the right that he has to file a request for reconsideration. Rejection of the application is made by written decision of denying it".

professional discussions it is assessed that the seven day deadline to provide access to required documents is short. However, regarding the right of the public to receive information, within a reasonable time, the Ombudsperson considers it as inevitable and decisive the opinion of the ECHR, that the delays in providing the information may inevitably obliterate all the value of information and interest upon it,²²⁸ *“Because news is a service that goes quickly and delay of its publication, even for a short period of time, may deny to this news all values and interest.”*²²⁹

2.17.3. Protection of privacy and personal data

In handling cases, the documents requested are of different natures. While the law provides more specifics, that reserve competence for authorities to deny access to complainants/applicants of information, when this concerns with security elements in the country, it remains extremely controversial the part when the elements of privacy and personal data are affected. It is a thin line that separates these two rights and their balancing in resolving the cases, while maintaining privacy, without damaging the right of access to official documents it is a continuing challenge in dealing with requests for access to public documents.

In March 2014, an NGO submitted a complaint to the OI about not receiving the answer from 7 municipalities in Kosovo (Prizren, Lipjan, Shtërpca, Mamusha, Klllokot, Partesh and Klinë). The request consisted of access to information and non-personal data from the annual report of property tax charges and collection from 2012. Although this NGO has not been correct with regard to the cooperation with OI, by not informing about the replies it received from some of the municipalities, these requests have taken to surface actions which fall in contradiction to the protection of citizens' personal data by the municipal administration and non-response within the time limits prescribed by the law. In their responses some of these municipalities provided a full list of names, addresses, obligations and other data without any type of restriction, which objectively are violation of the right to privacy and personal data protection.

2.17.4. Unjustified denial of access to official documents

In December 2014 the Ombudsperson prepared a report with recommendations which was addressed to the MAFRD regarding the denial of the right to access public documents, by concluding violation of the law. Based on the Law for access to public documents one of the NGOs had asked the Ministry by a request for access to *"The list of NGOs, to which were given donations,"* which based on the request should have contained information *"for what purpose the donations have been provided, the title of the project, from whom the project was implemented, and which is the financial amount that was allocated to each NGO, and each project"*. In this case the Ministry through a letter informed the entity of the request that

²²⁸ Case *The Sunday Times V. The United Kingdom*, (Application no. 13166/87), 26 November 1991.

²²⁹ *Freedom of Expression*, a guide for implementation, of Article 10 of the ECHR, page 21, paragraph 34, Case *The Sunday Times V. The United Kingdom*, (Application no. 13166/87), 26 November 1991 and Case *Observer And Guardian V. The United Kingdom*, (Application no. 13585/88), 26 November 1991.

its request was refused on the grounds that "*Based on previous reports of the NGO ... official materials treats with propaganda approach and for commercial purposes ...*".

The Ombudsperson estimated that such justification of the Ministry was not sufficient, ignoring the right of the NGO to access the required information, by not justifying restrictions on access to public documents, the essence of the right which is restricted, the importance of the purpose of the restriction, the nature and extent of restriction, relationship between the restriction and the purpose to be achieved, as well as considering the possibility of carrying out this goal with less restriction possible.

The Ministry has neglected completely so far the report with recommendations, which clearly proves the need to change the law to empower an institution with executive powers in order to force violators of the right to access public documents, to respect the Law and Constitution.

2.17.5. Finding of preparatory works for drafting the Constitution

One of the most important issues that should be emphasized and that is related to access to public documents, is undoubtedly the request of the Ombudsperson and finding the documents for preparatory work (*travaux préparatoires*)²³⁰ for drafting the Constitution of the Republic of Kosovo.

The continuous requests by CCK, over a period of more than four years, for consultation in cases covered by this court KI47/10, KO98/11 KO103/14 and KO119/14, haven't resulted successful, while in the media it was reported that these documents are archived and "no owner" in a facility of the Government.²³¹

The disclosure of such an information in the media, forced the Ombudsperson to open *ex officio* case regarding these documents, having five main purposes: (1) to find whether the reporting on existence and the location, respectively, the archiving of these documents in a Government facility, has grounds; (2) to investigate whether any institution or state authority has acted in contradiction to Article 41, paragraph 2 of the Constitution, which provides that "*documents of public institutions and organs of state authorities are public[.]*"; (3) to ensure that these documents are sent without delay to the CCK, in accordance with the continuous demands of this Court; (4) to enable access to *travaux préparatoires* by the OI during its work, and; (5) to publish and maintain these institutional and historical evidence of the establishment of the Republic of Kosovo, as for the citizens of today as well as for future generations.

After a persistent searching and successful communications with the responsible offices in the Assembly, the Presidency, the Government and the State Archive of the Republic of Kosovo, the Ombudsperson, on 5 December 2014 has received official confirmation that the OPM, which possessed all the documents, sent them to the Agency of State

²³⁰ *Travaux préparatoires* are all processed documents, collected and stored, in any form, whether, during the process of drafting the Constitution of the Republic of Kosovo, by the Commission for drafting the Constitution of the Republic of Kosovo

²³¹ "Achieves of drafting the Constitution in the facility of the Government and 'without owner'", *Kosova Press*, 1 October 2014, at: <http://www.kosovapress.com/sq/nacionale/arkiva-e-draftimit-te-kushtetutes-ne-objekt-te-qeverise-dhe-pa-pronar-26024/> (15.12.2014).

Archives of Kosovo (ASAK) on 24 November 2014, ten days after the first request of the Ombudsperson.

On 8 December 2014, the Ombudsperson visited the Archives to confirm directly the existence and preservation of these documents. In the ASAK expressed their commitment to send as soon as possible, following the archive systematization, a copy of all requested documents to the OI, in accordance with the Law on the Ombudsperson and the Constitution of the Republic of Kosovo.

Through a press release, the Ombudsperson informed the public that these investigations have been successful and the preparatory work documents - *travaux préparatoires* – of the Constitutional Commission have now been found and are in the right and safe place. Through this statement, the Ombudsperson called upon all relevant institutions to investigate the causes of the “loss” and non-disclosure of the preparatory works for these last six years, and make them known to the public.

The importance of informing, in a democratic state is emphasized in the opinion of the ECHR, according to which “*To deny the public information on functioning of state bodies means to violate a fundamental democratic right.*”²³²

Given the great need that Kosovo society has for an accountable and transparent administration, the Ombudsperson considers it necessary that for the competent institutions, primarily for the Government and Parliament of the Republic of Kosovo, to issue following

Recommendations:

- *To aim enhancing of activities on awareness rising on the right of access to public documents, through information campaigns, aiming initially responsible officials of the institutions but also the citizens as well about this right.*
- *Increasing and intensification of constant trainings for the officials to create and handle professionally the records of public documents and to respond to requests of citizens correctly and in compliance with the legal norms.*
- *To undertake all necessary actions to commence with the amendment of the Law on Access to Public Documents, to make the law clear, simple and applicable.*
- *To aim establishment of a mechanism with executive power for handling complaints concerning to access to public documents.*

2.18. Responsibility for living environment

The constitutional responsibility of all to create a healthy, quality and safe environment for the citizens of Kosovo and the gradual approximation of an approximate situation with the EU environmental standards remains a challenge.

²³² Case *Observer And Guardian V. The United Kingdom*, (Application no. 13585/88), Partly Dissenting Opinion Of Judge Pettiti, Joined By Judge Pinheiro Farinha. “In this respect there was a violation of the right to receive information, which is the second component of Article 10 (art. 10). To deprive the public of information on the functioning of State organs is to violate a fundamental democratic right”.

Although the Constitution of the Republic of Kosovo the responsibility of everyone to protect the living environment has categorized it in the group of human rights, the environment and its protection they continued to remain outside the priorities of governmental programs.

By not being a priority of the Government, the protection of environment affects the matters of public health and quality of life.²³³ The ecological tax, collected during registration of vehicles, didn't start to be allocated for the field of environment and continues to be as revenue in contradiction with the purpose of its collection. Also, the inter-institutional cooperation, of the authorities for environmental protection, is moving slowly.²³⁴

Given the importance of this right, and its direct reflection on the right to life, the right to privacy and to housing, right to family, right to property, public health, etc., soft implementation of environmental legislation by citizens as well as institutions, is concerning.

During the reporting year, OI has received 22 complaints regarding the violation of Article 52 of the Constitution of the Republic of Kosovo, "Responsibility for the environment"²³⁵, whereas it was assessed that in 10 of them there is room to conduct investigations.

Uncontrolled urban expansion, abusive interventions, construction without any criteria, disregard of regulatory plans and construction normative, loss of agricultural lands, air pollution, water pollution, destruction of forests, improper waste management, damage and the extinction of biodiversity, lack of sufficient monitoring systems, noise, non-observance of fundamental principles of environment, are among numerous environmental problems that continued also during 2014.

2.18.1. Air pollution

The right of citizens to a healthy environment has continued to be affected by air pollution, industrial production, old transport vehicles, the use of low quality fuel, uncontrolled pollution by construction of roads and buildings under construction, the exercise of activities in quarries and quarry firms, burning stubble fields, and from proper mismanagement of landfills, urban and industrial waste.

Based on the reports of the competent authorities, Kosovo it is facing with significant air pollution. Exceeding of PM10 and PM2.5²³⁶ has been recorded, with the deterioration of the situation, especially during the winter, which is influenced by the use of different materials for heating. The main polluters are KEK, Trepca industrial complexes, Ferronikeli, Sharrceci, emissions from Gjakova and Mitrovica heatings. Prishtina

²³³ *Kosovo Progress Report 2014*, pg. 4, "The lack of interest in the environment has become a serious issue for public health and the quality of life in Kosovo".

²³⁴ *Law No. 03/L-025 on protection of environment*, 2.4 shall coordinate preparation and implementation of policies and environmental instruments,

²³⁵ *Constitution of the Republic of Kosovo*, Article 52 [*Responsibility for the Environment*], 1. Nature and biodiversity, environment and national inheritance are everyone's responsibility

²³⁶ *MESP, Environmental Protection Agency, (EPA) Report on the state of environment 2011-2012*, p. 43.

Heating has improved in terms of environmental pollution after the start of the heating system using steam from the power plant.

The monitoring of the air quality, for technical reasons has not been constant, whereas the monitoring of reports on discharge of operators is not satisfactory. Information on air quality remains poor.

2.18.2. Water pollution

The right of citizens to quality portable water and access to water supply systems, improvement of water shortages²³⁷, has not marked any evident progress. In Kosovo continues and it is increasing pollution of rivers by uncontrolled discharge of wastewater, untreated, sewage, chemical products and household and inert waste. A problem in itself it remains the destruction of rivers from gravel exploiters.

Administration, management and development of water resources is partly unsatisfactory due to lack of funds as well. Ministry of Environment and Spatial Planning (MESP) has continued to have problems with the accumulation of payments/funds intended for administration, management and development of water resources, both by natural persons as well by legal entities, for water usage and their discharge.

2.18.3. Damage and destruction of agriculture land and forests

The land degradation from the impact of human activities continued with the same intensity. The fragmentation of agricultural land, uncontrolled destination of use from agricultural to construction land, unplanned construction, non-management of landfills, household and industrial illegal waste landfills, exploitation of gravel, uncontrolled discharge, have also characterized this year. According to MAFRD, it is estimated that during one year in Kosovo, 400 hectares of agricultural land destination was changed into construction land.²³⁸

Although Law no. 04/L-174 on spatial planning provided zoning of parcels, non-completion of the law with normative bylaws, and non-sanctioning and prevention of illegal constructions has contributed to the loss of agricultural land.

The OI on 15 October 2014 organized a roundtable entitled "Responsibility for the Living Environment", with particular focus on the Municipality of Obiliq. This organization, among other things, aimed at gathering for a joint discussion, the citizens affected by pollution and some of the heads of the responsible institutions. The roundtable also discussed the discharge of industrial wastewater from KEK, non-management of Mirash landfill and industrial landfills, and damage of the land.

²³⁷ *Regional Environment Centre REC, Report of Findings from the Survey of Local Action Plan on Environment, Survey of citizens about environmental problems*, "44.15, have considered access to drinking water and water supply as the main environmental problem."

²³⁸ *MESP, EPA, Report on the state of environment 2011-2012*, p. 73.

2.18.4. Spatial planning

The citizens of Kosovo have continued to encounter problems almost identical in terms of spatial planning. Although Law no. 04/L-174 on spatial planning was approved on 31 July 2013, MESP has failed to complete it by sub-legal acts.²³⁹

Neglect of observation of the rules on creating urban environments, failure of the competent authorities to prevent, control and reduce negative impact to environment in Kosovo, caused establishment of a chaotic, unsafe, non-healthy environment, with direct impact on the rights of citizens.

Law no. 04/L-110 on Construction, obliges issuance of a Unique Construction Code, however even after two years of waiting, it has not been approved yet. Human rights continued to be violated by constructions in contradiction to the principle of protection of health and safety, particularly high buildings without sufficient space between the buildings, exceeding from the regulatory lines and construction lines, horizontal and vertical exceeding of facilities, inadequate lighting and ventilation, lack of emergency stairs, of areas for the movement of persons with disabilities, of measures for safety of life and property from fire, lack of support areas, parking lots and garages, in particular green areas, and other deficiencies attributed to the construction environment.

Development without criteria has influenced the creation of an environment unsafe, unhealthy and limiting the freedom of movement of citizens. Even this year there have not been any progress in improving the areas and paths for un-hindering movement of citizens

Lack of sidewalks/paths for pedestrians, especially the lack of infrastructure, occupation of sidewalks in various forms is insurmountable obstacle for people with disabilities, disproportionate width of sidewalks with the number of residents, lack of access to the main traffic routes, barriers imposed arbitrarily, failure to secure facilities under construction, and placement of construction materials and of goods close to the stores, holes, lack of shutters/covers of manholes, lack of public parking lots, are some of the problems identified this year with direct impact on the rights of citizens.

2.18.5. Problems with waste management

Coverage of overall public areas in Kosovo with waste/garbage, thrown by irresponsible citizens, but also by different companies, it is a very serious problem and requires urgent action by the state. Problems of waste management have not marked improvement. The water leakage from landfills and penetration of such water to surface and ground waters are also acute problems.

From the official data, there have been identified 400 illegal landfills with a total surface area of 301.18 ha²⁴⁰. A separate problem is also the disposal of waste, especially inert

²³⁹ *Law No. 04/L-174 on spatial planning*, Article 27:“ Ministry shall issue sub-legal acts that are required by this Law and shall harmonize existing sub-legal acts within one (1) year from the date of entry into force of this Law”.

²⁴⁰ MESP, EPA, the report “Waste and Chemicals”, p. 37

ones into the rivers. On the other hand, the willingness to take action to start the separation, sorting, recycling and reuse of waste has not been noted..

2.18.6. The impact of environmental pollution on human health

According to an environmental study, the air pollution causes 835 premature deaths, 310 new cases of chronic bronchitis, 600 hospitalizations, and 11,600 emergency medical visits.²⁴¹ The impact of air pollution and smoking, is affecting cardiovascular, malignant and respiratory organs problems.

According to a research, the number of 5 year old children with respiratory problems in the municipality of Obiliq, is twice higher than in the Municipality of Peja. However, according to a 5-year research, the number of smoker patients, with malignant diseases in Prishtina, is twice as higher compared to that in Prizren.²⁴²

It is very concerning the fact of flaws that are attributed to spatial planning and technical infrastructure, as well as their impact on citizens' health, due to lack of space for physical and recreational activities, and the barriers for movement/ walk of pedestrians.

The environment created with the lack of green areas, walking paths, recreational areas and impact on physical and mental well-being of children, especially the impossibility of movement of persons with disabilities, it is very concerning for the Ombudsperson.

Although Kosovo continues not being a party to the Aarhus Convention, the principle of information has been integrated into environmental legislation. In many facilities under construction, there are no information boards, as a special form of environmental information, in particular lack of the access to information on the discharges of the large operators. The difficulties in the access to environmental information, has been supported by the categorization of environmental information, in the group of restricted information under the LAPD.²⁴³

Based on the data of the report, the Ombudsperson, with the aim of creating a healthy environment for the people of Kosovo, according to the concept of sustainable development, rational use of natural resources and limit of emissions, environmental pollution discharges, prevention of damage, rehabilitation, improvement of the damaged environment, coordination of national activities, promotion and public participation in environmental protection activities, promoting the importance of environmental information;

Recommends:

- ***To conduct campaigns continually to inform the public in order to raise awareness regarding the preservation of the environment***

²⁴¹ 241Kosovo Country Environmental Analysis Cost Assessment of Environmental Degradation, Institutional Review, and Public Environmental Expenditure Review, World Bank, January , fq 10.

²⁴² Dr. Gazmend Zburi in the OI roundtable “Responsibility for living environment” with special focus on the Municipality of Obiliq, on 15 October 2014.

²⁴³ Law No. 03/L-215 on Access to Public Documents, Article 12 “Exceptions from the right of access to documents1. Any applicant shall have the right to access public documents. Limitation of this right shall be exercised proportionally, and only for the purpose of protection [...] 1.10. environment”.

- *To coordinate actions of the police, courts and environmental inspectors for the prevention of exploitation of rivers by irresponsible persons and in contradiction to the law.*
- *To undertake measures by the institutions responsible for preserving agricultural land from uncontrolled change of destination into construction land.*
- *To undertake measures to remedy the consequences of illegal and no criteria constructions.*
- *The competent authorities should implement thoroughly Article 12, paragraph 2 of Law no. 04/L-188, for treatment of illegal constructions, since the inspection phase of construction without permission, to reject the applications for permit for legalization in cases prescribed by law;*

Second part – Discrimination

2.19. Equality Before the Law

2.19.1. *Applicability of laws*

The Constitution of the Republic of Kosovo guarantees equality before the law and human rights observance and the right of equal legal protection without discrimination.²⁴⁴

From 1 January to 31 December 2014, the Department against Discrimination (DKD) in the OI have received 65 complaints of the citizens of Kosovo, whether individual complaints or *ex officio*, in which there was claims of alleged violation of rights protected by the laws in force in the Republic of Kosovo, with regard to equality before the law. The largest number of complaints it concerned with discrimination in the social, health, property, working relationship spheres.

Law against Discrimination, in spite of the fact that has passed through the stages of amendment and supplementation, it has not been able of having approve by the Assembly of the Republic of Kosovo yet. The Ombudsperson has recommended amendments in the law also in previous annual reports.²⁴⁵ Based on the past experience, precisely due to the shortcomings outlined, the non-implementation of the Law against Discrimination continues. So far, OI has known only one case of treatment of discrimination case addressed in the courts.²⁴⁶

2.19.2. *Right to work and age-based discrimination*

As reported in the previous report, the OI has cases registered for which MLSW has signed an agreement with KEK for employment of 100 workers who are involved in the social scheme.²⁴⁷ After the testing phase and after notifying the candidates that have been hired by the Kosovo Energy Corporation, they were re-notified that they could not commence work because they do not meet the age requirement, under the agreement between them and MLSW.

In the previous annual report, the Ombudsperson reported that the MLSW has not responded to the letters of the Ombudsperson regarding this matter, therefore on 27 February 2014, the Ombudsperson published a report with a recommendation for MLSW regarding age discrimination,²⁴⁸ however up to date OI has not received any official information on the implementation of the recommendations.²⁴⁹

²⁴⁴ *Constitution of the Republic of Kosovo*, Article 24.

²⁴⁵ See: *Annual reports of Ombudsperson*, 2010, 2011, 2012, 2013 – Equality before the law.

²⁴⁶ OI, *ex officio* case A. no. 170/2010.

²⁴⁷ OI, cases A. no. 454/2013, A. no. 449/2013 and A. no. 566/2013.

²⁴⁸ OI, *Annual Report 2013*, <http://www.ombudspersonkosovo.org>

²⁴⁹ OI, *Report with recommendation for MLSW*, regarding the cases A. no. 454/2013, A. no. 449/2013 and A. no. 566/2013.

The Ombudsperson, also through an *ex-officio* report, raised the issue of the functioning of the Economic and Social Council (ESC), and has assessed that SEC by non-exercising its competences, according to the Law on Social and Economic Council, has negative implications on the observation of the rights of employees in the public and private sector.²⁵⁰ After recommendations of the Ombudsperson directed to the relevant ministries, the ESC has managed to harmonize views regarding a very important document in the field of employment, the Collective Contract.²⁵¹

Within the campaign "Meet Your Rights", the OI has visited primary and secondary schools in almost all municipalities of Kosovo. During visits have been encountered cases of discrimination. One such a case of discrimination was evidenced in separate parallel of the primary school "Migjeni" in the village of Shipitullë. Despite the fact that the Law on Labor, Article 20.2 provides that full-time work shall be forty (40) hours per week, a technical worker of this school works 72 hours a week without compensation.

2.19.3. Persons with disabilities (PWD)

Despite the fact that persons with disabilities have special needs for making a living, they have continued to be included in a category with inappropriate material compensation, according to the Law no. 2003/23 on Disability Pensions in Kosovo. In previous annual reports, the Ombudsperson has recommended the adoption of a law which would stipulate the categorization accordingly with the objective degree of disability, however up to date the Kosovo Government has not taken any action in this regard.²⁵²

2.19.4. Legal infrastructure and its implementation in practice

Kosovo has a satisfactory legal infrastructure for the rights of persons with disabilities (PWDs), however, it is questioned how much these laws are applicable and in accordance with the needs of this category of our society.

Law No. 04/L-092 for blind persons, in relation to other laws that regulate the issue of disability is more advanced and should serve as a model to other laws regulating the position of PWDs. However, the fact of non-payment retroactively of the outstanding amount for blind for 2013, it is concerning. This concern was raised by the Association of Blind and Partially Sighted People of Kosovo.

The OI has good cooperation with NGOs that represent the interests of people with disabilities. The OI constantly exchanges information with these organizations that represent the interests of people with disabilities. During this reporting year, concerns have been raised by these organizations almost in all areas where PWD face their problems. Among concerns it is the issue of advancing the legislation to materially support people with disabilities.

On the basis of information possessed by the OI, the specific laws pertaining particularly to this category and whose applicability is put into question are: Administrative

²⁵⁰ OI, *ex officio* case A. no. 402/2013.

²⁵¹ OI, *Response by Economic-Social Council*.

²⁵² OI, *Annual Report for 2013*, p. 112; OI, *Annual report for 2011*, p. 22.

Instruction no. 09/2010, for the definition of jobs and employment of persons with disabilities in accordance with their working skills, Law no. 2003/23 for Disability Pensions in Kosovo, Law no. 04/L-110 on Construction and Administrative Instruction no. 2007/33 on the technical requirements of the building for access of people with disabilities.

The law on employment of PWDs which determines that the institutions when exceeding the number of 50 employees are obliged to ensure the employment of one person from this category if it is not implemented in practice.

Law no. 03/L-022 on material support for families of children with permanent disability stipulates that children under the age of 18 shall have material support in the amount of 100 euro. After the age of 18, they are treated with Law no. 2003/23 for Disability Pensions in Kosovo with the financial support of 75 euro.

In this case, even though the financial needs are increasing for people with disabilities, the amount of support decreases for 25 euro. Also, the Government of Kosovo in spite of the Ombudsperson's recommendations in previous annual reports has not undertaken any action to supplement the Law no. 2003/23 for Disability Pensions in Kosovo, regarding the categorization of people with disabilities accordingly to their objective degree of disability.

For the OI also the cases of reevaluation of people with disabilities regarding the right to pension are concerning. Despite the fact that the disabled have the same diagnosis and have been for a long time users of such a pension, after reassessment by the medical commission, they are not included in the list of beneficiaries of pensions for the PWDs, because according to the assessment of the medical commission they do not meet the required criteria, by not justifying well their decisions and utilizing a standard form for almost everyone.

According to information provided by the NGO "Hendikos", until now there were 27,000 users of disability pensions, whereas now there are 17,000. This makes the PWDs doubt on the correctness of the work of the medical commission. Also by "Hendikos" has been a raised concern that the law on quadriplegic and paraplegic persons even today in the Government it is incomplete. This concern was raised by the Ombudsperson in the previous annual reports.

2.19.5. Requirements for PWD education in public schools

Regarding the issue of education even today there are still problems in all areas for inclusion. Physical access for people with disabilities is not possible in many public schools. In Prishtina there are only three schools, which only partially fulfill the conditions for free access of children with disabilities. Ombudsperson has visited the primary school "Model", in Prishtinë and primary school "Asim Vokshi" also in Prishtinë. These are the schools that fulfill the requirements for PWDs.

The Ombudsperson through audio-visual and print media, by raising as a concern this matter has requested to create the conditions in all schools in order children with disabilities attend classes.

The Ombudsperson visits the resource centers where children with disabilities attend school. In given cases it recommends to the responsible institutions the improvement in cases of identified violations. During this reporting year, it is published an information booklet of the OI in *Braille* alphabet.

2.19.6. Restriction and prohibition of free movement for people with disabilities

Another problem children with disabilities are faced with it is the lack of transportation which is not organized by the institutions and this makes that many of the families have no material opportunity to send their children to school. Therefore, despite the fact that primary education it is compulsory, this category of persons is unable to exercise this right.

The issue of free movement of people with disabilities remains a problem even in other public institutions, including the University Clinical Centre of Kosovo. According to information OI has been ensured by "Hendikos", there are cases when the doctor was forced to walk out to the courtyard of the hospital to check the patient in the absence of access to the building due to the use of the wheelchair as an aid to move. This case is evidenced in the Dermatology Clinic of the UCCK.

Municipality of Prishtina has requested from "Hendikos" the list of people with disabilities who live in apartments for arranging the infrastructure for free access. It has remained as before because to date nothing has been undertaken. Such initiatives are often made only for propaganda purposes by politicians, especially on the eve or during the campaigns for electoral purposes.

In health, people with disabilities are exempted only from paying medical checks. They are required to provide the medicaments on their own. In the essential list there are not sufficient medicines for this category.

2.19.7. Right to education

Against the Rectorate of UP discrimination complaints from citizens of Kosovo have been filed. Complainants allege that UP does not treat equally candidates for enrollment in public universities with previous generations.

According to education reforms of Kosovo in 2014, the grade 13 was removed, and consequently the number of graduates in pre-university education for 2014 was doubled because two generations graduated at the same time, whereas the number of vacant positions for the enrolment of students in the UP remained the same. This has made the competition for enrollment in public universities to be higher, given that candidates of the two generations have been in competition for enrollment, grades 12 and 13. After a complaint of a group of students, the Ombudsperson raised this issue with the Rectorate of UP and MEST²⁵³.

²⁵³ OI, Case A. no. 383/2014. In the OI was received a complaint from a group of students who have applied to the Faculty of Medicine, in the University of Prishtina. They have filed a complaint against

As a response to the letter of the Ombudsperson, the Rectorate of UP has reviewed the graduates request to increase the number of students to enroll in the Faculty of Medicine. Rector of UP in response was stating that it is impossible to increase the number of students in the UP, especially in the Faculty of Medicine, because it has insufficient infrastructure capacity-space as well as number of academic staff.²⁵⁴ Regarding this case, the OI contacted the legal office at MEST, requesting information regarding the previous actions this ministry has taken before reforms in pre-university education.

The Ombudsperson has received information from MEST that in the framework of reforms in the pre-university education, public universities are opened in almost all cities in Kosovo. This should result in discharging the UP from the overload of the interested candidates for enrollment. Representative of MEST Legal Office has notified the OI that the number of students in UP is increased upon request of the Rectorate of UP, however there is no such thing done for this academic year.

This reporting year, the OI has raised *ex officio* the issue of assessment of the legality of the decision of the Minister of MEST, no. 178/01B, of 13 November 2014, for the enrolment of children of categories emerged from the KLA war in UP “Hasan Prishtina” in the academic year 2014/2015. OI has submitted a request for interim measures about implementation of the Decision no. 178 /01B, of 13 November 2014, until the conclusion of investigations by OI, regarding the legality of this decision.²⁵⁵ Despite the request and recommendation of the Ombudsperson, this decision continues to be legally effective.

2.19.8. Special Chamber of the Supreme Court (SCSC)

Taking into account the fact that many former workers of publicly owned enterprises were left without work, and still remain without legal or institutional support, the issue of privatization, as well as proceedings before the SCSC, according to the allegations of the complainants has brought them in a discriminatory position in exercising their rights.

During this reporting year, OI have been admitting complaints from Kosovo citizens regarding the amount of the court fees for filing the workers’ requests for review by SCSC. According to the complainants, the court fee was unbearable and therefore many cases has led that due to lack of funds former workers could not seek judicial protection for their rights guaranteed under the Constitution and laws. The SCSC, on behalf of the court fee, under decision no. 25, dated 5 March 2014, of the KJC, the workers were asked for fixed court fee in an amount of 100 Euro for any claim against PAK on issues of workers' rights deriving from the privatization process, although the KJC, under Administrative Instruction no. 2008/02 had determined the court fees for courts proceedings of the Republic of Kosovo.²⁵⁶

the UP Rectorate regarding the non-response to their request for increasing the number of students who will be admitted to the Faculty of Medicine, due to the fact that this this, the candidates for enrolment were two generations graduated in secondary school .

²⁵⁴ LAP, Response of the Rectorate of UP.

²⁵⁵ LAP, Report with *ex officio* recommendation 518/2014.

²⁵⁶ OI, cases A. no. 266/2014, A. no. 265/2014 and A. no. 294/2014.

To investigate this case, the Ombudsperson directed KJC two letters with a request that the court fees remain according to Administrative Instruction. According to the response of the KJC, it is emphasized that the decision no. 25, of 5 March 2014, has been reviewed for the court fees for SCSC and the decision no. 97/2014 was taken, under which the unification of the court fees has been made.²⁵⁷

2.19.9. Shelter issue

As in previous annual reports of the OI, the situation of families without a shelter it is concerning which unable to solve the problem for accommodation, have continued to ask for help from the municipalities for sheltering. During the reporting year the number of complaints to OI relating to housing, compared to previous years, was smaller.

The Municipality of Prishtina, additionally to already two collective buildings that were put into use in 2012, has under construction two other buildings which are dedicated to social cases. The containers in Fusha e Pajtimt further continue to be occupied with people who live in conditions that do not correspond to a dignified life. These cases were reported by the Ombudsperson also in previous reports and through the media.

The Municipality of Prishtina during this year has failed to guarantee free and unhindered use of their private properties and of public properties to its taxpayers. In the OI remains open a complaint of residents who live in the neighborhood to the green market in the city center of Prishtina. Citizens Complaint has been opened as a special case by the OI following a large number of complaints and petitions directed to the Municipality of Prishtina, but which has never received a response²⁵⁸

Recommendations:

- ***The Government of Kosovo should amend Law no. 2003/23 on Disability Pensions in Kosovo regarding the categorization accordingly with the objective degree of the disability, in order that material compensation of the users of pensions is made in accordance with the needs and requirements of the disability.***
- ***Ministry of Labor and Social Welfare should respond to Ombudsperson's recommendations in accordance with the Constitution of the Republic of Kosovo and the Law on the Ombudsperson.***
- ***Ministry of Education, Science and Technology should provide conditions for inclusion of students with disabilities in education.***

²⁵⁷ *Ib idem.*

²⁵⁸ OI, A .no. 494/2013. The applicants claim that it is impossible for all the residents of this neighborhood to have normal life in this neighborhood because their freedom of movement, as well as free use of their property is becoming difficult due to the urban chaos created by sellers in public spaces namely streets at the entrance and exit of the neighborhood. The Ombudsperson, through letters sent filed the appeal of residents of the neighborhood during the reporting year with the Municipality of Prishtina, and had meetings with the Director of Inspection in the Municipality. In the first letter, Prishtina Municipality has responded, as incompetent on this issue. According to the Municipality of Prishtina, the green market falls under the jurisdiction of the PAK.

- *The Government of Kosovo and the Inspectorate of Labor should monitor the implementation of the Law on Labor with regard to employment of people with disabilities under 50 + 1 quota according to this law.*
- *The Government of Kosovo and municipal authorities should monitor and also implement the Law on Construction No.04/L-110 and Administrative Instruction on the technical requirements of the building for access of persons with disabilities - No.2007 / 33.*

2.20. Gender Equality

Although the Republic of Kosovo has made progress in achieving equality, women as a vulnerable category, continue to face many challenges and unequal treatment and discrimination in many aspects.

Gender based discrimination includes the differentiation in treatment, limitation or exclusion based on gender. A fundamental element of a democratic society it is the existence of a law which prohibits unequal treatment based on gender. Law on Gender Equality it is indispensable in order to eliminate the phenomenon of unequal treatment of individuals of different genders. The Republic of Kosovo, in 2004, adopted such a law, but unfortunately has encountered various problems during implementation. The OI has laid down these shortcomings and problems consistently in the annual reports of previous years. This law it is now in the process of supplementation and amendment in order to eliminate identified legal gaps.

The extensive experience of the OI shows that women, in most cases, complain about the problems related to the right to work, economic status, health care, the right to inheritance and domestic violence.

During 2014, women submitted to the OI 507 complaints, or 23% of all complaints submitted in 2014 to the OI. This figure, which does not constitute even a quarter of the complaints submitted to the OI, is not a novelty. This trend of decline of participation of women complainants to OI continues now for many years. Although this is not a number obtained from a scientific research about the reasons of such a percentage of participation which is slightly in decline, in fact, this percentage is in direct correlation with the participation of women in public life in general in Kosovo.

2.20.1. Right to work and decision making

The role of women in the labor market it is of great importance in terms of gender equality. Their participation is extremely significant and also shows the level of democracy achieved in a society. The involvement of women in public life in general, and decision-making in public institutions, in particular the political level, it is not sufficient.

Although in the Assembly of Kosovo, the representation of women is 30% according to the gender quota, there is an unfavorable situation for women in the Government of Kosovo, which in its composition has only two women ministers. This fact shows that while gender representation can be good on paper, as a legal norm, in reality there is a

great predominance of men in the political and decision-making processes. This is in great disproportion to the composition of the population. For this reason, gender quota as a legal obligation, must exist for a further period of time as part of the legislation of Kosovo, until a culture of participation of women in leadership positions is established. Gender quotas can be removed and replaced with real competition, only when the participation of women in public life and especially in the institutional life is proportional to the actual composition of the population. This quota should apply to all public institutions, including the Government of the Republic of Kosovo.

2.20.2. Right to property and inheritance

Gender equality means a society in which women and men enjoy the same rights and have the same obligations in all areas of life. However, women's rights still remain one of the main challenges for the development of Kosovo's society, particularly regarding their right to inherit the property.

Although there is a good legal infrastructure that guarantees equal rights to property and inheritance for both genders, in practice, women, in a very small percentage, are the owners of movable and immovable property. There are also many cases when women are excluded from family and stigmatized if they request to exercise their right to family property.

2.20.3. Complaints regarding the right to property and inheritance

In one of the cases recorded in the OI, the complainant has requested monitoring of her case in the court, as her uncle it makes it impossible to her to become the owner of the house which her father had built while he was alive, on the same land plot with the uncle. She claimed that her uncle declared that she cannot become the heir to the property because, according to customary law, women do not enjoy the right of inheritance. For this reason, the complainant filed a claim to the court against her uncle, for not being able to exercise her right to family property. The case is in the court proceedings and the OI is monitoring the case²⁵⁹.

In another case submitted through the official e-mail, the complainant asked to be advised regarding her right to inheritance, since she was not included in the division of inheritance, on which occasion only two of her brother benefited. The Ombudsperson in the response sent back explained that under the Law no. 2004/26 on Inheritance in Kosovo, ²⁶⁰ Article 3, provides that all children of the decedent under the same conditions are equal to inheritance. The complainant was advised to seek her rights regarding inheritance of the family property through the court.

²⁵⁹ OI, case A. no. 316/2014.

²⁶⁰ Law No. 2004/26 on Inheritance, Article 3.1. " All physical persons under the same conditions are equal in inheritance.."

2.20.4. The right to health care

The Ombudsperson in the annual reports of 2010, 2011, 2012 and 2013, has continually recommended to the Assembly of Kosovo the adoption of the Law on Health Care, which was approved in 2014, however its implementation it is expected to start with the functioning of the insurance fund. Kosovo is the only country in Europe which does not have this law into effect. The health protection is guaranteed by the Constitution of Kosovo, but also with the international instruments which are directly applicable in Kosovo.

In its meeting on 31 October 2014, the Government of Kosovo during the adoption of the draft budget of the Republic of Kosovo for 2015, stated that in 2015 will begin with the implementation of the Law on Health Insurance. The implementation of this law will provide health financing to a significant extent, and together with it, the improvement of service quality.²⁶¹

An important event for the health of women of the Republic of Kosovo it is the provision of the mobile mammography equipment funded by female MPs of the fourth legislature of the Assembly of Kosovo, which has been delivered to MoH on 31 October 2014. This mammography will be at the service of all women without discrimination, both in the cities and in the villages of Kosovo and will help in diagnosing and fighting the breast cancer.

2.20.5. Domestic violence

Domestic violence continues to be an evident problem in our society. Only a small number of cases of domestic violence are reported to the competent authorities to address this issue, however the perception is that in reality this number is much larger. Very often, domestic violence is treated as an internal problem of a family. Due to the considerable emotional ties between the victims and perpetrators of acts of violence, it often happens that women who report these cases do not require restraining (protective) orders from the competent courts. Specifically in the rural areas, the social position of women is clearly subordinate to that of men, and society is very little aware of the concept of gender equality. In most cases the most frequent victims of domestic violence are children, women, and elders.

One of the main reasons, which continue to be a source of violence in the family is the difficult socio-economic situation in our country. Unemployment and poverty are still factors that mostly affect the increase of number of cases of domestic violence.

Although there is a solid legal basis for protection from domestic violence, it is necessary that in the Constitution of the Republic of Kosovo, is included the Convention of Council of Europe on combating violence against women and domestic violence, the so-

²⁶¹ See in: <http://www.kryeministri-ks.net/?page=1,9,4499> (31.12.2014).

called Istanbul Convention,²⁶² which became effective in August 2014. Such a call is made also in the Strategy for Enlargement of the European Commission.²⁶³

2.20.6. Women and girls, victims of sexual violence during war

In the annual report of the OI of 2012 and 2013, the Ombudsperson requested the legal regulation of the status of victims of sexual violence during the war. He also requested that women and girls, victims of the war in Kosovo, should be provided legal and institutional support, with special focus on removal of prejudices against them, with the aim of restoring human dignity to this part of our society.

The Assembly of Kosovo on 20 March 2014 adopted the Law no. 04/L-172 on Amending and Supplementing the Law No.04/L-054 on the Status and Rights of Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Sexual Violence Victims of War, Civilian Victims and Their Families, which establishes the legal conditions for rehabilitation and compensation for victims of sexual violence during the war in Kosovo.

In July 2014, it was also a petition "International Justice for Raped Women during the last war in Kosovo" signed, which managed to collect 115,759 signatures of citizens of Kosovo, by which it is aimed to request international justice to all those women who have been victims of sexual violence in the last war in Kosovo.

Recommendation:

- ***Women and girls, victims of sexual violence during the war in Kosovo should be ensured with the institutional and legal support, in order to restore human dignity, and take measures for their social, spiritual and material rehabilitation.***

2.21. The Rights of Children

Despite the efforts of public authorities in the Republic of Kosovo to improve the situation regarding the rights of children, particularly in the field of normative regulation, overall situation in this field leaves much to be desired and requires more dedicated social and institutional commitment.

The OI during the reporting year received 55 complaints, mainly filed by the parents of children. Of this number, 26 were approved for investigation, while the others were declared inadmissible, because the issues they dealt with were outside the jurisdiction of OI, there is no violation of human rights, or the applicants were able to exhaust them or have been exhausting the legal remedies.

²⁶² Convention of Council of Europe for combating violence against women and domestic violence (*Istanbul Convention*), accessible in: <http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=210&CM=8&DF=&CL=ENG> (15.01.2015).

²⁶³ European Commission, *Strategy of enlargement and main challenges*, 08.10.2014, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-strategy-paper_en.pdf (15.01.2015).

2.21.1 Contacts of the child with the parent who does not exercise parental care

The OI during this period has received a number of complaints against the courts, which concern to the delay of the court proceedings to decide on child custody,²⁶⁴ alimony,²⁶⁵ on the request for recognition of the right to material support to the families having custody of children with permanent disabilities.²⁶⁶ There have also been complaints for non-execution of final court decisions concerning the non-realization of personal contacts of children with the parent²⁶⁷ Due to non-realization of contacts or impossibility for realization of regular contacts with children, OI has received complaints against the centers of social work.²⁶⁸

- In these situations, the OI directed to the respective institutions with recommendations, requesting from them to take necessary actions, in order for the children to be able to exercise their rights, guaranteed by the Constitution, laws and the Convention on the Rights of the Child.²⁶⁹

2.21.2 The right of children to education

Providing quality education for all, inclusion of children with disabilities in education, provision of appropriate school infrastructure, as well as preventing and combating violence in schools, remain goals for achievement of which is required continuous engagement of the institutions of the Republic of Kosovo. A number of complaints received are related to children's rights. Eight of them refer to the right to education. In three of these complaints, upon completion of the investigation, was concluded that there has been no violation of human rights, while other complaints were resolved according to the request of the applicants.

From the complaints received some refer to the issue of providing transportation for attending the school, of the two villages of municipality of Kaçanik and Shtime.²⁷⁰ The competent authorities of these municipalities had closed schools in these villages and had decided to continue teaching the children in neighboring villages. Due to the inadequate and unsafe road, the children of these villages had not continued school in the nearest villages and had dropped out of school.

In the case of the municipality of Kaçanik, with the assistance of the OI, the children were provided with transportation by municipal authorities. The part of the road which was dangerous and unsafe for passage has been asphalted. After a year break, the children now continue school. As for the municipality of Shtime, the OI is working that

²⁶⁴ OI, case A. no. 385/2014.

²⁶⁵ OI, case A. no. 339/2014.

²⁶⁶ OI, case A. no. 192/214.

²⁶⁷ OI, case A. no. 243/2013.

²⁶⁸ OI cases: A. no. 128/2014, A. no. 116/2014, A. no. 535/2014 and A. no. 450/2014.

²⁶⁹ *The Convention of the Rights of the Child* is the most important instrument of international law in the field of children's rights, which is implemented directly by the institutions of Kosovo, under Article 22 of the Constitution of the Republic of Kosovo

²⁷⁰ OI, cases A. no. 528/2014 and A. no. 565/2014.

responsible municipal authorities provide these children with the opportunity to enjoy the right to education without obstacles.

Regarding the issue of providing transportation to attend school, among other the OI has also assisted in a case of a child with disabilities, who was forced to drop out of secondary school due to the inability to travel to the secondary school.²⁷¹ With the mediation of the OI and the commitment of the municipal authorities this student was provided with transportation and continues education.

The lack of transport is not the only barrier the children are facing, in particular the children with disabilities. In school they also face with inadequate school infrastructure, lack of personal assistants, supporting teachers and many times the individual educational plans/curricula,²⁷² which denies them to fully enjoy the right to quality education and all-inclusive, as stipulated under the law.

2.21.3 Violence and security situation in schools

Violence remains a concerning phenomenon in Kosovo's public schools. In spite of the efforts of the MEST in this area no progress has been noted.²⁷³ At the beginning of this year on schools premises and near the schools violent incidents have occurred. Two of these incidents ended tragically with the loss of life of two students.²⁷⁴

In the meetings conducted by the OI officials with primary school students and secondary school students during this period, it appears that many of the students are unsatisfied with the security situation in their schools. Many children think that schools are not that safe anymore, as some students carry with them the cold weapons and even guns, and that violence is present both within and outside the school premises. They underline that the use of alcohol and narcotic substances has increased in some schools of the capital city. Moreover, they are also concerned with the fact that on the way to

²⁷¹ OI, case A. no. 513/2013.

²⁷² Information provided by representatives of educational institutions and NGOs working in the disability field, in meetings held in November 2014

²⁷³ Within the obligations to protect children from all forms of violence, MEST has continued to promote activities and preparing the conditions for implementation of the Protocol for Prevention and Reference of Violence in Pre-University Education, No. 21/2013. In this respect, MEST held meetings with the municipal education departments and inspectorates of education, held roundtables, trainings for representatives of relevant institutions and drafted guidelines for the implementation of this Protocol.

Protocol for Prevention and Reference of Violence in Pre-University Education was adopted by the Government of the Republic of Kosovo on 6 September 2013. With this protocol are defined the roles and responsibilities of educational institutions and other institutions in the prevention and treatment of cases of violence against children in pre-university institutions. Likewise, the protocol defines the procedures to address violence against children in pre-university educational institutions.

²⁷⁴ The first incident occurred in the yard of the primary school "Emin Duraku" in Prishtina where one student killed with gunfire and other two children aged 14 years were injured. The second incident also occurred within the school space in the secondary school " Arkitekt Sinan " in Mitrovica. After injuries from stabbing with knife, following a fight between two students, one of the students died in a city hospital. Information from the website of the Kosovo Police, in <http://www.kosovopolice.com/?page=1,26,3727&offseti=492> and <http://www.kosovopolice.com/?page=1,26,3812&offseti=448> (19 January 2015).

school and vice versa are in danger from stray dogs, as well as moving vehicles, because they are unable to walk on the sidewalks that have been turned into parking places.

Besides the numerous shortcomings in schools due to lack of basic hygienic conditions, classes in more shifts, lack of appropriate space for exercises and games, a separate problem is the one that their voice is not heard enough and that their opinion is not taken into consideration on matters directly affecting their rights, including those dealing with violence and the security situation.

2.21.4 Trafficking in human beings - child victims

Despite the progress made, prevention of child trafficking and relevant protection of children's rights - victims of trafficking in human beings - remains a challenge for Kosovo institutions.

A number of human trafficking victims in Kosovo during this year were also minors, who were trafficked for purposes of sexual exploitation. The OI received this year a complaint from a mother of a minor girl, against the Police of Kosovo, for the reason that they did not take appropriate actions that her daughter leaves the group, which forces her to commit various criminal offences.²⁷⁵ On the basis of the information provided and the circumstances of the case, the OI requested from the institutions working in identifying and protecting the child victims of trafficking in human beings, to undertake necessary actions so that the child is provided adequate protection and assistance. The obligation to help or to take appropriate actions in this case was reiterated by the OI also in the *Working Group*²⁷⁶ meetings of Prishtina and Ferizaj.

Institutions of Kosovo should seriously and with greater responsibility take all necessary actions to provide child victims adequate protection and assistance in all cases in which children are victims.²⁷⁷ In this regard, the Ombudsperson requires significant increase of the efforts and greater commitment of institutions to prevent this phenomenon.

Taking into account the situation described regarding the rights of children, in order to improve the overall situation in this field, in particular the system of child protection and the prevention of trafficking in human beings, the Ombudsperson this year too, to all relevant institutions,

Recommends:

- ***To undertake all necessary actions in order that the cases dealing with children or which affect their rights, are decided without delay, within the time limits provided by law, in order not to damage or endanger children's health, well-being or even their life***

²⁷⁵ OI, case A. nr. 340/2014.

²⁷⁶ *Task Force* or the tables for case management consist of representatives of institutions and organizations working in the field of protection of children at risk of being abused, neglected, trafficked, economically and sexually exploited and children in conflict with the law. Tables for case management can be considered as a good opportunity to provide appropriate assistance and protection to vulnerable children.

²⁷⁷ OI, cases A. no. 340/2014, A. no. 450/2014, A. no. 385/2014, A. no. 589/2014 and A. no. 128/2014.

- *To undertake all necessary actions in order that the best interests of children becomes primary in their work, including the work on the issues related to child custody, or non-realization of children's contact with the parent.*
- *To undertake all necessary measures to improve and establish physical infrastructure as well as to allocate a separate budget to provide transportation for children, in accordance with the legislation that regulates the field of education.*
- *To undertake appropriate actions in increasing the number of supporting teachers and in providing personal assistants for children with disabilities.*
- *Psychologists and pedagogues should be part of school personnel in all schools.*
- *To include the tutor's class as mandatory in school curricula.*
- *To increase communication between teachers and parents, in order to better address the concerns and problems of the students.*
- *To undertake appropriate actions in order to increase safety in the school environments, of the way to school and vice versa.*
- *To inform students about the consequences and dangers that brings the use of alcohol and narcotics.*
- *To strengthen the capacities of relevant institutions employees, for effective identification of juvenile victims, treatment and provision of adequate assistance, starting from the needs and circumstances of each case.*
- *To undertake appropriate actions to increase responsibility and accountability of employees working with cases of trafficking of human beings.*
- *To continue with awareness campaigns, especially for children, regarding the trafficking of human beings, about the potential risks and ways of identifying them, as well as for children's rights for protection and assistance.*
- *To establish special funds for funding urgent needs of victims of human beings trafficking and their full reintegration into society.*

2.22 Right to health and social care

The situation in the field of the right to health and social care for the reporting year, does not present a significant difference compared with previous years. Overall socio-economic situation in Kosovo continues to be difficult due to high unemployment and poor economic development.

Complaints filed with the OI during 2014, regarding the field of the right to health and social care, remain roughly the same by their number, legal nature and responsible parties. The OI during 2014 has initiated four (4) cases for complaints in respect to violation of the right by the health institutions, while the other number of the complaints

(59) is dedicated to the institutions that provide services from the field of social welfare. These complaints mainly deal with social assistance, pensions and sheltering (housing).

2.22.1 Deficient health services and suspicions of misuse

The provision of health services by health institutions in the Republic of Kosovo this year has also continued to be deficient at all levels (primary, secondary and tertiary). The supply with medicines from the essential list continued to be insufficient and, as a result, the patients are forced to buy them at private pharmacies.²⁷⁸ This year, a high number of patients, due to the specifics of their illness, non-provision of health services, or for other reasons, have been forced to seek medical treatment abroad. Health workers continue to work contrary to the Law on Labor, especially while on duty, working twenty four hours a day, and some of them, surgeons in particular, even more.

Another serious problem which affects the entire health system of Kosovo is mismanagement and suspicions of misuse in this sector. The investigations of the Special Prosecutor's Office regarding misuse in the health sector by health professionals²⁷⁹ had greatly impacted on weakening the trust on health institutions of the Republic of Kosovo. As known, these investigations resulted in the arrests of some health officials and even implicating some of the highest officials of the MoH.

2.22.2 General assessment of health field

According to the recent statistics, the number of patients with cancerous diseases in Kosovo is continuing to increase each day.²⁸⁰ These patients are facing huge financial expenses seeking treatment inside the country and abroad to purchase or use the therapy with radiation, since the Department of Oncology in UCK does not possess cytostatic regularly or does not provide radiotherapy services, as the equipment does not function and are not properly maintained. According to Law no. 04/L-125 on Health, Article 12 provides that the responsible institutions shall take all measures and actions and are responsible for *"the prevention, and early detection of malignant diseases, particularly breast cancer, cancer of the neck, and colorectal cancer."*(Paragraph 1.4 of this article).

The adoption of the Law no. 04/L-249 on health insurance by the Assembly of the Republic of Kosovo on 10 April 2014 may be seen as a hope to ease this difficult situation and increase the hopes of citizens for a modern health system in Kosovo. But, it is most likely that the law will have delays in implementation.

2.22.3 Citizens' complaints on health system

The OI has received complaints regarding the violation of patients' health by health institutions, which according to applicable legislation are obliged to provide medical aid to all citizens, without any discrimination. The provision of Article 4 of Law No. 04/L-

²⁷⁸ List of medical products and consumable sanitary materials that are purchased for the needs of all levels of health care from the Kosovo Budget.

²⁷⁹ Notification by the State Prosecutor, in <http://www.psh-ks.net/?page=1,8,631> (4.11.2014).

²⁸⁰ ASK, Series 5, *Health statistics 2013*, page 15, November 2014.

125 on Health, provides that *“Implementation of this law shall be in full compliance with the human dignity, fundamental rights and freedoms [...]”*. Unfortunately, this still remains only a beautiful language expression but without objective value, because this law has not entered into force and its practical implementation continues to be delayed.

From the complaints submitted to the OI, it is seen that in many cases they are addressed against health personnel, particularly physicians. One of the complainants alleges that the negligence of health workers resulted in the death of their newborn baby.²⁸¹ Another complainant complains against the personnel of the secondary health institution, because the anesthesiologists have tried to force families to take home the sick patient without being fully recovered, seriously endangering the patient's life, which was already in danger. The OI has investigated this case and after the meetings with responsible authorities, this situation has been improved.²⁸²

From the investigations of other cases related to the right to health, the OI noted that in some cases when patients are diagnosed with diseases that have no prospect of healing, such patients either stay in inadequate health institutions (unprepared institutions with professional staff and equipment), or are sent home, since in Kosovo it is not established the medical discipline which is known as “Palliative Medicine”.²⁸³ The EU Council of Ministers, directs member states on the organization of palliative care, stating that: *“In European societies with an aging population, is expected an increase of about 20% of the need for palliative care in the next 10-15 years, as for cancer patients, as well as those who do not suffer from cancer. It is estimated that the need for palliative care beds is approximately 50-100 per 1 million inhabitants.”*²⁸⁴ Starting from this fact, the MoH, in cooperation with other responsible institutions should perhaps seriously consider this recommendation although it is not addressed to Kosovo, to initiate the issue of establishment of this medical discipline, much needed for the citizens of Kosovo.

2.22.4 Social care

Poor economic and social situation, as a result of low economic development, high unemployment, unresolved housing issues, it is having an impact that many Kosovar families are migrating to western countries, hoping to find a better life. This difficult situation also made that the OI during the reporting year has received a lot of complaints in the area of social welfare which mainly relate to, but not limited to, the issues of

²⁸¹ OI, case A. no. 320/2014, the complainant alleges that due to total negligence of medical personnel in the maternity care of UCCK, their newborn baby died.

²⁸² OI, case A. no. 87/2014, the complainant alleges that his son was hit by electricity (high voltage) and has five months that he is in a coma in intensive care and according to him, he anesthesiologists requested from him to take the sick home, but he emphasizes that the patient is in coma and still needs hospital treatment as every day he is aspired by endobronchial catheter, receives parenteral therapy and is subject to passive exercises of the department of physical therapy, whereas none of these services can be provided home

²⁸³ *Palliative medicine* is a relatively new medical discipline where medical treatment is provided in special wards by trained teams for care to patients who, because of incurable diseases, especially tumors, AIDS or other diseases are at the end of their life (terminal stage), while neither drugs can help anymore.

²⁸⁴ *Recommendation Rec (2003) of EU Council of Ministers, addressed to member states on organizing Palliative Care in: <http://www.eapcnet.eu/LinkClick.aspx?fileticket=YR9odrODI-s%3D&tabid=1709> (9.12.2014).*

housing and social assistance benefits by the many families who are included in the social assistance scheme in Kosovo.

MLSW tried to include many families in the social assistance scheme, according to the laws in force, but based on the economic situation of the country, the needs of families for social assistance are very high, therefore more budget funds for this category of the population, a part of which is living in extreme poverty, are required.

MLSW has tried to include many families in the social assistance scheme, according to the laws in force, but based on the economic situation of the country's needs for social assistance families are very large, therefore requiring more funding for this category of the population, a part of which it is living in extreme poverty.

Many complainants filed complaints with the OI, because CSWs have terminated their social assistance because their child has reached the age of five. The OI requested in the previous reports that this age restriction be removed, as by reaching this age, the children cannot help the family, but the need for increased aid even goes higher. This requirement is completely arbitrary and quantitative, and does not correspond with the real needs of poor families. Unfortunately, so far, these recommendations have not been taken into account by the relevant institutions.

2.2.2.5 Specific cases in OI for social assistance issues

After several complaints of this nature, the OI, has initiated some cases for investigation and issued a report with recommendations.²⁸⁵ The OI received complaint regarding the termination of the use of age-based pension, with the allegation by the complainant that the termination is without legal basis. In particular are difficult the cases when the assistance is terminated precisely due to disability (be that physical or mental) to the beneficiary of assistance to respect the legal requirements regarding assistance or their extension.²⁸⁶

However, in cases where we have learnt that there have been cases of abuse by some users of this category, who have used the errors in their IDs, associated with the year of birth and have applied for pension by benefiting from the pension benefits based on age, before reaching the age of 65 years. However, during the re-application, especially after changing the ID from UNMIK to those of the Republic of Kosovo, the officials of pension administration managed to discover these phenomena and against them was imposed the measure of termination of pension up to full reimbursement of funds they have used in unmeritorious manner.²⁸⁷

²⁸⁵ OI, cases A. no. 1/2014, A. no. 4/2014, A. nr. 17/2014, A. no. 70/2014 and A. no. 85/2014.

²⁸⁶ OI, case A. no. 70/2014. The OI had opened *ex officio* case when receiving information through the media that a Kosovar families lives in extremely difficult conditions and does not even receive social assistance. During the investigation of this case, the OI has noted that this family was originally involved in social assistance scheme, but it was terminated due to non-application for extension of assistance. Failure to apply for the continuation of assistance was a result of the lack of ID of the user, which had stagnated in mental development. After the intervention of the OI and the regulation of ID, this family has benefited social assistance again retroactively.

²⁸⁷ OI, case A. no. 121/2014.

Law No. 04/L-131 on pensions schemes financed by the state, through Article 7 regulates the requirements and criteria for recognition of the right to basic age-based pension, pursuant to which: “*Basic Age Pension shall be paid to all persons who are permanent citizens of the Republic of Kosovo, who possess identification documents and who have reached the age of sixty-five (65)*”, whereas valid documents necessary for the recognition of the right to basic age pension, according to this law, shall be “*Identity Card issued by the responsible body of the Republic of Kosovo*” and “*Certification by Civil Office that he/she is a permanent resident at the given address*”. It is clear that the legislator did not foresee the possibility that the identification document may contain errors, so to avoid this shortcoming, in order that all citizens of the Republic of Kosovo are equipped with new identity cards without such flaws, MLSW, through an administrative instruction may require that besides the ID is required also the birth certificate or other document.

2.22.6 Requests for social housing

The OI has received a significant number of complaints seeking to be provided with housing by the respective municipal institutions and these families are mainly involved in social assistance scheme.

In the OI, in early 2014, 9 families of the Serb community appeared for the issue of housing, which were placed in the premises of the former social enterprises, because they were unable to renovate their houses. They had no problems with housing until the moment when PAK privatized (sold) the property of former socially owned enterprises. After this property was transferred into private property, the private owner has requested that from the object are vacated from persons and things within three months. These families could not find a solution, so they addressed to the OI for help. After investigating this case, the OI issued a report with recommendations, through which requested from the municipality of Gjilan “*immediate measures to find a solution to the issue of housing for these nine families that are temporarily residing in the privatized building [...]*”.²⁸⁸

This problem has been solved thanks to this recommendation and cooperation between the Municipality of Gjilan and MRC, who signed an agreement that initially these families are placed in the apartments and the payment of rent is covered by the Municipality, while MRC will build houses for these families, after the Municipality allocates the property, in which will be built houses for these displaced families.

The OI has received other complaints of this nature. One of the complainant complained against the Municipality of Gjakova, because by its decisions, it declared as usurpation occupants of some families (of the Roma, Ashkali and Egyptian communities) and requested from them to vacate this municipal property, transforming them as a *family in need* for the housing issue. These families claim to have built their houses in settlements for more than forty years. They admit that this property is registered in the name of the municipality, but emphasize that they have no means for living, receive social assistance and cannot afford to build their own houses. The OI during investigation of these cases noted that municipal responsible authorities, the Department of Health and Social Welfare and the Department of Urban and

²⁸⁸ OI, case A. no. 1/2014.

Environmental Protection do not have any strategy to shelter these residents, and did not cooperate with each other.²⁸⁹

2.22.7 Unlawful decisions of MLSW Minister

The OI has received several complaints related to the decision of the Minister of MLSW, Mr. Nenad Rashiq, decision no.171, issued on 9 June 2011, by which it suspended the approval of the applications for the exercise of rights arising from *Law no. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims*.²⁹⁰

During the investigation of these cases, it is evidenced that the Minister of MLSW has issued the decision after meeting with the International Monetary Fund, through which it requires from the Department of Families of Martyrs, War Invalids and Civil Victims (DMFWI) that: *“The number of claimants for recognition of status under the Law on War Values to be concluded with the situation dated 31 May 2011 until the issuance of “a new political decision” by the Minister of MLSW, therefore no new request should be approved for the recognition and implementation of any right set forth by the Law on War Values”*.

On 6 February 2014, representatives of the OI met with Director of DMFWI of MLSW to obtain additional information on the *decision*. Director of DMFWI determined that the *decision* is still in force and the approval of new applications is not allowed. Furthermore he stated that there are a total of 13,500 beneficiaries of the scheme provided by the Law on Values of War and, according to some estimates, there are at least 1000 potential applicants, which as such cannot be approved because the *decision* is in force.

At the time the *decision* was issued/taken, *the Law no. 02/L-02 on the Status and Rights of Families of Martyrs, Disabled, Veterans and Members of KLA and Families of Civilian Victims of War*, of 23 February 2006, was in force. On 8 December 2011, the Parliament adopted *the Law No. 04/L-054 on the Status and Rights of Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims and their Families*, which is currently in force and which repeals UNMIK Regulations and Law no. 02/L-02. However, the *decision* continued to remain in force, by hindering the submission of applications for exercising the rights stipulated by law.

The OI was notified that the MLSW issued another decision, Decision No.10, dated 21 January 2013, on *“partial annulment”* of the *decision*. The annulment of *the decision* is valid only for the families of missing, which began to file applications as of 15 January 2013 for martyrs’ families, war invalids of UCK and war veterans, who may apply for exercising their rights after conclusion of verification process of their status. However, *the decision* continues to be applied for the category of *civil victims*. The partial annulment of the *decision*, not only proves, but also deepens even more the discrimination made to the Applicants. This is initially because the unequal treatment was based on a certain date and divided the Applicants before and after the entrance into force of the *decision*, regardless whether it is about missing, civil victims, war veterans etc. However, the

²⁸⁹ OI, case A. no. 318/2014.

²⁹⁰ OI, cases A. no. 85/2014, A. no. 4/2014 and A. no. 542/2013.

decision on partial annulment of the *decision* is made in a selective manner, based on the category and continues to remain effective for the category of civil victims of war.

After legal analysis of the cases, the OI concludes that the MLSW Minister, as to no other Minister of the Republic of Kosovo, has not been vested any power for issuing any decision, to suspend or impede application of the law. To no member of the Government, nor to Minister of MLSW in this case, is vested the right to restrict the rights and freedoms of the citizens of the Republic of Kosovo, provided by the Law and Constitution. Any such restriction can be made only by the law, based on Article 55 of the Constitution of the Republic of Kosovo. *The decision* or any other normative act of a member of the Government of Kosovo and of any other public authority in the Republic of Kosovo is not valid if it is not based on the law and if it is not the law.

The OI has drafted a report with recommendations for MLSW regarding this case. Despite the legal obligations of the Institutions of the Republic of Kosovo to respect and implement the recommendations of the OI, this recommendation was disregarded by the MLSW. These recommendations remain unimplemented by the new Government of the Republic of Kosovo and the relevant Minister of MLSW until the end of this report.²⁹¹

Recommendations:

- *Government of Kosovo through responsible mechanisms for public health institutions should supply with medicaments from the essential list and other sanitary material during all the time.*
- *To strengthen control in health facilities at all levels, in order health workers provide quality health services and unable them to misuse their job position to the detriment of the patient.*
- *The Government of Kosovo, through amendment of the Law on Social Assistance Scheme should request removal of the restriction of social assistance for the families with children who reach the age of 5, because this is not a qualitative restriction, it has no legitimate purpose, is not proportional and is unconstitutional.*
- *Municipalities, when planning their budget, should provide budget lines for the construction of housing facilities for families in need.*
- *Government of Kosovo should request from the responsible institutions, including its bodies within the Government, to respect and implement recommendations of the OI.*

2.23 The rights of LGBT community

The OI, same as other years, has paid attention to issues and life challenges of the LGBT community in Kosovo, which further on face the problem of failure to report individual violations of rights of LGBT persons. As we have drawn attention in the previous reports of the OI, submission of violations of the rights of the LGBT community is one of key factors in monitoring the work of state authorities in preventing these violations.

²⁹¹ OI, Report with recommendation, cases: A. no. 542/2013, A. no. 4/2014 and A. no. 85/2014.

²⁹² It is necessary that the violations of the rights of the LGBT community are made visible, cases of violations against the people of this community to be filed in with the competent authorities, so that investigations can be conducted and perpetrators of violations of these rights be punished.

The rights of the LGBT community in Kosovo are relatively well protected by the Constitution and laws, ²⁹³ however in practice there are problems which the LGBT community members face with every day. Notwithstanding this, during 2014, we can say that there is a significant progress in promoting LGBT community in Kosovo.

A particularly evident progress is marking the day against homophobia and transphobia. ²⁹⁴ Under the support of the United State Agency for International Development (hereinafter USAID), the Center for the emancipation of society known as CES (QESH), it could be said that has successfully implemented a campaign with many activities. Otherwise, this is part of a larger project implemented by the organization QESH in collaboration with USAID, which aims at helping in capacity building to support the LGBT community in Kosovo and strengthen the awareness of society for LGBT community inclusion. The activities that followed these events have passed without any incidents.

In a coordination meeting organized by the Office for Good Governance (OGG) of the Office of the Prime Minister (OPM), the members of the LGBT community expressed their gratitude to the Police of Kosovo for the good organization and support. There is particular progress in the field of training of the police staff in protecting the rights of the LGBT community and which is funded by the Embassy of Finland in Kosovo.

This year too, the LGBT community had a great support by representatives of the international community and the Government/Office of the Prime Minister. This year, under the organization of this office have commenced being held regular coordination meetings of members of the organizations, who are dealing with protection of the rights of the LGBT community, representatives of the ministries, police, embassies and other organizations which are important in the protection and promotion of LGBT community rights.

The initiation of the twinning project “fight against homophobia and transphobia” is also very important, which is supported by the Austrian and Finnish Institute for public health and social care,²⁹⁵ in order to provide assistance in making recommendations for the harmonization of the law and other related activities, which will contribute to the protection of LGBT community rights in Kosovo.

The most often problems LGBT community faces in Kosovo are perceptions of society which are not prepared enough to accept the differences, and in order to overcome these differences, this year, has been paid attention to finding modalities for reducing the existing differences as well as to influence the consciousness of citizens. Special emphasis

²⁹² OI, *Annual report for 2013*, p. 34.

²⁹³ *Constitution of the Republic of Kosovo*, Article 24.

²⁹⁴ USAID, *News* „Kosovo is Ready Project”, nē: <http://www.usaid.gov/news-information/factsheets/kosovo-ready-project> (15.10.2014).

²⁹⁵ Finnish Embassy in Kosovo, *News*, “Finland supports sexual minorities in Kosovo”, 20 maj 2014, <http://www.finlandkosovo.org/public/default.aspx?contentid=306474&nodeid=42593&contentlan=2&culture=en-US> (20.11.2014).

is put on the inclusion of the LGBT community in the education system, with a focus on prevention of discrimination against the LGBT community in education.

The discrimination problem on grounds of sex orientation comes into expression especially among teens. The members of the LGBT organizations have shown examples from schools when teachers themselves harass and discriminate others on the basis of sexual orientation. In order to overcome this problem there are under preparation publications of manuals for school principals on how to influence the prevention of this type of discrimination and approach to the LGBT community in general.

A specific problem it is discrimination and violence by their peers, and in this regard it is necessary to work on improving communication but also the preparation of the teaching staff in order to inform children with this topic. Concrete support in this area is provided by USAID through education program on tolerance, a type of training for the teaching staff for approach to the LGBT issues and generally dealing with the existing prejudices, how to inform children about this problem and how to give to all this a different approach through educational content.²⁹⁶

Recommendation:

- *Government of Kosovo should include in education programs knowledge about LGBT community rights.*

2.24. Use of languages

The legal framework of Kosovo protects the linguistic rights and provides the defense mechanisms in order to respect the equal use of official languages and official letters of minority communities in the Republic of Kosovo.

The language rights in Kosovo are part of the constitutional and legal protection,²⁹⁷ which purpose it is the protection and preservation of the identity of minority communities, which is regulated in detail by a number of laws and provisions, according to which its members cannot be prohibited to exercise any of the recognized rights. In the legal regulation of the Republic of Kosovo, the right to official use of language is regulated in accordance with international standards.²⁹⁸

The Constitution of the Republic of Kosovo, Law on Use of Languages,²⁹⁹ Law on the Protection and Promotion of the Rights of Communities and their members³⁰⁰, as well as the Law on Local Self-Governance,³⁰¹ obliges all public institutions and service providers to ensure equal use of both official languages, Albanian and Serbian, as well as official languages in use in the municipalities. Other community languages, such as

²⁹⁶ USAID, *News* „Teaching Tolerance: A Lesson for Kosovo’s Educators in LGBT Awareness” 10 December 2014, <http://blog.usaid.gov/2014/12/teaching-tolerance-a-lesson-for-kosovos-educators-in-lgbt-awareness/> (14.12.2014).

²⁹⁷ *Constitution of the Republic of Kosovo*, Articles 5, 57, 58 and 59.

²⁹⁸ *Framework Convention of the Council of Europe for protection of national minorities, European Chart for regional languages or of minorities, ECHR and its Protocols, Recommendation for the national minority rights to use of its own language* (Oslo, 1996) and *Recommendation of the Hague regarding the national minority rights to education*.

²⁹⁹ *Law No.02/L37 on use of languages*.

³⁰⁰ *Law No.03/L-047 on protection and promotion of the rights of communities and their members*.

³⁰¹ *Law No.03/L-040 on local self-governance*.

Turkish, Bosnian and Roma language, are in official use at municipal level, according to legal prescribed norms.

Having analyzed the current practices at local and central level, although there have been seven years since the Law on Use of Languages have been adopted, it is noted that its implementation is a complex process, which has required and still requires that, in addition to legal-institutional framework, are developed other conditions for its implementation, such as: social awareness for language rights, implementation of the policy of equal opportunities and implementation of multicultural policy which must be fair in the distribution of justice.

2.24.1 Complaints filed regarding the use of languages

The Ombudsperson in 2014 received three complaints from members of different minority communities concerning to implementation of the right to official use of language, which indicate certain problems in the implementation of these rights in the judicial system in Kosovo. The complaints refer to failure of the Basic Court in Prishtina and Basic Court in Prizren to serve on the Applicants (complainants) the court decisions in the language of the party in the proceeding.

Regarding complaints filed, the Ombudsperson initiated investigations to correctly determine the factual situation and from the Basic Court in Prishtina and the Basic Court in Prizren, as responsible parties, requested to explain the allegations contained in the complaint. During the investigation, the Ombudsperson found that the complainants had waited from 6 to 22 months for submission of the translation of the court decision for their cases. In their statements sent to the Ombudsperson, the responsible parties have justified these delays in the translation of judicial decisions in the languages of the parties, by the insufficient number of translators in the courts and the number and volume of documents which are translated. After commencing the investigation and actions by the Ombudsperson regarding the complaints above, the responsible parties in these cases, have translated the judgments into the languages of the parties in the proceedings within the shortest time limit and duly served the latter to them.

Having assessed the verified facts and legal provisions in these cases, the Ombudsperson finds that the courts, in all judicial proceedings must ensure equality of official languages and hire an appropriate number of translators, to ensure that all procedures, documents, reports and correspondence in relation to the procedures, are issued within a reasonable time in the official language(s), which is chosen for that process,³⁰² in order to prevent unnecessary delay of court proceedings pursuant to Article 6 of the ECHR.³⁰³

The state has general obligation to solve systematic problems that consist the core of the violation verified upon the time limit.³⁰⁴ In assessing whether the extension of the time limit may be considered a reasonable time, are taken into account the following indicators: the complexity of the case, the complainant's behavior, the behavior of the

³⁰² *Law No. .02/L37 on use of languages*, Use of languages in judicial proceedings, Articles 12-14.

³⁰³ *ECHR*, case *Stögmüller v. Austria*, 10 November 1969, p. 5. The court emphasized that the objective of ensuring meaningful deadline is "the protection of all participating parties in the judicial proceedings ... by excessive procedural delays".

³⁰⁴ *Idem*.

state judicial and administrative authorities, as well as the fact of what right of the complainant is endangered in the case itself.³⁰⁵ Therefore, a special responsibility lies with the domestic judiciary to ensure that all those who have a role in the procedure to do whatever they can to avoid any unnecessary delay.³⁰⁶

To the extent indicated, it follows that the complainants, because of excessive delays in the translation of the court decisions, have been prevented not only to be informed about the content of the decision in his own language, but also for the right to use the legal remedy, guaranteed by Article 32 of the Constitution of the Republic of Kosovo and Article 13 of the ECHR.³⁰⁷

2.24.2 Use of language at central and local level

In addition to handling of complaints, the OI during the reporting period has supervised and monitored the situation, implementation and respect of the language rights of communities at central and local level, during which the representatives of the OI, with the purpose of viewing the overall situation in exercising and implementation of language rights, talked with representatives of relevant state authorities and local courts, minority communities etc.

Having analyzing the data collected and practices at local and central level regarding the use of official languages, despite the constitutional and legal protection of the language rights, it is evident that there is no great progress compared with the previous reporting period, and that in Kosovo is not ensured equal official use of minority languages, which still causes legal and social inequalities in the implementation of language rights.

In the whole territory of the Republic of Kosovo, the Albanian and Serbian languages are languages of the Constitution and laws, assembly, judiciary, executive, state administration bodies and other state organizations, the educational system, publicly owned enterprises, institutions, local self-government, communication of public administration with citizens and the mass media. They are obliged on the names of the authorities and state administration, other state authorities, publicly owned enterprises, institutions and local self-government bodies; in the drafting and promulgation of the Constitution, laws and other normative legal acts; entire electoral procedure at all levels; mutual relations of the organs of state power in relations with other state bodies and local self-government bodies and citizens; writing of geographical names, traffic signs, signs and notices; the issuance of all official documents of the Republic of Kosovo citizens; the issuing of school documents state accreditation institutions; in all public education institutions and education etc.

All municipalities in Kosovo up to now have adopted the municipal regulations on the use of languages. Turkish language is currently official in the municipalities of Prizren

³⁰⁵ ECHR, case *Buchholz v. the Federal Republic of Germany*, 6 May 1981, p. 49.

³⁰⁶ ECHR, case *Guincho v. Portugal*, 10 July 1984.

³⁰⁷ Article 13 of ECHR provides effective legal remedy before national authorities due to any violation of the protected rights. The rights guaranteed by Article 13 are of a procedural nature. It has particular importance for the domestic legal system, since the local system requires availability of effective legal remedies against violations of human rights and is addressed to competent national authorities, because they have an obligation to investigate allegations of violations of human rights.

and Mamusha. In 2007 and 2008, the municipalities of Gjilan, Mitrovica, Prishtina and Vushtrri also recognized the Turkish as the official language. Bosnian is an official language in the municipalities of Prizren, Dragash and Peja, and in official use in the municipality of Istog. The municipality of Gračanica, by decision dated 10 October 2014, recognized the Roma language as a language in official use, since, in accordance with Article 2.4 of the Law on Use of Languages, that language fulfills the requirements to be recognized as such.

2.24.3 Problems with translation in official languages

The problems with the quality of translation in Serbian language of the laws and bylaws which are issued by Kosovo institutions at central and local level, nor the problems with the quality of documents translated into Turkish and Bosnian, which are in official use in many municipalities in Kosovo have not been overcome yet. Lack of interpreters of Bosnian and Turkish language, prevents the members of these communities to use their language and letters in proceedings before the state authorities, so they use Albanian or Serbian languages in communication with state authorities, at local and central level, and receive documents in one of these two languages, to avoid lengthy procedures.³⁰⁸

Moreover, in the municipalities and in the courts at all levels, human and financial resources, appropriate facilities for office, as well as basic technical tools for interpreters and translators, including dictionaries, computer programs that automatically check spelling or devices for recording are missing. Translators often do not have the relevant qualifications and experience, so they necessarily need professional training. All this makes harder the access of minority communities to public services and effective participation in public life.

It has been found that the majority of municipalities have not respected the obligation of putting the signs inside and outside the municipality, as well as notices on bulletin boards, in all official languages. This obligation has not been respected neither in primary health care centers. Written documents are issued to the parties mostly in the majority language, and the translation is waited for a long time and they are usually translated only at the request of the party. The reasons for this are the same as in previous years, the small number of translators, lack of translation qualifications and financial resources etc.

2.24.4 Problems and causes of non-observance of official languages in public administration

Some officials in the municipal offices for communities, as well as some members of the Serbian community constantly emphasize the problems in communication with municipal authorities, for the services they communicate every day with minority community members, new employees of the public administration often do not speak Serbian (in the cadastre offices, tax, civil registration, etc.).

³⁰⁸ ECHR, Article 13.

The Albanians have similar problems in the municipalities of Serb majority community in northern Kosovo for many years, where it is not respected the use of official languages. But, in some municipalities of Serb majority community in central Kosovo, regardless of the employment of few Albanian municipal officials, there are situations where they have to turn to Serb employees in Serbian because they mostly speak poor Albanian.

The reason for this is the lack of employees in public administration who know the official languages and the lack of appropriate language training for officers, especially translators in municipalities, their lack of interest in learning and perfecting the language, as well as the low level of representation of some communities in public administration.

The Ombudsperson notes that the Government of Kosovo, even during this reporting period, did not make any significant effort regarding the recommendations of the Ombudsperson, given in two previous annual reports, dealing with the implementation of the Law on Use of Languages.

2.24.5 The problems of electronic information in different languages in municipalities

Ombudsperson has also noted that municipalities still have not met the recommendations of the Ombudsperson³⁰⁹ regarding the use of official languages in official webpage of municipalities, since in some municipalities public documents are not published in the official languages.

After having monitored and analyzed the web pages, it is noted that only seven of them are fully harmonized with the language rules, even if the translation is sometimes late a little.³¹⁰ Municipality of Mamusha has the version of its webpage in Turkish, but the information is not fully published in the page in the official languages. Municipality of Prizren does not have its webpage in Bosnian language and doesn't update the page regularly in Serbian, and the link with the Turkish language version cannot be opened. Municipality of Dragash doesn't have its webpage in Bosnian language, as neither the Municipality of Peja, which lacks Serbian version as well. In other municipalities, the webpages are mostly not in accordance with the legal framework, either they are monolingual, or even when technically are available in the official languages; contain a range of shortcomings, such as the rare updates, poor quality of translation or incomplete categories.³¹¹

In accordance with the legislation in force, the municipality has an obligation that in every official website, equally, to provide and publish identical information in both official languages of the municipality.

³⁰⁹ OI, *ex-officio* case A. no. 275/2012.

³¹⁰ Web pages of the municipalities of Gračanica, Kamenica, Klokot, Novobërdë, Ranillug, Shterpece and Vushtri under review conducted by legal advisor of OI on 01/10/2014

³¹¹ *OSCE Report*, Respect of language rights in municipalities of Kosovo, June 2014. p.19-20.

2.24.6 Good example – improvement of implementation of the right to registration of personal name

During the reporting period, the Ombudsperson notes the improvement in the implementation of the law on registration of names of members of minority communities, according to their language and letters and has changed the practice upon civil registers regarding the registration of names in the language and the letters of the minority communities.

In this regard, in December 2013, MIA has adopted the new Administrative Instruction no. 25/2013 to document the civil status, which implementation commenced in 2014. Administrative Instruction defines the types, formats, substantial components, the maintenance of the regime, the validity of documents that are stored and issued according to the civil service rules and issuance of those documents,³¹² as well as that the personal documents are issued at the request of a party, in the language of the community to which he/she belongs, in accordance with the Law on use of languages.³¹³

2.24.7 Office of the Language Commissioner

The Ombudsperson during monitoring the implementation of language rights notes that the Office of the Language Commissioner (OLC), during the reporting period has undertaken a number of successful activities at a systematic level, which show commitment and determination of the OLC in accomplishing the mandate trusted and establishing a good practice, which, with full use of the official languages and their writings, will be established in accordance with the Law.

The OLC has established its website in five languages (Albanian, Serbian, Bosnian, Turkish and English), has produced an *on line* form for complaints and resolved complaints submitted through mediation.

With the strengthening of the office and its promotion, it is noted that each year the number of complaints addressed to the OLC is increasing.³¹⁴ Encouraging sign is that although so far they are only individual solutions and not systematic, all of complaints from citizens, except for some which are in the process of settlement, have already been resolved in favor of applicants³¹⁵

Recommendations:

- ***That the Kosovo Judicial Council ensures equality of languages in all courts so that all proceedings, documents, notices and documents related to the proceedings, are issued within a reasonable time in the official language(s) of parties.***

³¹² *Administrative Instruction no.25/2013 on civil status documents*, Article 1.

³¹³ *Ibid*, Article 8, paragraph 1-2.

³¹⁴ In 2014 with this Office were filed more than 50 complaints for violation of the right to use of languages.

³¹⁵ Information provided by the Language Commissioner during a meeting with the OI representatives, held on 11.10.2014, in the building of the Government.

- *That the Government of Kosovo ensures that all institutions at central and local levels employ professional translators for official languages in Kosovo, to improve the quality of translation in these languages.*
- *That the Ministry of Public Administration, in cooperation with the municipalities, ensures and monitors that the municipalities websites contain information in all official languages, in accordance with the law on use of languages.*
- *That the Ministry of Local Government Administration provides advices and guidance to municipalities in terms of their own obligations to support the same status and equal use of official languages in their work.*
- *That the Office of the Language Commissioner strengthens the monitoring of observance of the language obligations of the institutions of Kosovo as provided by the law on use of languages and to continue with measures to raise the Kosovo citizens' awareness of their language rights.*

2.25 The rights of communities and of their members

In accordance with its mandate, the OI in this annual report as well, has paid special attention to the rights of minority communities in Kosovo and effective implementation of human rights and of minorities, as well as the challenges and problems faced by minority communities during the reporting period.

For the reason of the legislation on specific rights and the number of communities, a report cannot be drafted only through the analysis of individual complaints addressed to the OI, but primarily through the collected data, information obtained and through the monitoring of work of various institutions, especially those who have direct contact with members of minority communities, as well as impact in terms of respect or violation of the rights of minority communities.

For working on this topic there are also of great importance the direct, immediate contacts with citizens, with whom the officials of the OI have talked to, for the purpose of collecting information on the ground with regard to different situations and the obstacles faced by members of non-majority communities in the event of exercising their rights.

Analyzing in general, it can be concluded, as in previous annual reports, that the minority communities in Kosovo, despite extremely good legal framework that protects their rights and affirmative positive actions at central and local level, however, they have been marginalized when it comes to respect of certain legal and constitutional obligations at all levels of government towards them. In fact, all positive examples are reduced to only few individual cases and not to minority communities as a whole, which is necessary to be changed in the future.

The problems of some communities will be further discussed through separate parts, where the findings, observations and problems faced by minority communities in Kosovo in everyday life have been presented. In this case it is worth to remind the general legal framework that protects the rights of minority communities, and they are:

the Constitution of the Republic of Kosovo,³¹⁶ the Framework Convention for the Protection of National Minorities³¹⁷ and the Law on Protection and Promotion of the Rights of Communities and their members.³¹⁸

The Ombudsperson considers that during this reporting period there was no significant improvement of the situation in which minority communities are.

2.25.1 The return of refugees and displaced persons to Kosovo

The report concerning the return of refugees and displaced persons in Kosovo is based on data which the OI has collected during 2014, which are based on statistical data to UNHCR for the displaced persons, and the information provided by representatives of central and local institutions³¹⁹

Analyzing the statistical data of UNHCR³²⁰, we come to a conclusion that from year to year it continues the trend of decline of the return of displaced persons, members of minority communities. In 2014 a total of 407 members of minority communities have returned, which unfortunately are almost half of the number of returnees, compared to 2013. With regard to the return, in the course of the up-to-date process it lacked efficiency and sustainability for the reason that concrete projects and programs that would be offered to the returnees are basically lacking, who after periodic food assistance could continue to create and self-sustain on their own, without the support of humanitarian organizations. The problem lies in the fact that the older population decides to return, while new generations decide on this step unwillingly, due to individual perception of security, but also because of the inability of employment and general economic situation. The return of the young population of the Serb community is noted only in those areas where the Serb population constitutes a majority, where access to education, employment and health services is largely better than in other environments. Regarding this, it is not surprising that in urban areas return only individuals, especially the elderly. For instance, in Prizren only a few persons of the Serb community have been returned, of which a total of 5 children in the entire municipality of Prizren³²¹ whereas in Peja 9 Serbs have returned and live there. It must be mentioned that in the village of

³¹⁶ *Constitution of the Republic of Kosovo*, Articles 59, 60, 61 and 62.

³¹⁷ *Constitution of the Republic of Kosovo*, Article 22 (4), which aims at improving the overall and effective equality of minority communities in all areas of life, such as economic, social, political and cultural.

³¹⁸ *Law No. 03/L-47 on protection and promotion of the rights of communities and their members*, 13 March 2008.

³¹⁹ Meetings between representatives of the OI and the heads of offices for communities and returns in Peja, Gračanica, Prizren, Rahovec and Klina during October and November 2014 as well as public statements of MCR, taken from the official website of the MCR.

³²⁰ *Office of the Head of the UNHCR Mission in Prishtina*, observation of statistical data at the end of October 2014. On the basis of data received from UNHCR in January - October 2014 in Kosovo have returned: 238 Serbs, 22 Roma, 121 Ashkali and Egyptian, 9 Bosniak, 16 Gorani and one Montenegrin.

³²¹ Information received in the meeting with the head of the Municipal Office for Communities and Return (MCR) in Prizren on 20 November 2014; 1 child lives and attends school as a single student in the Serbian language in the building of Bogoslovija of Prizren, while 4 children live with their parents in the village Novake.

Bellopoja in the municipality of Peja live only 10 families, of 100 houses built for returnees (others come periodically during the summer or just to visit their properties).³²² Offices for communities that include in their competence the Bosnian community in Kosovo emphasize the problem of migration of young population of this community, due to very difficult position and inability to employment, as well as due to more favorable conditions for study in higher education centers in Bosnia and Herzegovina, Montenegro and Serbia.³²³

2.25.2 . Security situation and sporadic incidents

The security issue in relation to the protection and improvement of property rights as well as the housing right of displaced persons and returnees, continues to negatively affect the return process. When it comes to security, sporadic incidents continue to be recorded against members of minority communities, which mainly affect the members of the Serb community in the area of returnees. Apart from minor incidents, a considerable number of serious incidents such as arsons, causing damages, writing threatening messages on the walls of houses and properties mostly of Serbs, have been evidenced. There have also been recorded a number of thefts of farming machines and cattle as well as one physical armed assault. In some municipalities the attackers have not been identified by police, so there are cases when they were also repeated.

In this context, it should be emphasized that the majority number of the incidents occurred in the municipality of Klina (villages of Dërsnik, Grapc, Klinac and Drenoc, but also in Klina), then in Fushë Kosovë, Rahovec, village Levoshë (Municipality of Peja) , in the villages of Zhaq, Gurrakoc and Shalë (Municipality of Istog), Viti and Gjilan.³²⁴ Up to date, the Kosovo Police solved only two cases of cattle theft in Klina municipality, while other incidents, such as physical and armed assaults have remained undisclosed or still are under investigation procedure.³²⁵

All these and similar cases discourage to a great extent sustainable return and discourage those who intend to return, especially after Kosovo Police is not handling incidents properly and fails to find the perpetrators of these incidents.

Apart from displaced persons outside Kosovo, in the territory of Kosovo there are still collective centers for displaced persons operational, for which the OI has drawn remarks also in the previous reporting periods. Unfortunately, the internally displaced persons remain accommodated in 36 collective centers, mainly in the north of Kosovo and the municipalities of Graçanica and Shtërpçe,³²⁶ where these people live in very difficult conditions. In its reports and press releases, the MCR planned to close these collective centers in shortest possible time, but the activity regarding this it is still in the planning stage. On this occasion, we should mention the new Strategy for Communities and

³²² Information received in the meeting with the head of MCR in Peja, on 21 November 2014.

³²³ Conversation with MCO heads in Prizren, Dragash and Peja on 14 October and 20 and 21 November 2014.

³²⁴ See, in: <http://www.mkk-ks.org/?page=3,12> (8.12.2014).

³²⁵ *Ibid.*, and telephone conversation with MCR head in Klina on 11 December 2014, who confirmed the information on assaults against the returnees in the Municipality of Klina.

³²⁶ See in: <http://www.mkk-ks.org/?page=3,12> (8.12.2014).

Returns (2014-2018) and the Action Plan³²⁷ which was drafted by MCR, which reflects the strategic objectives for sustainable return of the displaced persons in Kosovo, for which the OI believes it will improve not only the return of internally displaced persons, but also its sustainability.

The issue of property and property rights protection of displaced persons still presents a great problem, which consists of one of the key factors for a sustainable return. Despite the fact that KPA has resolved more than 96% of the cases submitted,³²⁸ however, in some cases, even after the expulsion of illegal residents and occupants from immovable property of displaced persons, they have been reoccupied again.

Waiting for many years that the KPA resolves the cases filed in by the owners of the immovable property, as well as delays in the implementation of decisions by KPA versus illegal residents, make the displaced population unable to return the property in its ownership and to use the same in freely and unimpeded manner, which represents a violation of the right to property.³²⁹ In addition, there are often cases of delay or refusal of certain local authorities to register the property in the cadastre offices and to issue the property certificates on behalf of the legitimate owners after the submission of documentation and final decisions of KPA. For this reason, citizens are forced to turn to the Basic Court in Prishtina, the unit for administrative disputes and in this way are forced again to wait for years to resolve the dispute, now with local authorities.³³⁰ The information above are documented by legal officers of the OI who receive, record and work on cases related to property rights issues.³³¹

Special attention should be paid to the fact that members of the Roma, Ashkali and Egyptian community, before the war of 1999, mainly lived in informal neighborhoods and precisely for this fact, now face problems to document housing and property rights. Upon seriousness of the problem of displacement within Kosovo has also reported to the Special Rapporteur of the United Nations in his report of 5 June 2014, during his visit to Kosovo³³²

Recommendations:

- ***Kosovo Property Agency should enhance and improve cooperation with the executive power within the legislative competences in order to give a more efficient response to repeated occupation of property in an unlawful***

³²⁷ MCR, Strategy for communities and returns and Action Plan (2014-2018), January 2014.

³²⁸ KPA in: <http://www.kpaonline.org/sr/default.asp> (1.12.2014).

³²⁹ ECHR, Article 1, Protocol 1 is legal instrument directly applicable in Kosovo.

³³⁰ OI, cases A. no. 552/2014, A. no. 262/2014, A. no. 414/2014, A. no. 546/2014 and A. no. 339/2013.

³³¹ LAP, cases A. no. 56/2014, A. no. 234/2014, A. no. 226/2012, A. no. 181/2013 and case A. no. 435/13. In this concrete case the complainant has passed through all judicial instances in Kosovo, even the CCK has rendered a decision in her favor in the mid of 2014, so that the property owned be returned to the complainant, but until the end of this report, she failed to exercise her right to use the property in unhindered manner

³³² General Assembly of the UN, "Report of the Special Rapporteur on the human rights of internally displaced persons", 5 June 2014: "Although the majority of Roma, Ashkali and Egyptian IDPs had houses, their right of housing and the land has never been registered and they have no documentation on the ownership of their houses. The vast majority of returnees who have no property are Roma, Ashkali and Egyptians who believe that they can be involved in reconstruction projects of houses and in this way they end up in re-displacement."

manner, for which it is required a better coordination with the Police of Kosovo and the judiciary.

- *Police of Kosovo should guarantee security and should act effectively to protect and find the perpetrators of attacks directed against minorities and to protect their property.*
- *MCR within the strategy of return should include projects related to the sustainable return, in terms of promotion of the small economy and stimulation of agriculture in rural areas of returnees, in order that returnees are able to work and as a result of this their return to be more sustainable.*
- *Local government, in coordination and cooperation with the MRC, should include on its plans the housing needs of the returnees and repatriated persons, who before the war in 1999 lived in informal neighborhoods, so that the members of the Roma, Ashkali and Egyptian communities, do not come in a situation to get displaced again.*

2.25.2.1 Education of minority community members

In the field of education, there is no significant progress in relation to the previous reporting period of the OI. There are still two parallel systems of education, one according to the curriculum of MEST of the Republic of Kosovo and the other, which is in line with the Ministry of Education of the Republic of Serbia, financed by the Republic of Serbia in the territory of the Republic Kosovo, independently from each other.

During the reporting period, it is for commendation the fact that since January 2014, for the first time was achieved an open cooperation between educational institutions, which work according to the curriculum of Serbia (this data does not apply to educational institutions on the north of Kosovo) and local governments, municipal departments for education of Kosovo, which represents a step forward towards full integration with the legitimate institutions of Kosovo. The cooperation so far has been evidenced in the help of local government educational institutions in terms of heating for the winter, school equipment, office materials for the school administration, organization of transport for pupils and similar.

Another problem it is lack of recognition of higher education diplomas, acquired in universities, high schools and the University of North Mitrovica, which works under the education system of Serbia. Despite the agreements reached in Brussels between Kosovo and Serbia for mutual recognition of diplomas, this issue has remained unresolved because of the failure in implementation of the agreements.

As before, the members of the community of Turks, Bosnians, majority of the community of Ashkali, Egyptian and a small part of the Roma community, attend classes according to the curriculum of MEST. Members of the Serb community, Croatian, ³³³

³³³ Primary school “Shtjefën Gjeçovi” in the village Janjeva, Municipality of Lipjan.

Montenegrin, Gorani (Municipality of Dragash) and majority of members of the Roma community attend schools in Serbian language, according to the curriculum of Serbia.

The problem of low involvement of children of members of the Roma, Ashkali and Egyptians to attend the classes in schools is still present. In most frequent cases, the children of these communities, after completion of primary education, do not continue further education. This fact encouraged the Royal Norwegian Embassy to help these communities and to encourage the children of Roma, Ashkali and Egyptians, that despite the difficult situation, to continue with secondary school education, stimulating the provision of 500 scholarships, which were awarded at the end of October 2014. The OI welcomes such an assistance of the Royal Embassy of Norway and encourages also other diplomatic representations located in the Republic of Kosovo, but also other international organizations, to support such projects in the whole territory of Kosovo.

Teaching according to the curriculum of Serbia takes place, same as before in several villages in the Municipality of Dragash, populated by members of the Gorani community, whereas members of the Bosnian community in the municipality are educated in primary and secondary schools working according to the curriculum of MEST.³³⁴

The problem still exists in the sense that students of Gorani community continue to be deprived of the right to use the facilities of two primary schools in Krushevë and Dragash, as well as in the building of a secondary school in Dragash, due to the decision of parents that the children attend classes under curriculum of Serbia, so these students are forced that from Krushevë and Dragash attend school in other villages and travel.³³⁵ In the past three years, as reported by the OI, with the mediation of the OSCE was made an effort to solve the problem, in order members of the Gorani community are integrated in Kosovo's education system and to return to their local school, but until the end of the reporting period, this issue has not been resolved.

Members of Bosnian community who live in the regions of Peja, Prizren and Dragash attend classes in their native language, under the MEST program. Members of these communities stress that the problem of lack of textbooks for secondary schools and faculties in Bosnian is still not being solved and they also claim that the translation of textbooks for primary school students is very bad, also the textbooks for national civil subjects are lacking: mother tongue, history, geography and musical education textbook for 10th and 11th grades.³³⁶

For this problem the OI reported in its previous reports, but the problem is still not resolved. Lack of textbooks for secondary schools, as mentioned in the communities' offices in municipalities where Bosnians live, is compensated by obtaining books from Bosnia and Herzegovina and Serbia. Also, as positive step, must be emphasized the fact that from the 2014/15 school year has been opened a secondary school of medicine in

³³⁴ There are six primary schools in municipality of Dragash and two secondary schools, which work well under the education system of the Republic of Kosovo and under the education system of the Republic of Serbia.

³³⁵ Report „*Return to schools in the region of Dragash*“, European Centre for Minority Issues Kosovo (ECMI) regarding education in the Municipality of Dragash, on 8 November 2014.

³³⁶ Information taken in a meeting with the head of MCR in Prizren, on 20 November 2014.

Bosnian in Dragash, with an initiative of the municipal office for communities and return and with the approval of the MED in Dragash³³⁷

The students of Bosnian community, after completing the secondary education have the opportunity to continue studies in the University of Prizren “Ukshin Hoti” (Faculty of Education and Faculty of Computer and Communication Technology) and in the University of Peja “Haxhi Zeka” (Faculty of Applied Sciences to Business, which as of this year began to enroll students of master level).

Bosnians in the Municipality Prizren, from villages Mushnikovë, Lubizhdë and Gërriçar more often are choosing to enroll their children where classes are held in Albanian language, because of the possibility of easier integration and for purposes of learning Albanian language, as well as due to better conditions and the possibility of choices when it comes to further education.³³⁸

As to the Turkish community, based on the information collected, one can only conclude that they are well integrated into Kosovo society, whether in education, or in other areas and in everyday life. The members of Turkish community are dissatisfied with the quality and number of textbooks in Turkish, which they take from Turkey when they lack.

Recommendations:

- *Government of Kosovo should make maximum efforts for the mutual recognition of diplomas, and thus help the advancement of the rights of communities.*
- *MEST should pay special attention in improvement of the quality of textbooks in Turkish and Bosnian language for the next school year 2015/16 and also to provide the textbooks missing in these languages, in order members of the Turkish and Bosnian community are not forced to request for solutions from Turkey and Bosnia and Herzegovina.*
- *The Government of the Republic of Kosovo and local governments should pay special attention to education of Roma, Ashkali and Egyptian communities to motivate young people not to drop out of school.*
- *The Government of Kosovo in cooperation with local governments should draft a concrete plan of action for raising awareness of parents and children of the mentioned communities, so that their children do not drop out of school.*

2.25.3 Situation of Roma, Ashkali and Egyptian community

Members of the Roma, Ashkali and Egyptians are facing a difficult situation in terms of socio-economic, educational, housing conditions in which they live and in terms of their better integration in the society.

When discussing the implementation of the “Strategy for Integration of Roma, Ashkali and Egyptian communities in Kosovo society”, adopted in 2008, the Action Plan for its

³³⁷ Information taken in a meeting with the head of MCR in Dragash, on 14 October 2014.

³³⁸ Information taken in a meeting with the head of MCR in Prizren on 20 October 2014.

implementation (since 2009), not much has been done to improve situation of the Roma, Ashkali and Egyptians in the economic, political and educational aspects. It has been concluded that many of the actions provided in the action plan have been poorly implemented or not implemented at all, thus we cannot talk about a significant improvement in the situation of the Roma, Ashkali and Egyptians.³³⁹

Positive examples of implementation of the Strategy can be seen only in certain municipalities where something has been done only in the fields of culture and education (school books and equipment for students) and only on the basis of foreign donations, whereas there has been no direct material funds from local government.

Difficult socio-economic situation, in which live Roma, Ashkali and Egyptians, resulted in a situation of massive displacement of these communities from Kosovo during the past few months, which is evidenced by the reports of civil society organizations which deal with minority communities.³⁴⁰

According to information collected by the IO, number of members of Roma, Ashkali and Egyptian community, who left Kosovo (either individually, or entire families) varies around 1700-2000 persons until early December 2014, whereas the largest number of them is from Ferizaj, Prizren, Fushë Kosovë and Obiliq.³⁴¹

Persons who fled from Kosovo, in the meantime we are talking here of tens of thousands citizens of Kosovo, among whom are also 3000-4000 members of these communities, who mainly are migrating to western European countries through illegal channels, whereas as the most often reason for leaving Kosovo, they quote their socio-economic situation.

Logical and inevitable conclusion is that the situation of the mass migration of Roma, Ashkali and Egyptians it is concerning and it is ultimate time that the Government pays special attention to solving the problems of community members in question, as requested, among others from the Government of Kosovo, in an open letter, of 6 November 2014, which was directed to Prime Minister by leading organizations of civil society involved in improving the situation of Roma, Ashkali and Egyptians, as well as the rights of minorities in general.³⁴²

With regards to persons repatriated of Roma, Ashkali and Egyptians communities, their situation has not changed in a positive sense, in comparison with the OI report of 2013. There is no improvement, nor there is any program for vocational training of the repatriated persons, employment opportunities are small, and there is no adequate transitional educational program for children of repatriated persons, before going to regular education. All what it is said above complicate further the access and use of public services and offices for repatriated persons.

Recommendations:

³³⁹ Information obtained from the representative of the civil society, particularly from NGO “Voice of Roma, Ashkali and Egyptians” (Voice of the Roma, Ashkali and Egyptians) from Gracanica.

³⁴⁰ ECMI report “Challenges in Kosovo’s efforts towards integration: Increase of displacement of Roma, Ashkali and Egyptians”, 3 December 2014.

³⁴¹ Informacionet Information obtained from the representative of the civil society, particularly from NGO “Voice of Roma, Ashkali and Egyptians” (Voice of the Roma, Ashkali and Egyptians) from Gracanica.

³⁴² <http://www.ecmikosovo.org/?p=5808>, an open letter to the leaders of the Platform of NGOs working with the communities of Roma, Ashkali and Egyptians (08/12/2014).

- *Central and local institutions should make more efforts to implement the Strategy for the reintegration of Roma, Ashkali and Egyptian communities, to improve the socio-economic situation and in particular promote (urge) the education of children of these communities*

2.25.4 Employment representation in central and local bodies

In the previous reporting period, the OI has paid particular attention to this issue, and therefore has monitored the situation regarding the employment of members of minority communities in central and local government in 2014. The minority members are still represented in insufficient percentage to public administration.

Having analyzed the participation of minority communities in institutions, it is obvious that they are present only in some given ministries, which deal with community issues, as well as in those ministries on top of which there are representatives of minority communities, such as case with MCR, MLGA and MLSW (until the beginning of December 2014).

The Ombudsperson requests that the legal provisions in this field are interpreted in the manner as prescribed, i.e. the representation must be adequate in each ministry separately, so that we can talk about proportional representation of communities at the central level. Additionally, the Ombudsperson emphasizes the fact of insufficient institutional representation of members of the Roma, Ashkali and Egyptians, who are represented in smaller numbers in all central institutions, and local government structures.

There should also be stressed that it is still a small percentage of members of minority communities in public companies (around 2.5%), which indicates that in this respect nothing has changed since the previous reporting period of the OI.

Recommendation:

- *To ensure equal representation of all communities in the central and local level in employment, according to law requirements. It must be necessarily required that publicly owned enterprises respect the legal requirement for employment of members of minority communities, in particular the communities of Ashkali, Egyptian and Roma.*

Third part

2.26 Judicial protection of rights

2.26.1 General observations

Lack of law enforcement and respect for human rights and freedoms in the field of justice remains an extraordinary concern for the Ombudsperson and an open wound for the Republic of Kosovo.

During this reporting year as well, the Kosovo judiciary, the courts and prosecutions together, have been followed by various natures of difficulties, which caused the loss of trust in the justice system for the rule of law. The non-functioning of the judicial power

in the entire country; the delay in the adjudication of civil and criminal cases; the number of pending cases from previous years; low level of execution of court decisions; statutory limitation of court cases; decisions and judicial proceedings against judges for corruption; non-implementation of the norms of the ECHR in practice, non-implementation of judicial decisions according to the decisions of the ECtHR.

Competencies of the Ombudsperson for treating the complaints submitted in relation to the work of courts are limited, despite the large number of complaints filed in. According to the Law on Ombudsperson, the Ombudsperson may only investigate complaints dealing with “unreasonable delay of judicial proceedings or obvious misuse of power.”³⁴³

During this year has not yet been achieved the extension of judicial power in the northern part of the country by the institutions of the Republic of Kosovo and the European Union Mission for Rule of Law (EULEX), although the Constitution guarantees the judicial power throughout the country.³⁴⁴ Since the declaration of independence of the Republic of Kosovo, since the beginning of 2008, the courts have not operated in the northern part of Mitrovica, Zubin Potok, Zvečan and Leposaviq.

Judicial and prosecutorial system of Kosovo continues to be supported by EULEX, in the rule of law, on the basis of the Law on Ratification of the International Agreement between Kosovo and the EU. ³⁴⁵ Judges and prosecutors of EULEX will continue to assist the local judicial authorities towards the development and strengthening of an independent justice system.

Judges act in mixed judicial panels with local judges, for reserved areas of investigation and trial, such as: war crimes, genocide, terrorism, organized crime, corruption, inter-ethnic crimes, aggravated murder, economic crimes and other serious crimes, but also for the adjudication of civil cases of all natures, according to the Law on Jurisdiction.³⁴⁶ Whereas KJC has no power over the judges and prosecutors of EULEX, because they respond only to the authorities of the Justice Component of EULEX.

2.26.2 Citizens' complaints against courts

In fact, the largest number of citizens' complaints filed with the OI in 2014, has to do with the judiciary. Against the courts as responding parties, the citizens have submitted a total of 665 complaints, while in the previous year 2013 were registered 577 complaints. In fact, there is an increase of 88 complaints or over 15% against the judiciary compared to 2013.

³⁴³ *Law No. 03/L-195 on Ombudsperson*, Article 15, paragraph 6.

³⁴⁴ *Constitution of the Republic of Kosovo*, Article 102, paragraph 2. “The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.”

³⁴⁵ *Law, no. 04 / L-274 on the Ratification of the International Agreement between the Republic of Kosovo and the European Union on the Mission of the European Union Rule of Law Mission in Kosovo*.

³⁴⁶ *Law no. 03L /053 on Jurisdiction, Case Selection and Allocation of Judges and Prosecutors of EULEX in Kosovo*, Article 5, paragraph 1.

Of the total number of complaints received, 470 of them were declared inadmissible, in accordance with Article 19.1.3 of the Law on Ombudsperson.³⁴⁷ 195 complaints have been opened for investigation.

The largest number of complaints filed in is against the Basic Court in Prishtina, total of 172 complaints; against the Court of Appeal 125; against SCSC 66 complaints. A smaller number of complaints were filed in against other basic courts in Kosovo and against KJC. The Basic Court of Pristina certainly faces with the largest number of cases throughout Kosovo.

In all cases, when citizens' requests or complaints against the judiciary were not in accordance with the powers of the Ombudsperson, the parties are instructed and directed to competent professional institutions for provision of legal services, as in the Agency for Free Legal Aid and NGOs which conduct free legal services for citizens.

From the analysis of the nature of the investigated citizens' complaints, it is found that the majority of complaints relate to: delays, sometimes of several years, statutory limitation of the court cases; then the non-execution of the court decisions; doubts on the objectivity of the judge in deciding the case; bad representation by defense counsels.

This is a serious indicator of the difficult situation of the judicial system, which has not managed to fulfill its legal obligations in relation to requests and rights guaranteed to citizens for protection of their judicial rights.

2.26.3 Delays of court proceedings in adjudication of cases

Of all the complaints filed against the judiciary, the largest number relates to delays of judicial proceedings of adjudication of cases in the courts, which are primarily of civil nature, in various fields, including the criminal one. The delay of the court proceedings is primarily a result of the large number of cases inherited from previous years, as well as the continual arrival of large numbers of new court cases in various areas.

Despite the increase of number of judges, and currently are 335, and civil supporting staff of 1,437 employees,³⁴⁸ in terms of delay of the court cases, no significant progress in the judiciary has been noticed. According to the first six-month period reports of KJC of 2014, the number of cases remaining as pending was 463,301 court cases.³⁴⁹

According to statistical data of the report, is noted that in the first six month period, the courts have adjudicated 230,674 court cases, while the citizens filed 238,276 submissions in the courts. From this we can conclude that the judiciary receives more cases than it can handle. Given this fact, the Ombudsperson requests the KJC, but also other relevant institutions, to work on finding a legal solution.

In all cases of complaints under the jurisdiction of the OI, regarding the delay of proceedings by the courts, the Ombudsperson has conducted investigations and contacted, either through letters or direct meetings with officials of basic courts. In most of cases, unlike the senior officials of the executive of the Republic of Kosovo, the

³⁴⁷ Law Nr. 03/L-195 on Ombudsperson, Article 19, p. 1.3.: "to reject the complaint because: is not in the jurisdiction of the Ombudsperson according to this Law; the complaint is submitted after the term foreseen with this Law; the complaint is anonymous; the complaint represents an abuse of the Law for filing the complaint or the complainant has failed to provide information requested by the Ombudsperson."

³⁴⁸ KJC, Report of first 6-month period 2014 , Statistics of regular courts, www.kgjk-ks.org (11.12.2014), p. 3.

³⁴⁹ *Ibid*, f. 3.

Ombudsperson found the cooperation of the persons responsible in court for resolving complaints of the complaining parties, sometimes even scheduling court hearings. Despite the good cooperation with majority of responsible persons, the Ombudsperson finds no justification for the delay of dealing with property disputes, when people are forced to wait decisions for years.

2.26.4 Statutory limitation of court cases by the court

Despite the fact that in the first six months report of 2014, the KJC does not present the data concerning the statutory limitation of the court cases during this reporting year, in the OI were submitted complaints due to statutory limitation of the court cases by the courts.

Statutory limitation of cases by the courts may be the result of overloading with court cases and the impossibility of adjudication within legal time limits. It could also be a result of the ongoing reforms of the judiciary. However, there are cases when the statutory limitation is due to the negligence or abuse of the duty of judges. For Ombudsperson, the statutory limitation of court cases is one of the most serious violations of human rights and freedoms of citizens guaranteed by the Constitution of the Republic of Kosovo.³⁵⁰

The Office of Disciplinary Counsel (ODC) of the KJC, in all cases of statutory limitation of cases, should investigate in detail the causes of the statutory limitation and, in every case, without exception, to initiate legal measures against those unconscious responsible persons of the administration of justice and to initiate to bring them before justice.

The Ombudsperson, based on citizens' complaints regarding the statutory limitation of court cases, recommends the KJC, to take all measures for strict implementation of the legislation in force the Republic of Kosovo, in order not to prolong the court cases up to their statutory limitation.

2.26.5 Non-execution of final court decisions

The Ombudsperson this year has also received a significant number of citizens' complaints due to non-execution of final court by the basic courts. In all these cases, the disappointed citizens requested the assistance and intervention of the Ombudsperson, for the execution of the court decisions.

The execution of court decisions at the country level is very low. According to the report of the first six months of 2014, of the KJC,³⁵¹ the execution of the decision according to the enforcement document is 64.16% while the execution of commercial disputes 50.20%. The causes that affect the low rate of execution of final decisions according to KJC lie with a small number of associates for execution and the lack of accurate addresses in Kosovo.

³⁵⁰ *Constitution of the Republic of Kosovo*, Article 54: "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."

³⁵¹ KJC, *Report of first 6-month period 2014*, *Statistics of regular courts*, www.kgjk-ks.org (11.12.2014).

In all cases of complaints under the jurisdiction of OI, the Ombudsperson has conducted investigations and contacted by letters and direct meetings with officials of the courts responsible for the execution of the court decisions, requesting the reasons for the delay of execution of the decisions. The Ombudsperson received official explanations to all requests and the courts have taken the procedural actions in terms of execution of court decisions.

2.26.6 Other various cases of citizens' complaints

A number of citizens' complaints by non-majority communities, addressed to the OI because during the court proceedings has not been provided translation into their native language, or the translation was weak, and could not be able to follow and to understand clearly the development of the proceedings in their cases. A number of complaints have been filed because the courts have not translated in time the court decisions and the parties have not been able to exercise effective legal remedies against the decision within the time limits provided by law. The Ombudsperson in all cases of complaints has requested to respect the the right of the party to notification in their language in accordance with the law on use of languages.

A part of complaints is also referred to the content of the court decisions of the first instance, but also of final court decisions, for which all appeal remedies have been exhausted. In this case, the Ombudsperson advised the complainants that if they consider that their rights have been violated by a court proceedings and decision, within legal time limit may exercise their right to appeal with regular and extraordinary legal remedies, in the highest court instances.

There were also complaints with the OI the unfair delay by the court administration, due to non-service of the court decisions within legal time limits, and due to impossibility of the party to have access to their case in the court. The Ombudsperson in all cases of complaints of this nature contacted the court officials and in cooperation with the courts, has resolved the appeals of the parties. The parties have been served with the court decisions, or they have been informed about the situation of their cases in the court.

A number of complaints filed due to unduly representation of the complainants by their defense counsel, appointed ex-officio or by the court, is also concerning. In all these cases, the parties were notified of their right to request the replacement of lawyers and to file appeal on their case with the KCA.

In many cases, the citizens in their complaints addressed to the Ombudsperson, request the monitoring of their cases in the court, but in some cases they also request the drafting of various submissions and their representation in the different court instances. There are some cases when the OI was requested to refer their case in the CCK, due to violation of human rights and freedoms, even in the cases when the Ombudsperson is not competent to refer a case to CCK. There were also complaints against final court decisions, for which all appeal remedies have been exhausted, including the constitutional complaint. From the Ombudsperson is requested that their case is sent for trial to the ECtHR in Strasbourg.

First of all, this is a result of non-information of citizens about the mission and competencies of the Ombudsperson, the nature of cases that may be referred to the

CCK by the Ombudsperson, and also about instant inability to refer the cases to the ECtHR cases in Strasbourg. At the same time, this confirms the loss of trust on the justice of judiciary in general. In many of these cases, they state that they trust only the OI, therefore they necessarily request the OI assistance, although the Ombudsperson cannot replace the defense counsel before any court.

2.26.7 Complaints against Kosovo Judicial Council

The Ombudsperson during this reporting year received complaints also against KJC. After investigation of citizens' complaints, it has been concluded that there have been violations of human rights in several cases, therefore it recommended to the KJC to eliminate these violations and to improve the legislation in the area of human rights. In all these cases, the requests of Ombudsperson were taken into account and were applied within reasonable time limits.

2.26.8 Complaint of worker trade union regarding court fees

On 5 June 2014, the Ombudsperson received the complaint from the president of the trade union of former socially owned enterprise "Ingeniering" on behalf of 24 employees and from the president of the trade union of the socially owned enterprise in liquidation "Mirusha" from Malisheva, on behalf of 120 employees, against decision no. 25, dated 5 March 2014 of KJC for the adoption of the plan on the court fees of SCSC. According to this decision of KJC, a fix court fee of 100 euro was requested to be paid by the employees for any claim against PAK on the issue of the rights of workers that derive from the privatization process.³⁵²

On 18 June 2014, the Ombudsperson addressed the letter to KJC, by which reminded that by Administrative Instruction no. 2008/02 were set the court fees for proceedings in the courts of the Republic of Kosovo and that new taxes impede the exercising of the rights of workers from the privatization process. By the latter dated 13 August 2014, the KJC notified the Ombudsperson that the challenged decision on court fees, was amended and that workers are exempted from the payment of additional fees, during the exercising of their rights in the process of privatization.

2.26.9 Lack of judge in the Basic Court – Branch in Gračanica

On 25 June 2014, the Ombudsperson in accordance with Article 15.1 of the Law on the Ombudsperson has investigated *ex officio* (ex officio), from which it follows that the Basic Court in Prishtina, Branch in Gračanica,³⁵³ from 1 February 2014 does not have any judge, by causing unlawful delays and a violation of citizens' rights to a fair trial within a reasonable time period.

Following the *ex officio* investigations, the Ombudsperson, on 11 July 2014 sent a recommendation letter to the KJC on taking needed and necessary measures, without any further delay to send a judge to the Basic Court of Prishtina, Branch in Gračanica, to

³⁵² OI, cases A. no. 265/2014 and 266/2014.

³⁵³ OI, *ex-officio* case A. no. 284/2014.

continue with the processing of more than 1000 cases, which are in this branch of the court in Gracanica.

On 17 July 2014, the KJC sent a response, in which he informed the Ombudsperson that it agrees with the abovementioned recommendation, and that the President of the KJC decided that on 1 August 2014 is appointed the civil law judge in the Basic Court of Prishtina, Branch Gracanica, who began to work on the same date.

2.26.10 Ombudsperson's conclusions regarding the judicial protection of rights

The difficulties in implementing the judicial rights of citizens before the justice authorities, created among citizens perceptions and public opinion of doubt on the work of the judiciary, despite the adjudication of numerous court cases. Delays of proceedings for years, until the cases are adjudicated with a final judgment, directly affects the loss of citizens' confidence on the institutions of justice, especially in the courts.

Due to the non-functioning of the judicial system in the northern part of the country, the human rights and freedoms of citizens guaranteed by the Constitution, were seriously violated particularly the right to judicial protection. For this reason, a relatively large number of court cases remained there, have failed to be reviewed and they may become statutory barred.

A concerning problem for the citizens of the country is the fact that there is no legal mechanism for protection of the right to trial within a reasonable time limit, when this right is infringed by the local judiciary. This legal mechanism would allow the parties the compensation due to caused material damage, delays in the proceedings, as it is common in democratic countries.

The length of civil proceedings and other procedures in the courts for many years, in adjudicating the court cases still results in difficult access, the judicial protection of human rights by the courts. This year there were statutory limitations of cases and delays in the execution of the court decisions. For the Ombudsperson, this is one of the most serious violations of human rights and freedoms of citizens guaranteed by the Constitution.

This year is noted an increase in the number of complaints expressing dissatisfaction with the court decisions, due to suspicion on objectivity of the administration of justice and require undertaking of measures be the Ombudsperson, whereas the number of cases where the parties require monitoring of the court hearings in civil and criminal proceedings, has significantly increased. For Ombudsperson these are clear signs of increase of the level of distrust in the justice shared by the courts and judicial control system. Consequently, this is followed by increased number of requests for referral of cases at the CCK or international judicial instances.

The courts operate without sufficient number of human resources, judges, professional associates and other assistance, and they face with extremely serious infrastructural conditions. This is expressed especially in the Basic Court in Prishtina and Mitrovica, in the Court of Appeal and in SCSC. These shortcomings and obstacles are directly reflected in the effectiveness of this court and the quality of its work, which results in the loss of trust of the citizens. These factors certainly do not constitute single key factors of the condition in which the Kosovo judiciary is in general.

Recommendations:

To the Assembly of the Republic of Kosovo, the Government and the Kosovo Judicial Council

- *The extent of judicial power in the whole territory of the country, including the northern part of Mitrovica and the municipalities of Leposavic, Zubin Potok and Zvecan, as provided by the Constitution of the Republic of Kosovo.*

To Kosovo Judicial Council and the Ministry of Justice

- *To initiate drafting of a legal instrument that would constitute an effective remedy pursuant to Article 13 of the European Convention of Human Rights, which provides relief in form of prevention through compensation regarding claims for statutory limitation of the court cases and unreasonable delay of the court proceedings.*
- *To initiate the rendering of a temporary decision on prohibition of the statutory limitation of the court cases in the Republic of Kosovo as a consequence of the denial of the citizens' right to address the judiciary to resolve the various conflicts.*

To Kosovo Judicial Council

- *To increase the number of judges and professional associates in the Basic Court in Prishtina, the Court of Appeal and the Special Chamber of the Supreme Court, so that all court cases are dealt within reasonable time limits and without unreasonable delay.*
- *Office of Disciplinary Counsel to investigate all cases of citizens' complaints concerning the statutory limitation of their court cases and, in cases of abuse of duty, to propose the imposition of legal measures against judges and prosecutors who have violated the law .*

To the Courts and KJC

- *To enable the provision of professional interpreters for all court disputes, criminal, civil and administrative, to all parties from non-majority communities, in their own language.*
- *Court decisions to be issued within legal time limits and in time to be submitted to the parties in their own language, without translation administrative delays.*
- *Execution and consistent implementation of final court decisions within the time limit provided by law.*
- *Increase transparency and notification of all parties, at their request to be informed about their cases after the reformation of the courts under the Law and transfer of cases in legal competence.*

2.27 The right to fair and impartial trial

The right to fair and impartial trial In the field of human rights, the right to a fair and impartial trial is a necessary precondition for the respect and protection of other rights in the field of human rights, but this right is very questionable in Kosovo society, due to the number of unresolved cases in the court, which is constantly growing. The right to

fair and impartial trial has a strong normative ground which refers to the protection of the right for equal treatment before the courts and state, the right to a public hearing which can be restricted only to the cases provided by law, the right to trial within a reasonable time, right to the presumption of innocence, the right to legal representation and legal aid for free etc. As in previous reports, the Ombudsperson recalls that during this reporting period, the situation is not satisfactory.

OI has received 547 complaints from citizens and has opened 180 cases for investigations during the reporting period, which include alleged violations of the rights to fair trial, particularly the right to trial within a reasonable time.

OI has initiated investigation on all opened cases and requested information from the courts of different instances, in relation to actions that have been taken to protect human rights. Ombudsperson noticed from the responses received from various courts of Kosovo that the Kosovo judiciary faces with a large number of unresolved cases. The number of unresolved cases, according to the annual report of the KJC on the work of the courts in 2014, is high and tends to increase further.

It can be noticed that a number of complaints received, dealing with the right to a fair trial, are related to the duration and non-execution of court decisions, particularly in cases related to property disputes, which are collected over many years, whereas many of them still remain pending and unresolved for a long period of time.

Cases reviewed for violating the right to a fair and impartial highlighted the problem of law enforcement, in the sense of urgent treatment and disrespect of legal time-limits in making decisions on the cases. In this context, it is important to emphasize the problem, which is related to labor disputes, requiring the above action. The right to work and exercise profession is guaranteed by the Constitution of the Republic of Kosovo, with international human rights and the fundamental laws that define the rights and obligations deriving from employment relationship. In OI are registered cases of procedural delays related to employment relationship before the court, which even after several years still are not reviewed.

One of the complaints registered in OI, has been a labor dispute when the complainant addressed to the Basic Court in Peja in 2011, due to the illegal termination of employment relationship by the employer. The case was not assigned to any judge of the Basic Court and after the reorganization of the judiciary in Kosovo, the case was transferred to the Court of Appeal, but to date the case has not been processed. The Ombudsperson has initiated investigation on complainant's case, sending a letter to the court by which has requested information on the actions taken in order to solve the problem. The Ombudsperson found from the response received, that the problem in this case was the backlog in the abovementioned court. This case underlines that delaying of court proceedings results in serious violations of human rights.

A number of complaints received from citizens are also related to the rights of fair trial, which refer to the length of proceedings, due to the lack of functioning of the courts in the northern part of Mitrovica. This fact remains a major challenge in ensuring the rule of law.

As provided by the new Law on Courts, the jurisdiction of the Supreme Court (SCK) is reduced and due to that this court is less burdened with cases respectively in 2014, this court received 83,3% less cases than in 2013, and statistics show that the efficiency of the work of the court is 100%.

The Ombudsperson emphasized the concerning fact, which refers to the tendency of the increasing of number of unresolved cases during 2014 against SCSCK, which decides according to the law regarding complaints filed against PAK, and Socially Owned Enterprises' claims, based on the analysis and statistical reports of court's work. Likewise, based on official information of the KJC, the statistics on the court's work show that SCSCK has 17,077 unresolved cases, while at the end of 2013 this number was 16,424. The effectiveness of this court is evaluated with 29.9%.

In this context, OI has reviewed a significant number of complaints as regards to the delay of proceedings in SCSCK, during the reporting period. Emphasis should be given to the cases of 2011, when complainants have addressed the issue in this court, but so far it has not decided on the complainants' case, no court hearing is set, and also the complainant did not have any information related to the work on cases above. After an investigation by the Ombudsman, during the reporting period has been received from the court a constant response that the cases are in the process, while in most of these cases has come to change the judge and at the end of the response is written the name of the judge, who is assigned to the case in question. Likewise, in court's response it is stated that due to the large number of cases received, the case in question will be processed in a very short period of time. Ombudsperson proceeds with these cases, since according to investigations conducted by OI, it is seen clearly the unwillingness of the judiciary in Kosovo, particularly of SCSCK, to guarantee to the citizens the right to a fair and impartial trial.

The Ombudsperson received 2014 complaints of citizens regarding the delay of the procedure for receiving the court decision in their native language even though the Constitution of the Republic of Kosovo guarantees its use. In this context, judicial institutions have made significant progress, although it is still necessary that they provide a greater number of interpreters and court translators. This issue is still not resolved properly, regardless of previous initiatives, which have been proven unsuccessful.

The correct cooperation between SCSCK and Ombudsperson should be emphasized, in terms of undertaking procedural actions, following the intervention of the Ombudsman, so that the complaints of complainants are processed in a short period of time.³⁵⁴

The Ombudsperson is of the opinion that the reasonability of proceedings must be assessed in terms of special circumstances related to the cases filed in court. However, the small number of resolved cases, in comparison with those received by court, due to the small number of judges and the large number of claims received in Kosovo courts will not contribute to solving this problem. This problem should be addressed, not only within the framework of the law but also in the way of establishing the best policies for their implementation. If at the shortest time are not undertaken concrete measures, such as increasing the number of judges and associates, as well as increasing of the court efficiency, then it will be concluded that the number of unresolved cases will be

³⁵⁴ OI A. no case 570/2013. *The complaint relates to the claim for land restitution, which the complainant has submitted to the court in 2008. In addition to the judicial preliminary hearing, which was held in 2011, the court has not taken any further action on the claim of the complainant. The Ombudsman, after conducting the investigation, contacted the court, requesting information on the abovementioned matter, and in a short period of time received a reply regarding the time of processing the case, and for this case informed the complainant in a timely manner. Regarding the complainant's case, the judge has received an order by which has requested from complainant to correct the claim in the first set hearing, given the fact that the two claimants have passed away in unreasonable delay of proceedings by the court. The complainant acted on orders of the judge and the next session the decision on the case was made.*

increased.

Having into account this situation and the increased number of complaints due to the delay of proceedings after filing the claim, the Ombudsperson concludes that the relevant institutions have taken the necessary measures, although there have been many projects, strategies, plans, and recommendations of the Ombudsperson in the previous reporting period, to ensure a trial within a reasonable period of time as provided in the Constitution and international instruments for the protection of human rights.

Recommendations:

Kosovo Judicial Council:

- *In order to increase the efficiency of the court, legal actions / initiatives that are appropriate and effective shall be taken, that the right to a fair and impartial trial is not only of a formal character, but to be applicable in practice.*
- *Shall be undertaken necessary measures for implementation of applicable rules in force, in order the court avoids procedural delay of cases, which then lead to their statutory of limitation.*
- *Submission of court decisions of the parties in due time, within the legal time- limit and in their own language, according to the Law on the Use of Official Languages, and in accordance with the Constitution of the Republic of Kosovo.*

2.28 The rights of the accused

Everyone, who is accused of criminal offense, shall have the rights provided by the Constitution,³⁵⁵ the Criminal Procedure Code of the Republic of Kosovo (CPCK),³⁵⁶ as well as international instruments directly applicable in Kosovo.³⁵⁷

During this reporting period OI has received 151 complaints, claiming that the rights of the accused have been violated excluding here violations on fair and impartial trial, which often interconnect with each other. Investigations have been initiated for 35 cases, while other 117 remained cases have been qualified as inadmissible.

The Ombudsperson has raised concerns in previous annual reports and special reports about the violation of the rights of the accused. Cases of violation of the rights of the accused are reoccurring and they do not only represent concerns for the Ombudsman, but also constitute serious violations of human rights.

Prolonged and unjustified detention continues to be a challenge for the criminal justice system. EULEX took over three cases, since the local judiciary had not finalized the legal proceedings within the legal time-limit of detention.³⁵⁸

In one of the cases presented to the OI during the reporting period, the party complained about the violation of the rights of the accused under Article 30 of the

³⁵⁵ *Constitution of the Republic of Kosovo*, Article 30

³⁵⁶ *Criminal Procedure Code of the Republic of Kosovo*, No. 04/L-123.

³⁵⁷ *Ibid*, Article 22.

³⁵⁸ *Kosovo Progress Report 2014*, pg.2, “Unjustified prolonged detention continues to be a challenge for the criminal justice system. EULEX took over three cases as the local judiciary did not finalize proceeding within the legal time frame for detention”.

Constitution and Article 5 of the ECHR. The party complains about extended detention. He believes in the trial, which is being conducted against him, his rights as the accused are being violated. He has been in detention since 25 August 2010.³⁵⁹ The rights of the complaining party with regards to detention duration are set out in Article 190, paragraph 4 of CCPK, which state a maximum detention of 18 months, until the establishment of a criminal case and this right has not been respected by the court. Since the complainant is in detention for more than four years without a final court decision, the Ombudsperson concluded that in this case violation of the right guaranteed by the Constitution and international instruments is constituted.

CCPK, Article 5, paragraph 1, stipulates that: *Any person charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time*", while in paragraph 2 of the same article the court obligation is provided "[...] *the court shall be bound to carry out proceedings without delay and to prevent any abuse of the rights of the participants in proceedings*" with the sole purpose that *"Any deprivation of liberty and in particular detention on remand in criminal proceedings shall be reduced to the shortest time possible"* (paragraph 3 of the same Article).

The rights of the accused are also guaranteed by the international instruments of human rights directly applicable in the Republic of Kosovo, as the International Covenant on Civil and Political Rights and the ECHR, which, in case of conflict, have priority over provisions of laws and other public institutions.

OI noticed that in many cases, a detention does not contain sufficient justification. In most cases, the courts have failed to make causal link between the charge and the deprivation of liberty in concrete cases. This constitutes an important element for assessing the legality under the jurisprudence of the ECHR. These cases are contrary to the requirements of Article 5 paragraph 1 of the ECHR. Likewise, according to the same Article, the cases in which the decision on detention does not contain legal ground, fails to provide sufficient protection against arbitrariness.

OI notes that to consider whether or not a specific issue of delay of proceedings, the courts cannot treat this as abstract matter, but the circumstances must be assessed in each specific case and there is never a fixed period applicable to each case without exception. Such assessment should include reference to each fact and consider the personal circumstances of the individual to justify his detention.

Another important matter in our criminal system is also the implementation of alternative measures, which so far have not found wide application. The jurisprudence of the ECHR states that when the courts decide on the release or detention of an individual, the authorities are obliged to consider alternative measures to ensure the presence of the individual in trial.³⁶⁰

In cases of illegal detentions, when the detained person is released and declared innocent by law, he or she is entitled to compensation, due to deprivation of liberty. The remuneration rate according to the decision of the Secretariat of the KJC, the "general criteria for compensation of damage to persons convicted or detained without any reason", dated 25 August 2008, includes a fixed amount per month. The Ombudsperson states that Article 5, paragraph 5 of the ECHR has not determined the amount of compensation. ECHR jurisprudence has determined that compensation which is

³⁵⁹ OI, case A. no. 442/2014.

³⁶⁰ *Khudoyorov v. Russia*, § 183; *Lelièvre v. Belgium*, § 97; *Shabani v. Switzerland*, § 62. [release may be conditioned by the guarantee to ensure the presence before the court].

neglected and not proportional with seriousness of violation is not in compliance with the requirements of Article 5, paragraph 5 of the ECHR.³⁶¹

The Ombudsperson draws the attention of the authorities that the legal ground for compensation is applicable from 25 August 2008 and since then it has not been changed and was never reconsidered on the basis of the above. It is therefore necessary to review and adapt to the required standards of Article 5, paragraph 5 of the ECHR.

Another issue that has been raised in previous reports and continues to be a concern, is receiving numerous complaints regarding dissatisfaction with the defense offered, especially by lawyers appointed ex officio, but also those who were elected by the parties.³⁶² The Ombudsperson considers that it must provide an effective mechanism to KCA, so that irresponsible legal representatives (attorneys) are seriously investigated and brought to justice to face the consequences for violating the law. The effective functioning of this mechanism will help in the discipline of lawyers and increase their professional accountability.

Protection system of human rights highlighted the need for immediate implementation of ECHR case law, as provided by the Constitution of the Republic of Kosovo (Article 52). The fact that criminal courts in Kosovo in their decisions ignored and did not respect this constitutional obligation, is concerning for the entire judicial system. This situation urges the need for radical reform in the approach of the courts to international standards and constitutional obligations. The Ombudsperson considers that the responsible authorities, including KJC and KJI, should urgently provide adequate training and appropriate reforms in advancing the protection system of the human rights.

Recommendations:

- *Courts shall impose alternative measures, while only in necessary and legally based cases they impose detention as a means of securing the accused.*
- *Courts shall appropriate reasoning of decision for extension of detention.*
- *KJC shall reconsider the amount of compensation for illegal detention cases.*
- *Kosova Bar Association shall provide a higher quality of legal aid and impose disciplinary measure against lawyers who violate the Law on the Bar and the Code of Professional Ethics of Advocate.*

2.29 Right to legal remedy

The right to legal remedies against judicial and administrative decisions, which affect the rights and interests of citizens, is one of the fundamental rights guaranteed by the

³⁶¹ *Cumber v. the United Kingdom*, Commission decision; *Attard v. Malta*.

³⁶² OI was informed by the KCA that during 2014, the Disciplinary Commission of Investigation has received 72 complaints, of which 3 are dismissed due to statutory of limitation, two were rejected due to the withdrawal of the parties, 10 are pending, 15 are under investigations, 42 are rejected.

Constitution,³⁶³ as well as international instruments directly applicable in the Republic of Kosovo.

International Covenant on Civil and Political Rights, Article 2, paragraph 3 obliges states: *"to ensure that any person, when they are violated the rights and freedoms recognized herein, have the right to an effective legal remedy even when the violation is done by persons while exercising their official functions"*.

In criminal court proceedings, remedies and time-limits for the use of complaints such as those against detention, appointment or extended detention on remand, appealing to the court decisions and exercising extraordinary legal remedies, are regulated and determined by law.³⁶⁴ Legal remedies to challenge detention on remand are also defined by international instruments.³⁶⁵ Likewise, the right to a trial within a reasonable time is guaranteed by the relevant local legislation and ECHR.³⁶⁶

The timeline for conduct of proceedings and rendering decisions on administrative cases is defined by the Law on Administrative Procedure.³⁶⁷

2.29.1 Individual cases submitted to OI

OI has received 263 complaints during 2014, claiming that the right to legal remedies was violated. There is an opened investigation on 52 cases, while others are qualified as inadmissible. The most common causes of complaints filed in OI, are due to violation of their rights to legal remedies and have been filed against the courts, ministries, municipalities, Kosovo police and publicly owned companies. Complaints are filed due to the failure of complaints review within the legal time limits and the failure to execute judicial and administrative decisions.

In one of the cases submitted to OI during the reporting period, the party complains against The Assembly of the Republic of Kosovo, as he was disqualification from competing for a highly competitive position as member of the Independent Media Commission (IMC), by denying him the right of use of effective legal remedies, without being given any clear legal explanation on why he was eliminated from the competition.³⁶⁸

³⁶³ The Constitution of the Republic of Kosovo, Article 32 *"Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law"*.

³⁶⁴ *Criminal Procedure Code no. 04 / L-123*, adopted by the Assembly of Kosovo on 13 December 2012.

³⁶⁵ ECHR, Article 5, paragraph 4 "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

³⁶⁶ ECHR, Article 6, paragraph 1. "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

³⁶⁷ *Law no. 02 / L-28* of the Administrative Procedure, Article 130, paragraph 1 stipulates that "The administrative appeal shall be done in the course of 30 days since the day". Article 130, paragraph 2 defines " In case of failure to undertake any action by the administration (non-issue of act or complete silence), the administrative appeal shall be done in the course of 60 days since the day of submission of request for commencement of administrative proceeding".

³⁶⁸ OI, A. No. case. 155/2014. The complainant alleges that on 28 February, 2014, through the official electronic mail, is informed by the ad hoc parliamentary committee that on 4 March 2014, at the offices of the Assembly of Kosovo is scheduled interview for the position of member of the IMC, for

On 22 April 2014, the Ombudsman, through an official letter, asked from the Secretary of the Assembly and the Chairperson of the ad hoc Committee, to be informed about actions taken or planned to be undertaken in the future, so that a response is returned to the complainants within the legal time-limit. In this letter, the Ombudsperson stated that "Setting from the content of legal opinion of the Anti-Corruption Agency (ACA), the complainant's disqualification from the competition without being given the opportunity to state for which position he will determine himself, is in contradiction to the requirement of ACA legal opinion ". On 21 May, 2014, Secretary of the Assembly informed the Ombudsperson through an official letter for the development of procedures of the ad hoc Committee for the selection of candidates for members of the IMC, however, no additional clarification was provided on the Ombudsman main query, in providing clarification on the reasons of elimination from the competition.

The Ombudsman, based on legal analysis, after ascertaining the violation of human rights to the detriment of the complainant, drafted a report with recommendations by recommending that: (a) the Assembly must take into account and respect the legal opinions and the opinions of the competent agency, in this case the ACA, especially when they require such opinions; (b) Citizens who file submissions to this body a response must be returned within the time-limit,³⁶⁹ so they are not denied the right to use effective legal remedies against its decisions, as this is guaranteed by the Constitution to the citizens ; (c) Secretariat of the Assembly advises the relevant committees to take into account human rights and to respond duly to the requests / complaints of citizens and in accordance with applicable law.

Complaints submitted regarding the right to judicial protection of rights were filed against KJC, courts of all levels, as well as SCSCK.

Citizens' complaints addressed to the ministries, administrations and municipalities, are mainly related to failure in responding to their queries - administrative silence, which include issues of various fields: employment relationships, property issues, housing, and access to public documents.

The Ombudsperson conducted investigations in relation to allegations regarding violation of the right to legal remedies in compliance with constitutional competences, by contacting through letters and direct meetings with responsible authorities and after ascertaining the violation of the right to legal remedies, it has requested that recommendations are implemented in order to avoid violations of human rights guaranteed by the Constitution and law.

which position the complainant applied. On 4 March 2014, a few hours before starting the interview, the complainant is informed by telephone that he cannot attend the interview, due to a legal opinion of the ACA, which states: "If the applicant fails to be selected and continues to exercise these two positions is considered to be incompatible and in contradiction with Article 16, paragraph 1 of Law no. 04 / L-051 on Prevention of Conflict of Interest in Exercising Public Functions. On 5 March 2014, the complainant addressed the President of the Assembly of the Republic of Kosovo and the Head of the ad hoc Committee with a written request for issuing a written explanation regarding the reasons for his disqualification from further competition for the position of the member of IMC , but he never received any reply.

³⁶⁹ *Law no. 02 / L-28 on Administrative Procedure*, Article 109, point a), states that: "The obligation to notify interested parties, must be notified for all administrative acts by which are made decisions on their claims, or legitimate interests or rights of the parties are granted, abolished, expanded or limited, or their enjoyment is otherwise limited". Article 112 of the same law provides that "the administrative acts shall be made public 8 days upon its issuance, unless otherwise specified under the law."

Recommendations:

- *Institutions of Republic of Kosovo at all levels, administrative bodies and courts, should respect the right to legal remedies so that citizens can exercise this right according to law.*

2.30 Relations between Ombudsperson and Constitutional Court

The Constitutional Court is the final authority in the Republic of Kosovo for the interpretation of the Constitution and the compliance of laws with the Constitution and its decisions are binding to the judiciary and all institutions of the Republic of Kosovo.

Ombudsperson is legitimized by the Constitution of the Republic of Kosovo as an authorized party to address to CCK when it considers that rights and freedoms are diminished or infringed upon the issuance of a legal norm of general character. Ombudsperson continuously follows the work of the Court, as well as the practice of the ECHR and in many cases it refers to decisions of these two courts as regards to recommendations, opinions and suggestions.

It is important to underline that the Ombudsperson is the authorized party to raise issues before the CCK on the basis of Article 113, paragraph 2 of the Constitution, on the matters relating to compliance with laws, decrees of the President or the Prime Minister and regulations of the Government as well as compliance of municipal statute with the Constitution.

2.30.1 Amendment of Law on Constitutional Court – removal of restriction

In last year's report Ombudsperson emphasized that there should be open discussions about the need to amend the Law on the Constitutional Court in order to change the 6 months period determined as the period within which the Ombudsperson can file cases to CCK. The Ombudsperson considers that this restriction "*[...] (6) months from the entry into force of the challenged act*" is disproportionate. This limitation period cannot be supported by the experience so far in the Republic of Kosovo and the region experiences with legal and political similarities, nor the experience of other European countries, which are distinguished for legal and political stability. Consequently, the Ombudsperson proposes and requests from the Assembly of Kosovo to change this legal norm, i.e Article 30 of the Law on Constitutional Court, by removing all restrictions on the Ombudsperson.

Ombudsperson of the Republic of Kosovo is the only non-political and independent institutional person which enjoys the right of initiative to control the constitutionality of the relevant acts. When it comes to cases raising the constitutionality of laws and other normative acts, the Constitution of the Republic of Kosovo does not limit the Ombudsperson in material terms. However, the Law on the Constitutional Court, by determining such a time-limit for raising the constitutionality cases of laws, represents an unnecessary procedural and rigid restriction. As such the Ombudsperson through a

report which consisted of recommendations asked the Assembly to undertake actions in terms of amending the law in question.³⁷⁰

We consider that the right to raise cases of constitutionality of the laws and other normative acts, particularly when these could have an impact on fundamental rights and freedoms, cannot be limited in terms of time.

2.30.2 Referral of President's Decree to Constitutional Court

On 9 October 2014, the Ombudsperson found that the President of Kosovo with the issuance of Decree no. DKGJK-001-2014 dated 31 August 2014, had violated the Constitution, by confirming the extension of the mandate of international judges at the CCK, without the proposal of the Assembly of Kosovo and requested the Court to annul the same, by declaring it anti-constitutional. Through an extensive and detailed analysis, the Ombudsperson explicitly expressed its position that the delegation of competence *for appointment* of the judges of the CCK could not be interpreted in order to understand the delegation of the competence *for proposing* them.³⁷¹ These are two separate competences, and in the absence of explicit delegation of competence for proposition under the international agreement between Kosovo and the European Union, it remains as the Assembly's competence. While the three international judges are not proposed by the Assembly, the extension of their mandate by President Jahjaga should be revoked as unconstitutional act. The Ombudsperson found that the Assembly cannot be circumvented by such a simple action of the President.

However, on 13 November 2014, the Ombudsperson received from CCK the ruling on the inadmissibility of the application related to the Decree of the President of the Republic of Kosovo no. DKGJK - 001 - 2014, dated 31 August 2014, for confirmation of the extension of the mandate of international judges at the CCK. The ruling of CCK would be considered as final word in terms of legal hierarchy, had it not be for the evidence which surfaced later on which establishes reasonable evidence that the ruling had been falsified, by hiding the absence of quorum.

A detailed analysis of CCK Ruling for this case outlines the professional legal flaws and almost complete lack of justification in this Ruling. In substantive terms, the most obvious example of lack of justification occurs in Court's claim that the decree of the President is in line with what is required in the content of the international agreement. The Court's claim is not accompanied by any argument, or citation of specific provisions of the agreement, in which claims to be based on, and does not respond to any of the arguments submitted by the Ombudsperson over this point.

The case referred to CCK, through a referral by the Ombudsperson, consisted precisely of the question if the deviation of the Decree of the President from the relevant constitutional provisions, is actually in line with what is required in the content of the international agreement. The Ombudsperson has contested this point by a long and detailed legal explanation in his referral. The fact that the Court has decided to address the key question of a case by only one short paragraph, without justification, without citation, and without responding to any of the applicant's argument on this question,

³⁷⁰ OI, Report with recommendations *ex officio* A. no. 171/2014.

³⁷¹ You can find submission of Ombudsperson addressed to CCK in www.ombudspersonkosovo.org

indicates a concerning poorness of legal elaboration, and neglect to the standards of fair and impartial trial.

Shortly after submitting the referral to CCK by the Ombudsperson, in the show "*Life in Kosovo*" an internal memorandum of the EULEX Mission was made public, written by a Legal Adviser of EULEX, which was addressed to the Head of the Mission. According to this memorandum, the President of CCK was consulted by EULEX on the question of this case, by expressing his opinion that ignoring the Assembly in the appointment process of the three international judges would not be a constitutional violation. Whereas, on 10 October 2014, *Pristina Insight* magazine published a full copy of the memorandum, which expressly states that: "*The President of the Constitutional Court informally agreed to this procedure [to appoint three international judges], and he said that there is no need for the engagement of Assembly [.]*"³⁷²

It should be emphasized that, even though the EULEX memorandum shows that the President of CCK Mr. Enver Hasani agreed only "*informally*" to ignore the Assembly, the memorandum also shows that Mr. Hasani was consulted exactly in his capacity as President of the Constitutional Court, not only for his professional opinion. The only way he is identified in the memorandum is based on his official function, "*President of the Constitutional Court*". Thus he was consulted only in that capacity by EULEX and he has given his opinion explicitly as President of the CCK. Consequently Mr. Hasan has played an active role in the approval of the procedure followed in the appointment of these judges and is obvious that his bias in assessing the constitutionality of that procedure which was being challenged by the Ombudsperson can be put into question. However, instead of being reserved from the participation in the proceedings of the case KO155/14, he had nominated himself as part of the review panel of the case.³⁷³

In the framework of a legal, intellectual and institutional obligation in reasoning of decisions, the CCK is associated with verifiable standards. This obligation of the Court corresponds to the right of the applicant to speak on the case. The Ombudsperson, as applicant in this process, has the subjective right to request from the Court, not only to take a justified decision, but that in the justification of the decision to apply the normative text legitimized in democratic manner. Faced with such a ruling, the Ombudsperson has not only the right, but has also the duty, to draw public's attention and open public debate on the poor legal and professional performance of the highest court of the country on the case of the Decree of the President.

2.30.3 Finding preparatory works for the Constitution of the Republic of Kosovo

Non-finding of the preparatory documents (*travaux préparatoires*) of the Constitution of Kosovo was also concerning for the Ombudsperson, documents that are irreplaceable, which could be used to help resolving the ambiguity in the text of the Constitution and to understand the purpose of its makers. CCK constantly demanded them for over a period of more than four years, to find and put them to use, but they failed. Responsible institutions, which had in possession these documents, for reasons completely unknown, have kept these documents hidden from the public and relevant institutions. Non-

³⁷² *Pristina Insight*. Issue No. 143, October 10 - 23.

³⁷³ See in: http://www.gjk-ks.org/repository/docs/KO155-14_SHQ.pdf (29.12.2014).

responding, or let us call it their hiding, is the most significant case of denial of access to public documents in the Republic of Kosovo. Although the media reported that these documents are archived and "without owner" in a premise of the Republic of Kosovo, they were not provided even for consultation, even to CCK of the Republic of Kosovo, from their "owner".³⁷⁴

Publication of this concerning information in media, as well as unsuccessful requests of the Constitutional Court to consult these documents for cases under review, has forced Ombudsperson to open *ex officio* case with five main purposes: (1) to conclude if the reporting is based on the existence and location, respectively archiving of these documents, in the premise of the Government; (2) to investigate whether any institution or state authority acted contrary to Article 41, part. 2 of the Constitution, which provides that "*public [d]ocuments which are kept by institutions and state bodies, are public [.]*"; (3) to ensure that these documents are sent without delay to the CCK, in accordance with the continuing requests of this Court; (4) to enable access to the *travaux préparatoires* of Ombudsperson Institution during its work, and (5) to publish and maintain these institutional and historical evidence of the establishment of the Republic of Kosovo, be it for today's citizens, as well as for future generations.

After a persistent research and successful communications with the responsible offices in the Assembly of the Republic of Kosovo, the Presidency, the Government of Kosovo and the Kosovo State Archive, the Ombudsperson, on 5 December 2014 has received official confirmation that the Office of the Prime Minister, who possessed all documents sent them in ASAK on 24 November 2014, ten days after the first request by the Ombudsperson.

No one, of course, so far has been held legally accountable for the illegal "loss", "ownership", or withholding these documents from relevant institutions, primarily CCK, when they were asked publicly on various occasions. This shows four-sides, and once more, legal irresponsibility of the highest ranking state hierarchy of the Republic of Kosovo.

2.30.4 Non-execution of Constitutional Court decisions

The recommendation of the Ombudsperson of year 2013 addressed to the Government of the Republic of Kosovo and PAK to implement the decision of the CCK, dated December 7, 2010, no. REF : AG 75/10 to compensate the former employees of Steel Factory - IMK Ferizaj remains unexecuted and consequently the decision of the CCK too. Both institutions, the Government of the Republic of Kosovo, as well as PAK, remained and continue to remain silent about this.

In relation to this case, the Ombudsperson has never received any response from the Government, nor by the agency mentioned, although the Constitution of the Republic of Kosovo obliges all institutions of Republic of Kosovo to respond to the requests of the Ombudsperson and implement its recommendations. Non-execution of court decisions by the institutions and the failure of the competent authorities of the Republic of Kosovo to ensure effective mechanisms for the enforcement of judgments without

³⁷⁴ "Archive of drafting the Constitution in the premise of the Government and 'without owner,'" *Kosova Press*, 1 October 2014 (<http://www.kosovapress.com/sq/nacionale/archive-of-drafting-of-constitution-in-premise-of-government-and-without-owner-26024/>).

undue delay constitutes violation of human rights, and diminishes public's confidence about justice prevail and the state of the rule of law.

Recommendations:

- *Law on the Constitutional Court, no. 03 / L-121, Article 30 respectively, should be amended and supplemented by deleting entirely the time limit for disputing the legal acts/submission of referrals to the Constitutional Court by the Ombudsperson.*
- *The Government of the Republic of Kosovo and Privatization Agency of Kosovo should undertake immediate measures to execute the judgment of the Constitutional Court, Ref. nr. 75/10 AG, as per case no. KI 08/09, without any further delay.*

2.31 Illegal investigation of the OI by Prosecution Office -

Basic Prosecutor's Office in Prishtina has approximately 30 months that has opened investigations based on an anonymous reporting against OI, although the exact date of the opening of the investigation it is unknown, since the OI has not received any official document for opening investigations by the prosecution. OI has been notified on this fact for the first time when the investigation police has come to the OI Headquarters and the officer in charge demanded official documents, based on a document issued by the Municipal Prosecutor's Office (now the Basic Prosecutor's Office in Prishtina, no. 2302/2 2012, of 04.07.2012, which authorized the Financial Investigation Unit – Department of Economic Crime investigation of Police of Kosovo, to undertake investigative actions.

OI, based on its constitutional mandate, to implement the law by all public authorities, has cooperated with police investigators, by providing all documents requested by them, respecting their competences, always with the aim of investigating the alleged suspicion of financial misuses and faster completion of the investigation.

Despite the willingness and cooperation of OI, to help the investigating bodies to investigate on the basis of anonymous reporting for financial misuses, initiated investigations have never been officially completed.

Prolongation of the investigation by the Prosecutor's Office for more than 30 months, the transition from primarily financial investigations to the investigation of employment relationship, not informing of the OI in relation to initiation of investigations, suspected persons and actions, the lack of a decision of the Prosecutor's Office to initiate investigations, put into question the purpose of these investigations and the initiator/s as well as legal treatment of these investigations, which obviously are accompanied by legal violation of CPCRK, to the cost of the OI. These investigations have put under direct pressure the work and exercise of legal mandate of the OI as an independent constitutional institution, in protection of human rights and freedoms.

2.31.1 Description of initiation of investigation – Case evidence and facts

OI has found out for the first time that investigations had been opened by the Municipal Prosecutor's Office (now Basic Prosecutor's Office) in Prishtina against OI, according to the authorization PN.nr.2302 / 2012 dated 04.07.2012. Investigations initiated **on the**

basis of anonymous reporting concerning to possible violations and **financial abuse** in OI, without mentioning concrete names of suspects.³⁷⁵

OI has submitted all required documents; audit reports, payrolls, decisions of positions, different invoices according to the request of investigating officers, etc.

Following the first request, with a second letter, of 11.02.2013, the investigator of DECCI FIU requires from OI additional documents, reports of the Independent Oversight Board for 2011; Tender for the supply of oil for 2010; contracts for the supply of mobile phones for 2010; contracts for information technology services for the year 2010; contracts for hotel services for the year 2010; a copy of the tender for the supply of beverages for the international conference of the 10th jubilee of OI, as well as all contracts and expenses related to this conference.³⁷⁶ All these documents have been submitted on time.

In 2013, the Kosovo Police, Financial Criminal Investigation Unit, has invited by phone, three officials for interview, while in 2014 has invited 8 officials of the OI, some of them were even called two to three times to the police station in Prishtina, regarding these investigations.

OI was never informed that in which capacity these officials have been invited to make statements, because there was no official written invitation. Also, it wasn't clear to the OI whether these persons are suspects of financial abuses or are invited as witnesses or explanatory of documents.

In a letter dated 15.11.2013, the State Prosecutor's Office Ms. Merrushe Llugiqi issues an Order, which extended the investigation and requests from the OI to give to the investigating police officer in charge of the case a copy of the files of 12 officers employed in OI, to investigate suspicions concerning the establishment of employment relationship and their work promotions in OI.³⁷⁷

OI has so far not received any notification or decision for extension of investigations, from one area to the other, from Prosecutor's Office, where it moved from **financial misuse** investigations, which was developing for more than 17 months to the **employment and promotion** investigations.³⁷⁸

Among the requested files there are officials who are employed in the OI since 2000, respectively since the establishment of the OI by OSCE, when this institution has been led by the OSCE. These officers have 13-years of experience in OI, and now, in 2013, the Prosecutor's Office is investigating the way how they have been employed. In this way, the dilemma arises, who is in charge and can be requested criminal liability for the manner of employment made by the OSCE?

Among the employees for whom files were requested, there are persons who are public appointee by the Assembly of the Republic of Kosovo. Without having it

³⁷⁵ The request of Kosovo Police - Financial Criminal Investigation Unit, dated 30/10/2012, DECCI / P / 122/12, Reference NDH-06 / 1-02 / 1-2 / 391-2012.

³⁷⁶ Request of Financial Investigation Unit, of Kosovo Police dated 11/02/2013, DECCI / P / 122/12, Reference NDH-06 / 1-02 / 1-2 / 42-2012.

³⁷⁷ Order no. PPN.I.nr.2302 / 2012 dated 11.01.2013, Department for Serious Crimes of Basic Prosecutor's Office in Prishtina, OSCE employment investigations.

³⁷⁸ Ibid.

clear/explained the issue of their immunity, can these persons be investigated without notifying the Assembly of Kosovo?³⁷⁹

Since the OI did not receive any decision on investigation expansion by the Basic Prosecutor's Office in Prishtina, it is unclear to him if the officials, whose files were requested, are suspects in serious criminal offenses?

At the meeting held on 9 December 2013, the Ombudsperson informed Chief State Prosecutor on initiated investigations and requested to be informed about investigations that are taking place against the OI, as well as informed on the legal omissions by the Prosecutor's Office to the detriment of the OI and requested their elimination.³⁸⁰

Executive Director of the OI was invited by FIU DECCI in Kosovo Police via telephone to a conversation-interview on 4th of July 2014. In the process of conversation, only verbally, without providing any official document, Executive Director of OI was informed that he is a suspect in investigations conducted against the OI, for criminal offense: Misuse of official position or authority. In this conversation no other names of any OI officers are mentioned.

Following this verbal notification of the Kosovo Police - FIU-DECCI, OI having in consideration that the hiring of the institution's legal advisors would present a conflict of interest has decided to hire a defense counsel to follow the procedures and to protect the interests of the OI in this criminal case.

The defense counsel hired by OI, through a letter, on 25 of July 2014, requested from Basic Prosecutor's Office in Pristina - Serious Crime Department, respectively from Chief Prosecutor Mr. Imer Beka and Case Prosecutor Ms. Merrushe Llugiqi, to "*be informed on what stage are the eventual investigations, and if deadline from Article 157 of this Code expired, we request to take the decision to terminate the investigation.*" Neither defense counsel nor OI, respectively Executive Director of the OI, have ever received any response.

The Ombudsperson, on 26 of December 2014, at a press conference organized at the end of the year, has publicly asked the Chief Prosecutor of Basic Prosecutor's Office in Prishtina, Mr. Imer Beka, to shed light on the fate of the case and process and on opened investigations against OI 30 months ago.³⁸¹ On the same day, Chief Prosecutor, Mr. Imer Beka when asked by KALLXO.COM an online portal for the public statement of the Ombudsperson about secret investigation of Basic Prosecutor's Office in Prishtina against OI, stated that "*The case is under investigation and it is related to individuals*

³⁷⁹ Ibid.

³⁸⁰ Ombudsperson meeting with Mr. Ismet Kabashi, Chief State Prosecutor, and Mr. Imer Beka, Chief Prosecutor of Basic Prosecutor's Office in Pristina, on 9 December, 2013. Chief Prosecutor Kabashi announced that he is not much informed about what it is all about, but based on the case number it is seen that it is not about an opened case, but it is about preliminary procedure for collection of data based on reports received for potential misuse. Further, he stressed that these cases (anonymous) are taken prosecution itself with reservations however on the basis of the law are obliged to act. The Ombudsperson made known to the Chief Prosecutor that he is interested on the final results of their investigation and conclusion of them as per the request of law, on the contrary open investigations outside the legal time limits are a constant pressure to OI associates and the work of the institution and attempts for intimidation and blackmail with political purposes. Likewise, from Chief Prosecutor was requested that the investigation shed light on the issue up the end.

³⁸¹ See in: <http://www.telegrafi.com/news/sami-kurteshi-says-that-kosova-failed-on-2014-bad-dog-brings-wolf-at-doorstep-2-56010.html>; in: <http://kosovaonline.info/?page=1,3,56355> (30.12.2014).

within the institution, without disregarding the Ombudsperson himself. ³⁸² Since that day, OI has not received any information, document or official notification from Prosecutor's Office in relation to the case.

Even though now that over 30 months have passed from the beginning of the investigation, OI has still not received any official information from the Prosecutor's Office on findings of the investigation, if there is any criminal act or any other illegal action by officials of OI.

2.31.2 Legal ground

Investigations conducted by the State Prosecutor's Office against OI are not developed in compliance with Article 103 and 104 of the Criminal Procedure Code of the Republic of Kosovo (CPCRK), no. 04 / L-123.

Article 103, paragraph 3 and 4 provides that:

“3. Every person against whom the state prosecutor has a reasonable suspicion that he or she has committed a criminal offence shall be named as a defendant in the decision to initiate a investigation. Every defendant named in the decision shall be entitled to the rights of a defendant under the present Code.

*4. If the state prosecutor becomes aware of evidence of the commission of another criminal offence or another suspect during an investigation, the state prosecutor may initiate a new investigation of the new criminal offence or suspects, or may amend the decision of or expand the existing investigation. The state prosecutor shall inform the pre-trial judge about **new or amended decisions.**”*

Article 104, paragraph 1 and 5 provides that:

“1. The investigation shall be initiated by a decision of the state prosecutor. The decision shall specify the person or persons against whom an investigation will be conducted, the date and time of the initiation of the investigation, a description of the act which specifies the elements of the criminal offence, the legal name of the criminal offence, the circumstances and facts warranting the reasonable suspicion of a criminal offence, whether any technical or covert measures of investigation or surveillance had been authorized and the evidence and information already collected. A stamped copy of the ruling on the investigation shall be sent without delay to the pre-trial judge.

5. The investigation shall be conducted only in relation to the criminal offence and the defendant specified in the decision on the initiation of the investigation or in an amended decision.”

2.31.3 Investigation of promotions at work

The Criminal Code of the Republic of Kosovo (CCK), in Articles 221, 222 and 223, criminal offenses against rights in employment relationship, in no legal provision provided states that promotions at work are criminal offense.

The employment in the Ombudsperson Institution is also made in compliance with the Law on Civil Service and in all cases of employment for managerial positions were present representatives of the Independent Oversight Board of Kosovo (IOB). In all

³⁸² See [in:http://live.kallxo.com/sq/MTL/Ombudsman-Wants-to-know-why-he-is-being-investigated-3-877](http://live.kallxo.com/sq/MTL/Ombudsman-Wants-to-know-why-he-is-being-investigated-3-877) (30.12.2014).

cases of employment, based on the laws and regulations of the civil service, IOB has oversight mandate under the Law no. 03 / L-192, Article 10, which defines the functions of the Board:

“1.2. decides whether the appointments of civil servants at managerial level are made in compliance with the rules and principles set out in the Law on Civil Service of the Republic of Kosovo;

1.3. oversees the implementation of the rules and principles of the civil service legislation.”

Auditor General of the Republic of Kosovo, as the highest constitutional institution of economic and financial control, audits every year the OI and the findings related to financial matter are published in its reports.³⁸³ The Auditor General has never found misuses of funds in OI, which would serve as the basis for a criminal investigation. Besides financial audit, the Auditor General audits every year the new employments for the calendar year of the audit. According to his reports, has never noticed a violation of legal procedures of employment in the OI.

2.31.4 Conclusions of Ombudsperson Institution

As it is noticed also from the description above, OI has cooperated with investigating officers and prosecutor's office at all stages of the investigation, providing them with all the required documents, and has enabled that all of its officials respond to invitations through telephone calls for interview.

Ombudsman finds that investigations, which started 30 months ago, were delayed without any reason and have not been completed yet, despite the interest of OI for shedding light on the allegations of misuse in the OI. Lack of transparency, results and information about the investigations, are classic misuse of legal powers by Basic Prosecutor's Office in Pristina, respectively its Chief Prosecutor, Mr. Imer Beka.

The OI finds that in the absence of ruling by the prosecutor for conducting investigation, as well as notice by who was initiated the criminal charge, stating that criminal initiation is anonymous, according to the first letter of the police, there is a disguise of the purpose of conducting investigations by police officers and the Basic Prosecutor's Office in Pristina. Also, the lack of information against which OI's officials investigation are being conducted; who are accused persons, whether they are public or civil servants; lack of information for which criminal offense or misuse are investigations conducted; lack of legal designation of the criminal offense; lack of an official document that indicates the time of initiation of the investigation, all these are elements that add to the suspicion of misuse of official position by the Chief Prosecutor of Basic Prosecutor's Office in Prishtina, with the knowledge of former State Chief Prosecutor Mr. Ismet Kabashi.

The lack of a decision to expand the investigation to the new criminal offense, employment/promotion, after 17 months of investigation for alleged financial misuse, leaves and cannot be understood otherwise than except that from the investigation of financial crimes no facts are found and evidence of violations, now it is required by all

³⁸³ See in: http://www.oag-rks.org/repository/docs/AuditReport_OI_2010_Albanian_636893.pdf; in: http://www.oag-rks.org/repository/docs/AuditReport_OI_2011_Albanian_872837.pdf; in: http://www.oag-rks.org/repository/docs/AuditReport-OI_2012_Albanian_306104.pdf; in :http://www.oag-rks.org/repository/docs/AuditReport_OI_2013_Albanian_512034.pdf(25.12.2014).

means any violation constituted in OI, even in employment and promotion, which is entirely out of competence of prosecutor's office under CPCK.

Employment and promotion are subject to oversight by independent institutions, IOBK and Auditor General and knowing that promotion is not a criminal offense, for the Ombudsperson leaves a room for suspicion based on objective and legal purposes of this general investigation. Ombudsperson has ascertained that for the investigations initiated by the Basic Prosecutor's Office in Prishtina, OI has not been informed officially, has not received a ruling for opening the investigation and there is no ruling to expand the investigation. These actions are in contradiction with Article 103 and 104 of CPCK-No. 04 / L-123.

Ombudsperson finds that these investigations which have initiate anonymously, followed by requests from the police investigators and prosecution for numerous documents, diverse and of different time periods, with the large number of interviewed (only for 12 conducted interviews by police officers has been informed the OI, and that only from the associates and not officially), the large number of requested files of employees (thirteen), among who are legal advisors, strengthens the suspicion that we are dealing here with ordered and deliberate investigations to obstruct the work of the Ombudsperson by making efforts to intimidate and blackmail him with the opening of investigations for everything, for any time and at any time, without any basis and only to blackmail OI, by keeping him under the pressure of the investigations on suspicion of guilt.

Moreover, the declaration of Chief Prosecutor of Basic Prosecution in Prishtina, Mr. Imer Beka himself that "*the case was at the stage of investigation and it is related to individuals within the institution itself, without disregarding the Ombudsperson himself*", by "*extending investigation*" even against the Ombudsperson as a person, proves for political purpose with elements of criminal offense of Chief Prosecutor of Basic Prosecution in Prishtina, of the Kosovo State Prosecutor's Office against the Ombudsperson, with the purpose of blackmail and political pressure. This is an act punishable by CPCK.

Recommends:

Basic Prosecution in Prishtina

- *To inform OI on the identity of the initiator/s, natural or legal person, and his/her criminal prosecution due to submission of false criminal charge. Conclusion of the investigations and delivery of the ruling on closing the case in relation to raised suspicions for the criminal offense under the reference PPN.no.2302 / 2012, after the expiry of the time limit under Article 159 paragraph 1 of the Criminal Procedure Code.*

State Prosecutor

- *To investigate officers/prosecutors of the case involved in this issue, and to undertake legal measures against all of them, depending on their degree of personal and functional responsibility, up to discharge, conducting investigations in violation of the Code of Criminal Procedure of Kosovo, Articles 103, 104, paragraph 1,2,3 and 9, and to the detriment of the Ombudsperson Institution.*

Chapter III

Cooperation and OI activities

3.1. Cooperation with local institutions

In the framework of continuing commitment to protect and improve the situation of fundamental human rights and freedoms in Kosovo, OI is committed to cooperate with local institutions, civil society and international organizations involved in the promotion and respect of fundamental human rights and freedoms.

OI during 2014 has cooperated with the local institutions such as: Assembly of the Republic of Kosovo, Government of the Republic of Kosovo, different ministries, municipalities, independent institutions and agencies as well as courts.

During the first six months period, actually until early parliamentary elections were held in June 2014, cooperation with the local institutions was ongoing. However, due to the political stalemate resulted after the CCK decision and obstacles in constituting the Assembly and not establishment of the Government for over six months, several obstacles have been noted in OI cooperation with the local institutions. Apart all obstacles occurred, OI has continued its cooperation with the Government of the Republic of Kosovo, but blocking of institutional functioning during 2014 was widely exposed through citizens' behavior, since an obvious decline of complaints addressed to OI by citizens against public institutions has been noticed.

Several meetings have been conducted between OI and the Assembly of Kosovo as well as reports with recommendations has been sent, in the time when institutions were still functioning. It must be mentioned particularly the very good cooperation that OI had with Parliamentary Commission for Human Rights, Gender Equality, Missing Persons and Petitions.

During review of the 2013 OI Annual Report, the Parliamentary Commission for Human Rights, Gender Equality, Missing Persons and Petitions has highly evaluated OI's work, drafting of annual report in a systematic manner and sending it to Assembly within the timeframe defined under the law.

Consultation Council for Communities that functions under the authority of the President of the Republic of Kosovo, in which all communities are represented and it is composed among others, of representatives of associations of communities, where OI has given a valuable contribution in addressing the issues and collection of the information with regard to the situation of the communities in our society.

In the capacity of the observer, OI is a part of the Inter-Institutional Steering Committee for integration of Roma, Askali and Egyptian, established by the Government of Kosovo regarding implementation of the Mid-Term Strategy for Integration of Roma, Askali and Egyptian, 2009-2015.

OI Group for Protection of Children (GPC) with the aim to promote and protect children's rights and capacity building has cooperated with the Council for Protection

and Justice of Children (CPJC) ³⁸⁴ which among other works in setting priorities and requires measures to be undertaken in order to improve the situation with regard to protection and justice of children.

On May 5, 2014 GPC has participated in the round table organized by OGG of OPM in cooperation with UNICEF and EU in Kosovo, in the framework of the project "Justice Reforms for Children". "Justice Indicators for Children" have been presented in this round table, developed and drafted with intention to assist governmental institutions in taking decisions on children's justice system by submitting evidence on the center of policy-making process and providing information with regard to fulfillment and application of relevant standards.

OI also cooperates with the Commissioner on Languages under OPM, under whose jurisdiction is monitoring of compliance of the Law on Use of Languages.

OI representatives of the group of LGBT community rights are also part of the Coordination and Advisory Group at the national level of the Republic of Kosovo under OGG for LGBT rights and through active participation in group meetings have contributed in finding the best ways to protect members of the LGBT orientation against discrimination by the society.

OI has continued cooperation with all levels giving its contribution by providing opinions on legislation initiatives, draft-laws and drafts of by-laws in the area of human rights.

Ombudsperson Institution, by opening two regional offices in Ferizaj and Gjakova by the end of 2013 has come closer to citizens in regard of protection of their rights.

According to OI statistics, the largest number of citizens' complaints during 2014 has been addressed against the judicial however the cooperation compared to last year regarding citizens' complaints has been obviously better. Representatives of OI, in accordance with the mandate, as necessary and request of complainers, have been monitoring court sessions of the submitted cases by the parties.

OI had a good cooperation with Police Inspectorate of Kosovo (PIK), Kosovo Police, CSK and its inspectorate, Office of Special Prosecution regarding investigations of complaints of persons deprived from freedom.

OI is interested to further strengthen cooperation with institutions for the purpose of improving the good governance as well as law enforcement and prevention of violation of human rights.

3.1.1. Comments and recommendations on draft laws and by-laws

Within the responsibilities of the Ombudsperson, defined under the Law No. 03/L-195 on the Ombudsperson, it is also to "*recommend the issuance of new laws in the Assembly,*

³⁸⁴ The Council has been established by the Government of the Republic of Kosovo on 25 August 2011. Mandate of the Council among other it is also in defining priorities and required measures to be undertaken in order to improve the situation with regard to protection and justice of children. OI it is part of the Council in the capacity as observer member.

amendment of the laws which are in force and issuance or amendment of by-laws and administrative acts by the institutions of the Republic of Kosovo".³⁸⁵

OI has received a number of draft-laws and drafts of administrative instructions by the Government and ministries during 2014 and has provided legal comments to all acts received. According to Regulation on Procedures of the Government of the Republic of Kosovo, No. 09/2011, the proposing authority has obligations that for draft-laws and by-laws, except relevant ministries, to consult with OI for the compliance with "...internationally acceptable standards for the human rights and freedoms...".³⁸⁶ The timeframe for sending comments it is 15 working days.³⁸⁷

OI has also provided legal comments on the package of basic laws on human rights (draft law on amending and supplementing the Law no. 03/L-195 on the Ombudsperson: draft law on protection against discrimination and the draft law on gender equality in society), the Ombudsperson has also provided comments on some other draft-laws and drafts of bylaws, which are presented in the table below.

Nr.	Draft Law or Draft of By-law	Sponsor of Draft Law/Draft
1	Draft law on amending and supplementing the Law no. 03/L-195 on the Ombudsperson	Ministry of Justice
2	Draft law on protection against discrimination	Government of Kosovo
3	Draft law on gender equality in society	Government of Kosovo
4	Draft law on amending and supplementing the Law no. 03/L-073 on National Elections in the Republic of Kosovo	Assembly of the Republic of Kosovo
5	Draft law on amending and supplementing the Law no. 03/L-172 on personal data protection	Government of Kosovo
6	Draft regulation on work conditions and compensation in the event of disability caused at work on the prisoners	Ministry of Justice
7	Draft Administrative Instruction on the procedures of parole release	Ministry of Justice
8	Draft Administrative Instruction on functioning of prison's health service	Government of Kosovo
9	Draft Regulation on house order of the Correctional Service	Ministry of Justice
10	Draft law on amending and supplementing the Law no. 02/L-31 on Religious Freedoms in Kosovo	Government of Kosovo
11	Draft law on General Administrative Procedure	Ministry of Public Administration

Table 1: List of documents OI has provided comments and recommendations upon

³⁸⁵ Law no. 03/L-195 on Ombudsperson, Article 16, paragraph 1, item 1.6.

³⁸⁶ Regulation of Rules of Procedures of the Government of Republic of Kosovo, Article 7, paragraph 2.

³⁸⁷ Thereto, Article 7, paragraph 3.

Ombudsperson has also sent to Chairmanship of the Assembly of the Republic of Kosovo and Parliamentary Commission for Legislation, Mandate, Immunities, Assembly Regulation and Oversight of the Anti-Corruption Agency, **recommendation for amending and supplementing the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, Article 30.**

Ombudsperson has positively assessed the practice of sending for consultation to OI the draft-laws and drafts of administrative instructions and other sub-legal acts of the state institutions of the Republic of Kosovo.

Although this presents a considerable burden in terms of profession and time for OI, Ombudsperson reaffirms the readiness to provide professional assistance and support towards this and recommends to all country's institutions to send to OI normative acts for consultation and comments, particularly those which concern in any manner with human rights.

3.1.2. Cooperation with civil society

Part of OI's mandate is cooperation with civil society for the purpose of advancing, protecting and promoting human rights. Having this in mind, OI had very good cooperation with NGOs during 2014.

During the reporting period, OI in cooperation with CDHRF and KRCT, as a Working Group for establishing NPM, has been monitoring CC in Dubrave and CC and DC in Lipjan. In relation to the monitoring, a round table on the topic "National Prevention Mechanism -challenges, opportunities and steps taken forward", was held in September 2014, focusing the published reports of the Working Group on NPM from monitoring activities of these centers as well as activities carried out in the period January-December 2014.

Representatives of OI with their participation have also given contribution in carrying out joint projects of local and international NGOs. Representatives of OI, in cooperation with UNICEF, have taken part in the meetings organized in schools of different municipalities, with regard to implementation of the "Know Your Rights" platform, which has been targeting youth from 16 to 29 years of age in order to learn more about their rights, to access information in relation to complaints system, to seek legal assistance and to report *online* the violations of their rights which will be submitted to OI.

Representatives of OI regional offices in Gjiilan, Gjakova, Mitrovica and Prizren, during October, have participated in the meetings organized in schools, within a project of NGO "Innovations Lab Kosovo" in cooperation with UNICEF, in carrying out "Know Your Rights" platform. OI's leaflet **on children's rights** has been delivered to the students in these meetings.

Representatives of OI have actively participated in the meetings organized with the school students of "Tefik Çanga" and "Jeronim de Rada" in Ferizaj, then school "Andon Zako Çajupi" and "Bedri Gjinaj" in Mitrovicë, within "Together 4 children rights - Child Protection" program, implemented by NGO "Syri i Vizionit" from Peja, supported by NGO "Save the Children", regarding enhancement of children safety at schools.

OI has been cooperating with other NGOs as well, such as “Smile” with which a number of documentaries in different fields of human rights have been produced. Regional office in Graçanicë has also cooperated with NGO “Voice of Roma, Ashkali and Egyptians” (Zëri i Romëve, Ashkalive dhe Egjiptianëve) and NGO “Communication for Social Development and Civil Rights”.

After the NGOs network of Anamorava Serb Community was established (with the support of ECMI), in order to set cooperation with the Secretariat of the network, on the 19 May 2014, a meeting has been organized with Mr. Aleksandar Stojković, Secretary General of the Anamorava Serbian Community Network in Partesh, Gjiilan region, with intention of discussing possibilities of OI cooperation with local NGOs of Anamoravë, concerning citizens' awareness raising on human rights and freedoms.

On the 26 May 2014, in Dragash, a meeting has been organized with representatives of the network of Gorani NGOs - Mr. Veis Sherif, Secretary General of the network and Mr. Fergap Zaimi, member of the Secretariat and member of the Consultation Council for Communities in Presidency.

Representatives of NGOs network of the Gorani community have highly estimated OI readiness and interest for developing cooperation and considered as a good opportunity for citizens' awareness rising on human rights and OI mission.

A good cooperation with LGBT community has been built by OI as well. Regarding to this OI cooperates with NGOs protecting the rights of LGBT community such as NGO “Qesh”, NGO “ISDY”- Institute for Sustainability and Development of Youth.

On 26 June, 2014 Advisory and Coordination Group for LGBT rights, held its next meeting on which participated local institutions, NGOs which protect the interests of the LGBT community in Kosovo, representatives of international institutions in Kosovo.

3.2. International cooperation

International cooperation is one of the areas with particular importance within the general scope of work of OI. Therefore, OI has paid a special attention this year as well to such cooperation, in global level as well as in the European and regional level. In terms of this it must be underlined cooperation with international and national organization of other countries operating in Kosovo.

3.2.1. Participation to international meetings

For the purpose of information and best practice exchange in the field of human rights in the world, OI has taken part in many international, multilateral and bilateral meetings which at the same time served for strengthening cooperation.

From 12-14 March 2014, OI has taken part on the 27th Meeting of the International Coordinating Committee of National Institutions for Human Rights (ICC) ³⁸⁸, held in

³⁸⁸ International Coordinating Committee of National Institutions for Human Rights (ICC) is an international organization of institutions dealing with human rights. It promotes and strengthens these

Geneva. The themes addressed at this meeting were: various issues of the work progress of this organization, implementation of the strategic plan of the ICC; activities undertaken during the year; financial aspects and memberships payment of member institutions; the issue of the requests for accreditation and the report of the meeting of the Sub-Committee for Accreditation and treatment of applications for accreditation from United Nations non-member states institutions, under Article 38 of the Statute of the ICC³⁸⁹, including the application of the Ombudsperson of the Republic of Kosovo³⁹⁰. Bureau of ICC, by approving the Report of the Subcommittee for Accreditation, thus it did reject the application of OI for recognition of status A and being an equal member of the ICC due to formal and political reasons, since Kosovo is not a UNO member and not recognized by UNO, and not for professional and qualitative or legal reasons.

After presentation of the findings and recommendations of this sub-committee, Mr. Kurteshi, Ombudsperson of the Republic of Kosovo, in the discussion session, exposed counter reasoning to the recommendations of the Sub-Committee for Accreditation and defended OI's application for accreditation in ICC, speech which was afterwards disseminated through e-mail to all people responsible for this process. It was expressly requested that ICC priority ought to be human rights prior of political obstacles since this is the primary mission of this organization. Ombudsperson has also made concrete proposal to ICC how to overcome this situation concerning OI membership in ICC.

Additionally, on the second day of the meeting the Ombudsman had several meetings with key people in the Sub-Committee for Accreditation, for the purpose of discussing the issue of accreditation of the OI to ICC, Mr. David Langtry, from the Commission for Human Rights of Canada and Mr. Michel Frost, from the French Commission for Human Rights, who represents the European group in the Sub-Committee on Accreditation. With both of them the Ombudsman discussed the decision of Sub-Committee on Accreditation regarding OI membership to ICC and OI disagreement with such decision, exposing OI opposing reasoning.

During other days of this meeting there were some important panels in which the following topics were addressed: Universal periodic review, Cooperation between National Human Rights Institutions (NHRIs) with parliaments, Women's Rights and National Plans for Human Rights, which resulted with very substantial discussions and best practices that could be followed by many institutions for human rights.

institutions, in order to comply with the Paris Principles and acts as the leader of the promotion and protection of human rights, at: <http://nhri.ohchr.org/EN/Pages/default.aspx> (17.12.2014).

³⁸⁹ Statute of the International Committee of National Institutions for Human Rights (ICC), namely Article 38 thereof, says: "*The Chairperson of ICC, after consultation with other members, may invite any other institution to participate in the work of the ICC as an observer*" at: <http://nhri.ohchr.org/EN/AboutUs/Governance/Statute/ICC%20Statute%20as%20amended%20at%20ICC%2025.pdf> (17.12.2014).

³⁹⁰ Report of the Sub-Committee on Accreditation of ICC, held in Ghana, November 2013, Annex 2, at: http://nhri.ohchr.org/EN/ICC/BureauMeeting/112013/_layouts/WordViewer.aspx?id=/EN/ICC/BureauMeeting/112013/Adoption%20of%20the%20draft%20agenda%20for%20the%20ICC%20Bureau%20me/SCA%20Chairperson%20report%20to%20ICC%20Bureau%20%20Ghana%20Nov%202013.docx&Source=http%3A%2F%2Fnhri.ohchr.org%2FEN%2FICC%2FBureauMeeting%2F112013%2FPages%2Fdefault.aspx&DefaultItemOpen=1&DefaultItemOpen=1 (17.12.2014).

From 17-19 September 2014, OI has been represented in the Annual General Assembly of International Ombudsman Institution (IOI),³⁹¹ which was held in Tallinn, Estonia, with the topic “Ombudsman’s Role in Democracy”. On the second part of the conference the work was focused in four working groups, on the following specific topics:

- *Should Ombudsman promote legislative reforms?*
- *Impact of international and European norms, guidelines and standards on Ombudsman’s work,*
- *Is the Ombudsman competitive with the judiciary, of the state power?*
- *Role of the Ombudsperson in the oversight of State Intelligence Agencies.*

In the first working group was stressed that Ombudsmen’s must be eyes and ears of the parliament and democratic oversight of the state administration. Annual Report it is the best way to present findings on human rights to the parliament. However, in order of fruitful function of this process, cooperation between the Ombudsperson and parliament is of fundamental importance.

In the second working group was presented the experiences of several institutions on applicability of various norms and standards for the human rights. Tendency and needs for changing of the classic ombudsman’s institutions concept as well as towards NHRI was emphasized in this working group and this was a conclusion of almost all participants.

The issue stressed in the third working group was different legal obligations and competencies of Courts and Ombudsmen’s. Ombudsperson cannot provide judicial protection since there are no legal mechanisms on his disposal for implementation of his decisions; this power rests only with judiciary. However, court in one side and Ombudsperson in the other side can cooperate in numerous cases as far as protection of human rights concerns.

In the fourth working group special experiences of few states and Ombudsman’s role in the Oversight of the Intelligence Agency were disclosed. In this aspect a good practice was revealed and shared by Finnish Ombudsperson to all participants, where this issue is legally regulated.

OI delegation has also attended the *World Forum for Human Rights*, which was held in Marrakesh, Morocco, from 27-30 November 2014. More than 6000 participants from 100 countries of the world participated in the forum. The forum aimed to provide a universal platform for dialogue between the governments, national human rights institutions and civil society organizations on the respect, dignity, equality and justice.

Large number of workshops, conferences, trainings and other special events were conducted in the course of the forum on different topics of human rights, such as: gender equality, the rights of persons with disabilities, access to justice, interaction of national human rights institutions with the mechanisms of the United Nations, legislative process and human rights, etc.

In order to further advance international cooperation and networking of institution with other counterparts, OI this year has sought out membership to two other very important

³⁹¹ OI it is an institutional member in the International Ombudsman Institute (IOI). For more go to: www.theioi.org

associations. *Firstly* to the Association of Mediterranean Ombudsmen (AMO) and, *secondly* to the Association of Francophone Ombudsmen.

OI has participated to the eight meeting of AMO, held in Tirana, on the 26-27 June 2014, on the topic “Strengthening of democracy – who are the partners of Ombudsman”.

3.2.2. European cooperation

In terms of international cooperation, OI has a very good cooperation with the European Network of National Human Rights Institutions (ENNHRI), based in Brussels, to which OI is a member since November 2013. ENNHRI is an organization whose mission is to support and empower national human rights institutions in compliance with the Paris Principles.³⁹²

In the framework of the activities of this network, the Academy of National Human Rights Institutions³⁹³ was held for the first time on June 2014, where representatives from 34 human rights institutions from all over Europe have taken part, among others also a representative from OI. This Academy has focused on the practical training of how to address the specific challenges the human rights institutions are facing with as well as on the issue of effective implementation of the mandate for the protection and promotion of human rights. It was also a good opportunity for the exchange of best practices between participants and a good platform for discussion on how these institutions may help one another in their work of common interest.

Main goal of this Academy was capacity building of the participants in 4 main areas: 1) bringing institutions a step closer to compliance with Principles of Paris as far the independence of these institutions is concerned; 2) integration of gender perspective; 3) monitoring of the human rights, including economic and social rights and 4) inter-action with United Nations mechanisms more effectively for the purpose of strengthening enforcement of international standards on human rights at the national level.

OI is also the institutional member of the European Ombudsmen Institution (EOI)³⁹⁴ from which it receives various information in relation with the activities conducted within different European mechanisms, however, it also carries out activities, meetings and conferences attended by all members.

Although, OI has the status of observer in the European Network of Ombudspersons for Children (ENOC), for the reason that for membership a country needs to have membership to the Council of Europe, it has a very good cooperation and participates to all of its activities organized by the network. From 22 – 24 October of this year, the Eighteenth Conference of the Network in Edinburgh was held in Scotland, under the topic “The impact of poverty and austerity on the realization of children and youth rights”. The conference has treated the topics such as: vulnerable children, promotion of

³⁹² Paris Principles for National Human Rights Institutions, see at: <http://www2.ohchr.org/english/law/parisprinciples.htm> (17.12.2014).

³⁹³ About the Academy of National Human Rights Institutions go to: <http://www.spp.ceu.hu/sites/spp.ceu.hu/files/attachment/article/718/nhriacademy-program-june2014-onlineversion.pdf> (17.12.2014).

³⁹⁴ European Ombudsmen Institute (EOI), nē: www.eoi.at

children's rights, child participation, welfare, health, the family and alternative care, as well as violence.

3.2.3. Regional cooperation

Cooperation at regional level is considered necessary and very useful in the work of the Ombudsperson Institutions, especially in terms of sharing best practices through the development of mutual cooperation.

Therefore regional countries in a joint meeting, on May 18, 2010 took a step further in order to formalize all cooperation and activities of the Ombudsperson institutions in signing the Sarajevo Declaration on Cooperation. *The Sarajevo Declaration on Cooperation* was signed by several participating countries of the region such as: Macedonia, Bosnia and Herzegovina, Croatia, Slovenia, and Vojvodina. In light of this initiative another meeting was held on the 10th and 11th of February of 2014, which was attended by representatives of the OI; the purpose of this meeting was to open up discussions about defining the priorities and models of such cooperation, its potential challenges and other potentially important issues which could be deemed as important. On the 4th of April 2014 the OI also signed the Sarajevo Declaration on Cooperation. It is expected that such joint regional activities will be frequent in the future in this regard.

OI is also member of Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE) since 2009, and participates in all related activities. This network has undertaken joint activities in the protection of children's rights. A meeting organized by this network was held on the 05 December 2014 in Belgrade titled "Online Reputation - Protecting the integrity of children on the internet". Deep concerns about increased violence and child abuse in the cyberspace were concluded under a joint statement of all the participants.

Meanwhile, TAIEX has played a useful role in establishing cooperation between Human Rights Institutions, which organized several conferences throughout the year for which is being reported. One of the meetings was held in Albania from 25 to 26 September with a topic "The role of the Ombudsperson Institutions in the process of European Integration", whereas the second meeting took place in Macedonia from 20 to 21 October with the topic "Monitoring of psychiatric institutions for the purpose to protect from torture and maltreatment".

3.2.4. Cooperation with international organizations working in Kosovo

There are a large number of international organizations operating in the Republic of Kosovo, with whom OI has excellent cooperation. Some of them also supported OI with various projects such as on capacity building, promotion and other forms.

This year, the OSCE has supported OI in organizing a training for the entire staff so as to investigate cases against discrimination as well as promote the mandate of the OI against discrimination through a TV advertisement broadcasted on public television twice for two weeks at different time slots.

United Nations Program for Development (UNDP) supported also OI with releasing a TV campaign, which in details explained to the general public the role and the mandate of the OI for the protection and promotion of human rights in Kosovo.

Council of Europe continues to be an exceptional important partner for OI. During the year in cooperation with the Council, OI has conducted several joint actions. This year the representatives of the OI were part of the Steering Council of the Joint Program of the EU and the Council of Europe on the topic "Supporting access to education and intercultural understanding". Participation in another very useful project is expected next year which will be implemented as support to judicial and semi-judicial institutions.

Additionally, a very successful campaign has also been implemented this year with the theme “Know your Rights”, where OI, UNICEF, Innovations Lab and Peer Educators Network joint partnerships. The campaign focused on raising children awareness about their rights, and therefore many direct visits to schools were made, round tables and other promotional activities.³⁹⁵

OI had another very rewarding cooperation this year with the Embassy of France in Kosovo. They supported OI by organizing a French language course and another training program regarding the promotion of anti-discrimination cases.

OI is also very grateful to the Embassy of Belgium, Norway and Turkey, which have provided support by way of donations; as such, many important activities were realized in the last few years.

3.2.5. Reporting to different International Mechanisms

OI annually receives various thematic questionnaires from international organizations to report on the situation of human rights in Kosovo. Even this year several questionnaires were sent which are listed in the following table.

Date	Topic of the report	Organization/institution the report was sent to
30 June 2014	Questionnaire regarding best practices related to human rights and the environment	United Nations Independent Expert on human rights and environment - Department for Sustainable Human Development – Special Procedure Division in United Nations
28 August 2014	The work and findings of the working group on Torture Prevention Mechanism in Kosovo	US State Department / US Embassy on the Report on Human Rights in the World
8 September 2014	International Questionnaire for Information Commissioners	Center for Freedom of Information

³⁹⁵ For more see section *Activities of the Children’s Rights Unit*, in the present report.

9 December 2014	Investigation of Ex-officio complaints	International Ombudsmen Institution
9 December 2014	Allocation of sufficient resources for the functioning of Human Rights National Institutions	European Network of Human Rights National Institutions

Table 2: List of reports sent to various international organizations

3.3. Communication with the media

Overall institutional malfunction and instability in the country have dictated the public debate and society’s attention in general, during the year of 2014. OI presentation through media on issues raised was mainly summarized in statements and published reports during the year and has been disseminated to media jointly with accompanying materials. The fact that disseminated materials have treated multidimensional topics, including responsibilities, powers and functioning of different institutions, were enabled to be treated by the media from different points of view and not just at the time of launching.

Also, through media communication with the public and institutions, OI has put in the upfront: protection and promotion of human rights as its primary objective and the core of its mission; empowering of the role and OI images into the public as a protector and human rights advocate; provision of the required information about competences, responsibilities and the work of OI, as well as launching issues on the media that are considered important for public debate.

During 2014, on the website of OI there can be found 30 press releases, announcements, reports, etc. (see table below). Also, during this year, OI has published its Annual Report, 2 bulletins: one as executive summary of the work, statistics and operational structure of the institution from the Annual Report of 2013 and the other consisted of a summary of the general recommendations of the OI during 2013. Also, OI has also published a bulletin in the Braille alphabet, as an overall informative summary of the work and the mission of OI.

Furthermore, in cooperation with the OSCE, OI has been conducted a campaign against discrimination, under which a range of activities have been performed. Whereas in cooperation with UNDP a documentary was produced, as part of an awareness campaign for human rights and the work and mission of OI.

During 2014 there were 90 public appearances accomplished through mass media and the print media (interviews, statements, programs open to citizens' questions, debates etc). This number of media appearances does not include distribution or reproduction of the same by electronic portals or other electronic media or print media which have borrowed materials. Additionally, topics initiated by the media themselves are not included here, either based on released statements, reactions or information from OI, either initiated by the media themselves, on which the opinion or position of OI was not asked for.

Also, three roundtables were open to the media: regarding consumer rights, on the necessity of a fair election process, as well as roundtables on the protection of the environment.

ALSAT	1
BIRN / Jeta në Kosovë	7
Epoka e Re	1
Bota sot	1
Drejtësia në Kosovë	1
Radio Evropa e Lirë	5
Gazeta Lajm	1
Infodirekt	1
inLajm	1
KLAN Kosova	6
Koha Ditore	3
Kosova Sot	4
Kosova Press	4
KTV	8
Lajm.info	1
Lajmi.net	1
Ora News (Balkan Magazine)	1
Radio Dukagjini	3
Radio Kosova (programi shqip)	8
Radio Kosova (programi serbisht)	1
Radio Romano Avazo Prizren	1
RTK 1	12
RTK 2	6
RTV 21	3
Media Nazionale Suedeze	1
TV BESA (Prizren)	1
TV Rrokum	3
ZËRI	3

Table 3: Media appearances of OI, according to media during 2014

3.4. Activities of the Children's Rights Unit

Children's Rights Unit (CRU) under OI has been established for the purpose of taking special care to supervise, protect and investigate violations of the rights of children from public authorities in Kosovo.

CRU during 2014 apart from the review of complaints submitted to OI has undertaken other activities towards the promotion and protection of children's rights as well as professional capacity building.

On the 11 March 2014, CRU has participated in the regular meeting of the Council for Protection and Justice for Children (CPJC)³⁹⁶ where was discussed about the issues with regard to the actions undertaken towards enforcement of the Protocol for prevention and referral of violence in the pre-university educational institutions. It was also discussed about the document drafted on children's justice indicators and the need of work assessment of CPJC in order to identify the needs and provision of appropriate support for monitoring and reporting in relation to the reforms of Children's Justice system.

On the 5 May 2014, CRU participated in a roundtable organized by OGG/OPM, in cooperation with UNICEF and the EU in Kosovo, within the project "Justice Reforms for Children". "Justice Indicators for Children" were presented in this roundtable, which were developed and drafted for the purpose of facilitating the work of governmental institutions on decision taking regarding child justice system based on best possible information, revealing best evidence on the core of policy-making and provision of information regarding accomplishment and respect of relevant standards.

On the 21 May 2014, a conference was held in Prishtina on report presentation "Participatory Approach Study", part of the project "Leaders-young Roma in Action - LYRA"³⁹⁷, organized by Save the Children, where representatives of OI have participated as well. In this conference, from representatives of young Roma leaders, who had been part of the study for the municipality of Prizren and Gjakova, were presented also the findings of the study in question, which concerned with the school dropouts, early marriages, discrimination of children of Roma, Ashkali and Egyptian community by the teachers as well as inclusion of children with disabilities in the school system in these municipalities. Apart from specific recommendations for each of the aforementioned topics, young leaders stressed also the issues, which based on the study results should be set on the agenda of government institutions.

³⁹⁶ CPJC is established by the Government of the Republic of Kosovo on 25 August 2011. The mandate of CPJC consists inter alia also with the definition of priorities and defining the measures needed to be taken in order to improve the situation regarding to the protection and justice of children. It consists from the representatives of governmental and non-governmental institutions working in the field of children's rights. OI is part of CPJC in the capacity of an observer member.

³⁹⁷ Project LYRA (Leaders - young Roma in Action) is a regional project funded by the US State Department and is implemented in three countries: Albania, Bosnia and Herzegovina and Kosovo. The project includes 60 young Roma and non-Roma leaders. The aim of the project it is about empowering and developing the capacities and competencies of young leaders (18-26 years), Roma and non-Roma young leaders, and activists in the Western Balkans, to undertake effective steps at the local, national and regional level to improve social inclusion, non-discrimination and protection of Roma.

On the occasion of marking the Children's Day, 1 June 2014, representatives of OI from Prishtinë, Graçanicë, Mitrovicë, Prizren, Gjilan and Gjakovë under their tents have been located on the main squares of these towns and have talked to children about children's rights and the role of OI in protecting and promoting human rights and children's rights, respectively.

On the same day, within the joint activities with Save the Children, within the project "Prishtina reads", in Prishtina's main square, OI representative has discussed and read to children Articles of the Convention on Children's Rights, while the Ombudsperson has received letters from several children, which have been collected during the day in the complaints box. Complaints box was placed by the Save the Children, for the purpose that the children are offered with the opportunity that their thoughts, desires or concerns express them in writing too.

On the 2 June 2014 representative of OI took part in a TV21 morning program where it was discussed on the work of GCR in protecting and promoting children's rights in Kosovo.

In the meeting of 2 June 2014 findings of a study have been presented, which were conducted regarding the violence and the safety of students on school premises, organized by the NGO "Centre for Research, Documentation and Publication". In this meeting, from participants, representatives of educational institutions, non-governmental organizations, including OI, were presented stands and recommendations for addressing appropriately and preventing the phenomenon of violence in schools of Kosovo.

On the 20 June 2014, OI and UNICEF have signed a cooperation agreement with regard to the project "Know Your Rights", which will be implemented through an *on-line* platform, which will enable young people (16-29 years) to learn more on their rights, access to information regarding the functioning of the legal system in Kosovo, as well as in addressing and seeking legal aid for submitting complaints for violation of human rights.

On the 26 June 2014, a roundtable was held in Podujevë regarding the "Role of the courts in protecting the children's rights" under Effective Rule of Law Program, organized by USAID, in cooperation with the KJC, where CRG took part too. In this roundtable, the participants also discussed about the need of respecting and better protection of the children's rights by the courts.

Representative of OI has participated in a roundtable in order to comment on the "Analysis of the situation of abandoned children 0-3 in Kosovo", which was organized by Coalition of NGOs for Children's Protection (CNCP), held in Prishtina on the 1 July 2014.

On the 14 July 2014, CRG of OI has participated in the inaugural conference of the Fourth Report, regarding the assessment of the implementation of the National Strategy and Action Plan on Children's Rights in the Republic of Kosovo for 2013, published by OPM of the Republic of Kosovo. As part of the conference panel representative of IO has presented on the topic "Efforts of the Ombudsperson Institution in promoting and guaranteeing children's highest interest".

On the 27 August 2014, was held a roundtable in Prishtina, where CRD took part, on the topic "Challenges in implementing the Juvenile Justice Code in Kosovo, from the perspective of judicial practices and the findings of an assessment report on the

legislation on children's rights, compared with the Convention on the Child Rights", prepared by UNICEF. Participants of the roundtable have discussed with and informed the participants about the actions, difficulties and challenges encountered during practical implementation of the Juvenile Justice Code.

Representative of OI, in cooperation with NGO "Syri i Vizionit" from Peja, under the project "Child Protection and Child Rights Governance", during September 2014, met with students of elementary school "Naim Frashëri" and "Ismail Qemajli" in Prishtinë. In these meetings has been discussed about the rights of children, the procedures for complaining in case of violation of children's rights and also of the role of the OI in the protection and promotion of human rights.

Under the project "Leaders - young Roma in Action - LYRA" young leaders at the meeting held on 18 November 2014, organized by Save the Children, from representatives of OI have been informed about mission of OI, in the protection and promotion of human rights, complaints procedures and the work of the CRG.

Within the "Week against violence against children", organized by NGO Syri i Vizionit and Save the Children, on 19 October 2014, a group of children from different municipalities of Kosovo have met with the Ombudsperson. Children during the discussions have expressed their concerns about the situation of security/insecurity in their schools and the road/path to school.

"Economic crisis, children struck by crises. What do we do?" was topic of discussion of CRONSEE³⁹⁸, at the ninth annual conference, which was held from 18-19 September 2014 in Belgrade (Serbia). Representative of the OI has also participated at this conference. Representatives of the Ombudsmen's members of CRONSEE at the conference emphasized the importance of taking appropriate actions to protect children's rights during the economic crisis, specifically in areas of education, health care, social protection and protection from violence.

From 30 September to 1 October 2014, representatives of OI have participated in a seminar and a study visit to Warsaw (Poland), organized by the Ministry of Foreign Affairs of Poland and the Ombudsperson of this country. The topic of the seminar was "Protection of the Child Rights", under the exchange of experiences with the countries of the Visegrad Group (Poland, Czech Republic, Slovenia and Hungary), the Western Balkans countries and Turkey, with special emphasis on the impact of the Ombudsperson for children in advancing child rights.

From 22-24 October 2014, in Edinburgh, Scotland, the Eighteenth Conference of the Network of European Ombudsmen for Children (ENOC) took place, where OI representatives have participated. The topic of conference was "The impact of poverty and austerity on the realization of children's and young people rights", which included workshops on topics such as: vulnerable children, promotion of children's rights, children participation, welfare, health, family and alternative care, as well as violence.

At the end of works, ENOC members came up with a statement, where they have expressed deep concern regarding the impact of austerity and poverty in realization of children and young people's rights. They stated that financial and economic crises and

³⁹⁸ CRONSEE was established in 2006, aiming cooperation, promotion and exchange of best practices in the protection of children's rights in the countries of South-East Europe. OI is a member of this network since 2009.

state responses to them have resulted in increasing the level of children's poverty and social exclusion in a number of European countries. The statement will be forwarded to the parliaments of the respective countries with recommendations that:

- All European States prepare and adopt a national Comprehensive Strategic Plan to combat child poverty and social exclusion, to be part of the National Plan of Action on the Rights of the Child.
- All European States should establish 'children's budgets' which entail the identification and analysis of resources for children in national budgets.
- All European States ensure that all their policies, laws, and practices are compliant with the relevant instruments on the protection of children, in particular the Convention for the Rights of the Children.
- All national public spending and other resource decision-making must be carried out so as to prioritise the needs, rights and best interests of children, with a particular emphasis on children experiencing or at risk of social exclusion.

On the 2 November 2014, OI respectively CRT has participated in the inaugural conference of the report "Legal Framework for Children's Rights in Kosovo, Compliance with the Convention on the Rights of the Children", in which the findings have been presented from the analysis carried out on the legislation in force that affects rights of the children, from the perspective of the Convention on the Rights of the Child and relevant regional and international norms.

On the 5 November 2014, in a meeting organized by the Save the Children, in which representatives of CRG took part as well as representatives of institutions working in the field of children's protection, was discussed about the legal status of physical punishment of children in Kosovo, as well as about the need to prevent and eliminate all forms of physical punishment in all environments including here home, school, alternative caring institutions, day care and penal institutions.

In the framework of promotional activities from 3 - 30 November 2014, OI has carried out an information campaign for primary and secondary schools' students regarding the role of OI in the protection and promotion of human rights in Kosovo. This activity also marked the 25th Anniversary of the Convention on the Rights of the Child, which presents one of the most comprehensive documents for the protection of children's rights in the world.

The main aim of organizing such a campaign was to inform students about the role of the OI in the protection and promotion of human rights, as well as their opportunities, in respect of the violations of human rights, should address to OI.

Another aim of the campaign has also been provision of opportunities to children to be heard by representatives of OI, express their thoughts/opinions, stands/views or concerns, on different problems they are facing every day, not just at school but also in the streets and elsewhere.

In the course of this campaign have been visited many schools of the villages and cities of Kosovo municipalities as of Prishtinë, Pejë, Gjiçan, Viti, Kamenicë, Junik, Deçan, Klinë, Gjakovë, Malishevë, Rahovec, Vushtrri, Skenderaj, Prizren, Suharekë, Drenas, Lipjan, Obiliq dhe Graçanica.

In cooperation with representatives of Kosovo Innovations Lab - UNICEF, under the project "Know Your Rights", representatives of the OI during October and November 2014, have met with young people of Prishtinë, Mitrovica, Pejë, Gjakova, Gjiilan, Prizren, Ferizaj and Graçanica. In these meetings young people, among others, in working groups through case studies have been informed about and discussed on the human rights, identification of the violations of the human rights and also the role of the OI in the protection and promotion of the human rights.

On the 17 November 2014, a representative of OI took part on the morning program on TV21, where was discussed regarding the right to education for the children of the village Semajë of the municipality of Kaçanik.

On the occasion of marking the Universal Children's Day on the 20 November 2014, children of primary schools of the municipality of Prishtina have visited the Main Office of OI. In the course of the discussions with the Ombudsperson, the children have expressed their concerns and views on the situation of children and their rights in the family, school and society.

"Children First: Better Public Spending for Better Outcomes for Children & Families", was the topic of the conference held by the "Eurochild"³⁹⁹ network, from 26-28 November 2014 in Bucharest (Romania), in which have participated representatives of CRD. Methodologies used in the exploration of what it is happening in Europe in relation to evidence-based and practices regarding child and family, social return of investment and public-private partnership, were in the focus of presentations and discussions made during the development of the conference.

"*On-line* reputation – protection of integrity of the child on the internet", was the topic of discussion at the CRONSEE at the thematic meeting, which was held on the 5 December 2014 in Belgrade, where the representatives of the OI participated as well. On this occasion the participants expressed their deep concern over the increasing cases of abuse and mistreatment of children on the internet space. They also stressed that children are exposed to various forms of violence, abuse, exploitation, violations of human dignity, invasion of privacy and endangering of proper growth and development, and in some cases, of a child's life and health.

In this regard they have concluded that the following measures and recommendations should be endorsed, implemented and supported at regional, national and local levels:

- Public authorities should, in cooperation with internet service providers, define strategies and plans for the protection of children from violence, abuse and exploitation on the internet and protect children from harmful content. These documents should show "zero tolerance" towards cyber violence and to precisely define the activities which efficiently and timely prevent/stop any form of violence and abuse of the child in the virtual space, identify and bring the offender to justice, and provide rehabilitation measures for the victim. Strategies and plans should provide for comprehensive measures to protect children from harmful content on the internet that adversely affect growth, development and well-being of children.

³⁹⁹ Eurochild is a network of organizations and individuals working in promoting and protecting the rights of children and young people in Europe. Their work is based on the Convention on the Rights of the Child.

- Public authorities adopt specific provisions, regarding access of children to internet cafés, game rooms and other premises which offer use of internet, in order to protect them from improper use of internet and relevant dangers. Criteria should be established to certify "child friendly" premises, that will meet prescribed requirements, such as proper supervision, special filters, time limits, prohibition of entrance to children of younger ages after midnight, etc.
- Effective mechanisms should be established and be available to children and adults to report and complain about violations on the internet. Children should have available advisory services which would support them and advise them how to react in case of internet violence or other violation of their rights.
- Public authorities should, with the participation of children and young people, design and implement a public campaign to raise awareness of the public, particularly children and young people, parents and professionals who work with children about the risks of violence on the internet and the measures of protection and self-protection.
- Public authorities should, with the active participation of children and young people, professionals and providers of internet and communication services, develop training programs for children about behavior in the internet space, especially social networks, about the importance of *online* reputation and the manner of its preservation and protection, and about the protection and self-protection mechanisms.
- Public authorities should encourage and participate in the development of new tools for handling and preserving the privacy of personal data of children and filtering and making unavailable such content which contain harmful information.

Those activities should be undertaken with the full participation of children and young people, taking into account the principles of availability to the child of all relevant information, and the respect for the principle of free flow of information.

On the 21 November 2014, 26 November 2014, and on the 9 December 2014, under the program "Together for the rights and protection of children", in Gjakova, Mitrovica and Prishtina have been organized joint roundtables, by NGO "Syri i Vizionit" in cooperation with Save the Children, in which representatives of government institutions, civil society, media and OI have taken part. The purpose of these roundtables was to analyze the situation of children's rights in the legislative aspect and needs assessment for amending or drafting of new laws on the protection of children's rights and improvement of the situation of children's rights in Kosovo.

On the 9 December 2014, in the course of the activities undertaken within the project "Know Your Rights", representatives of the OI have participated in a roundtable in which, among others, were presented and discussed on the 3 (three) winning works of the competition conducted regarding the rights of the children. Competition was conducted through "Know Your Rights" *online* platform.

3.5. Activities against discrimination

Department Against Discrimination (DAD) in the course of this reporting year has been conducting regular visits to the NGOs which represent the interest of persons with disabilities, from which OI has received complaints regarding the conditions for free access to the public institutions as well as legislation on the persons with disabilities.

As in the previous years, OI representatives have been carrying out visits to the hospitals, NGOs, settlements inhabited with communities, homes for the elderly and caring institutions. Also, meetings with the Commissioner for Languages from OPM have been held, representatives of OI have been participating in public debates, conferences and different trainings and also within the "Know Your Rights" campaign, have visited schools in the municipalities of Kosovo and have held lectures regarding to OI and non-discrimination.

During the reporting period meetings with OGG and human rights coordinators of the national and local level have been carried out and have also attended to the public debate on amending/supplementing the Anti-Discrimination Draft-Law.

In monitoring the observance of human rights of the persons living in homes for the elderly and caring institutions, during this year have been visited for several times the home for the elderly in Prishtina, Special Institution in Shtime, Psychiatric Clinic at UCCK. During these visits, in the focus has been monitoring of the living conditions of the residents, facilities in the residence, working conditions of the employees in these institutions.

Representatives of OI during the reporting year have participated in the public debates of local audio-visual media where topics regarding the rights of persons with disabilities have been addressed.

On the 19 February 2014, a representative of OI has participated in the roundtable organized by Association of Lawyers NORMA regarding the Kosovo pension scheme.

On the 5 February 2014, a representative of OI has participated and has also given contribution to the roundtable organized by Women Parliament Members in cooperation with the Union of Independent Trade Unions of Kosovo (UITUK) on the topic of the Law on Labor and the level of applicability of the law in question.

From 10-12 February 2014 in Prishtina, on the basis of a joint project between European Union and Council of Europe, a representative of OI has attended training on monitoring the facilities where persons deprived from freedom are held.

On the 17 March 2014, a representative of OI has participated and has also given contribution to the Technical Working Group meeting, organized by OGG/OPM, in relation with the approval of Priorities for the Government of Kosovo by the Inter-Agency Steering Committee on the implementation of the Action Plan and Strategy of Kosovo for Integration of Roma, Ashkali and Egyptians, 2009 - 2015.

On the 5 May and 26 June 2014, a representative of OI has participated and has also given contribution to the Advisory and Coordinating Group at national level in the Republic of Kosovo on the rights of LGBT community.

On the 14 May 2014, a representative of OI has participated and has also given contribution in the public discussion of the draft of the Administrative Instruction no.

13/2013 on subsidizing unsustainable economic routes organized by the Ministry of Infrastructure.

On the 30 May 2014, a representative of OI has given contribution to a roundtable on the topic "Monitoring of returnees – assessment of voluntary return" organized by Kosovo Agency for Development and Advocacy in Graçanica.

On the 25 July 2014, representative of OI has participated and has given contribution to a roundtable on the resolution of requests for registration of agricultural land that has been returned to the owners in the period 1992-1998, and that now belong to the municipality of Graçanica. This roundtable was organized by the OSCE and the municipality of Graçanica, Department of Planning, Urbanism, Topography and Spatial Planning.

On the 8 August 2014, a representative of OI has participated and has contributed to a roundtable under the topic "Recognition of the judicial system in Kosovo by minority communities" organized by the Centre for Social Development in Graçanica.

On the 18 and 19 September 2014, a representative of OI has participated and has contributed to the Annual Ombudspersons for Children Network Conference meeting on the topic "Economic crises, services for children-(did not) survive(d). What do we do?", held in Belgrade, Serbia.

On the 13 November 2014, representative of OI have met with the "Handikos" manager to be informed on the situation of persons with disabilities in Kosovo.

On the 17 and 26 November 2014, representatives of OI have visited "Përparimi" resource hub in Prishtina, discussing with the students and school personnel regarding human rights and children's rights specifically.

A considerable number of primary and secondary schools have been visited in Prishtina and other municipalities, including municipalities inhabited by communities, during November and December 2014, with regard to the conditions of schooling of the children with disabilities in the public schools.

3.6. Personnel of OI

Human resources represent a significant factor in the function of realization of the constitutional mandate of the OI. The number of employees for the reporting year 2014 is 54 employees, and this number has been determined on the basis of annual budgetary allocations. The approved number of positions of 63 employees, according to the categories of officials, it is divided as follows: six (6) public officials, elected by the Assembly of the Republic of Kosovo and fifty-seven (57) officials - civil servants.

There are four (4) new employees employed in 2014, where one of the new employees is from the minority communities, respectively from the Ashkali community. However, it should be stressed the fact that despite all efforts, OI has not yet managed to fulfill the legal requirement for employment of persons with disabilities in the OI, in accordance with the principle 50+1, due to lack of space - offices for work, in the current facilities which are privately rented.

A fact that it is worth emphasizing is that the tendency of the professional staff to leave the institution during 2014 has not been noted, as in the previous years. However, there

has been movement of personnel and voluntary termination of the job, actually two (2) employees have terminated their jobs. The main reasons for the voluntary termination of the job, after a long-term professional training in OI, are: accommodation in other workplaces due to higher income and more favorable working conditions than in OI, or even professional reorientation.

Budget of OI for 2014 for the positions approved has been sufficient. OI hasn't completed all of the positions due to inability of accommodating these officials because of limited space in the current facilities, privately owned and having no optimal working conditions.

OI is awaiting amendment of the Law on Ombudsperson and other laws in the framework of the package of laws on human rights which shall provide additional legal powers to OI. Therefore, in order to exercise the new powers, apart from the new space, the new publicly owned building respectively, it will be necessary to fill in the current positions and it will be made possible having additional staff according to the new powers.

3.7. Budget of OI

OI it is an independent institution funded from the budget of the Republic of Kosovo. According to the Law on Ombudsperson "*OI shall prepare its annual budget and sends it to the Assembly of the Republic of Kosovo for approval*".⁴⁰⁰ According to this provision, OI shall be provided with the necessary budget "*irrespective of the provisions of other laws*".⁴⁰¹

3.7.1. OI funding from the Budget of Kosovo

On the basis of the legal process for preparing and submitting regular budgetary requests, Ombudsperson has submitted to the Assembly of the Republic of Kosovo its budgetary request for 2014.

Ombudsperson's budgetary request for 2014 has been based upon the OI's work plan and planned activities and the budget for 2014 has been approved according to the budgetary request by decision-making organs.

The situation and budget flow of OI for 2014 it is shown in the following table. Whereas the report and detailed coverage of all flows within the budget of OI, for all specific economic categories, it is sent to the Assembly of Kosovo, according to the content of the unified form for financial reporting drafted by the Parliamentary Commission on Budget and Finance.⁴⁰²

⁴⁰⁰ *Law on Ombudsperson, no. 03/L-195*, Article 34, paragraph 2.

⁴⁰¹ *There to.*

⁴⁰² A detailed Financial Report for OI budget will be sent to the Assembly of the Republic of Kosovo, based on the unique form for financial reports.

No	Economic Category	2014 Budgetary Request	2014 Budget Allocation	2014 Final Budget	2013 Final Budget
1.	Salaries and wages	596.371.00	596.371.00	596.371.00	513.050.00
2.	Goods and services	459.239.00	459.239.00	390.353.15	302.239.00
3.	Utility expenditures	30.000.00	30.000.00	25.500.00	23.000.00
4.	Capital expenditures	10.000.00	10.000.00	10.000.00	52.000.00
Total		1.095.610.00	1.095.610.00	1.022.224.15	890.289.00

Table 4: 2014 Budget Request and Budget Approved

Budget planning and expenditure have been carried out as needed and designation of work and function of OI whereas monitoring and internal audit for budget utilization has been constant.

Based on the Decision No. 01/176, of 10 March 2014, Government of the Republic of Kosovo, designating raise of salaries by 25% for civil servants, OI has conducted budget cuts in the amount of 73,385.85€, from the following budget categories: goods and services in the amount of 68.885.85€ and utilities expenditures in the amount of 4.500.00€.

After closure of the 2014 fiscal year, OI upon financial analysis of the budget situation in relation with the means planned for expenditure up to 31 December 2014 has identified and estimated some budget savings as well.

On the 5 December 2014 OI has notified in written the Ministry of Finance for return of financial means from the budget in the amount of 128,000.00 Euro to the Kosovo Budget, but the Ministry did not execute the withdrawal of these budgetary means, declared to be returned, from the OI's budget.

3.7.2. Final Budget of OI and realization of expenditures for 2014

In the following table the situation of the final budget in relation with the budgetary expenditures for 2014 it's presented. This is a table of data summary over economic categories, based on the expenditures expressed in percentages.

Nr.	Economic Categories	2014 Final Budget	Budget executed	Remaining debts	Free means	Realization in %
1.	Salaries and wages	596.371.00	542.558.37	0.00	53.812.63	90.98 %
2.	Goods and services	390.353.15	252.779.03	61.983.60	75.590.52	64.76 %
3.	Utility expenditures	25.500.00	14.724.05	1.891.03	8.884.92	57.74 %
4.	Capital expenditures	10.000.00	9.145.00	855.00	0.00	91.45 %
Total		1.022.224.15	819.206.45	64.729.63	138.288.07	80.14 %

Table 5: Budget expended in 2014

3.7.3. OI funding by donors

OI has been supported in various activities during 2014 for professional staff development and study visits abroad by international institutions operating in Kosovo such as: Council of Europe, OSCE, UNDP, Embassy of France, etc. The support of the donors has been funded and managed by the donors themselves.

3.7.4. Conclusion

The 2014 budget requested and approved by the Assembly of the Republic of Kosovo for OI has been sufficient. There has been no obstacle or limitation of any nature by the Assembly in this aspect.

With regard to the year 2015, depending from the legislative package of laws on human rights in Kosovo, which it is expected to be approved by the Assembly of the Republic of Kosovo, among which, there will be the Law on Ombudsperson, Law against Discrimination and the Law on Gender Equality, OI shall be burdened with additional three new competences.

According to the Law against Discrimination, OI will have now on also the role of the National Institution for Equality and against Discrimination. According to the Law on Gender Equality, OI shall be burdened with the competence of the National Institution for the implementation of Gender Equality. While the role of the National Mechanism for Prevention of Torture (NMPT) will be another new competence of the OI

All these competencies will be followed by additional commitments, which will also require additional staff and consequently additional financial means, and staff it is to be recruited by the end of 2015. Of course, management of OI on time will also prepare the

draft budget for 2015 and 2016 taking into account these additional legal requirements and will submit to the Assembly of the Republic of Kosovo on time the budget request proposal regarding the allocation of sufficient means in order to fulfill its obligations and its constitutional and legal mission.

Chapter IV

Statistical presentation of cases submitted in OI

From 1 January to 31 December 2014, at the main office of the OI in Prishtina and to regional offices, 2224 complaints and requests for advice or legal assistance have been submitted from citizens. 207 complainants met with Ombudsperson or Deputy Ombudspersons personally, during "Open Days" held twice a month in Prishtina and at least once a month in other municipalities.

The largest number of cases investigated by the OI, during the reporting period was mainly related to: the right to a fair and impartial trial, protection of property, the right to work and exercise profession, health and social protection, the right to legal remedies etc.

4.1. Complaints declared inadmissible by OI

During 2014, OI has received 2,224 complaints and requests for legal advice from Kosovo citizens. After reviewing them, 587 complaints have been opened for investigations, while 1,637 complaints were declared inadmissible⁴⁰³, based on the legal powers of OI. Compared to 2013, this year the number of inadmissible complaints has increased to nearly 177 complaints or 9%.

Reasons for rejection of complaints declared inadmissible by OI, based on the Law on Ombudsperson, expressed in numbers and percentages, are as follows:

- *Article 20, paragraph 1.1*⁴⁰⁴ – *No violation, mismanagement* - 487 complaints or 30%
- *Article 20 paragraph 1.4*⁴⁰⁵ – *Non-use of legal remedies* – 468 complaints or 28 %
- *Article 20, paragraph 1.3*⁴⁰⁶ – *In use of legal remedies* – 338 complaints or 21 %
- *Article 19, paragraph 1.3.1*⁴⁰⁷ – *Outside OI's jurisdiction* – 270 complaints or 16 %
- *Article 20, paragraph 1.2*⁴⁰⁸ – *Failure, no-interest of the party* – 43 complaints 3 %
- *Article 19, paragraph 1.3.2*⁴⁰⁹ – *After the deadline* – 31 complaints or 2 %

⁴⁰³ Inadmissible complaints are complaints for which OI cannot open investigations based on its powers as provided by Law on the Ombudsperson, Article 19 and Article 20.

⁴⁰⁴ Law no. 03 / L-195 on *Ombudsperson*, Article 20, paragraph 1.1 "When from the entries submitted and the circumstances of the case appears that the rights and freedoms are not violated or any mismanagement is not performed."

⁴⁰⁵ *Ibid*, Article 20, paragraph 1.4, "When all the regular and extraordinary remedies are not exhausted, unless he/she considers it would be useless for submitter of the complaint to initiate or continue proceedings, or if estimates that individuals have suffered severe damage or may suffer severe and uncompensated harm in the meantime."

⁴⁰⁶ *Ibid*, Article 20, paragraph 1.3: "When procedures for a case are being conducted in judicial or other competent bodies, except in cases specified by this law."

⁴⁰⁷ *Ibid*, Article 19, paragraph 1.3.1 "It is not under the competence of the Ombudsperson according to this law."

⁴⁰⁸ *Ibid*, Article 20, paragraph 1.2: "When the request is incomplete and has not been completed even after the requirements of the Ombudsman."

The rights guaranteed by the Constitution of Kosovo, which based upon allegations of the complainants are violated by various public authorities, taking into consideration only complaints declared inadmissible by OI, expressed in numbers and percentages, (a complaint may contain more than one violation of guaranteed rights), are as follows:

- *Health and social protection* – 374 complaints or 20 %
- *Right to fair and impartial trial* – 367 complaints or 19 %
- *Right to work and exercise of profession* – 297 complaints or 15 %
- *Protection of property* – 274 complaints or 14 %
- *Right to legal remedies* – 211 complaints or 11 %
- *Rights of the accused* – 117 complaints or 6 %
- *Equality before the law* – 39 complaints or 2 %
- *Right to marriage and family* – 35 complaints or 2 %
- *Right to education* – 30 complaints or 2 %
- *Rights of the child* – 29 complaints or 2 %
- *The prohibition of torture, cruel, inhuman or degrading torture* – 20 complaints or 1 %
- *Freedom of movement* – 17 complaints or 1 %
- *Others* – 96 complaints or 5 %

Public responsible authorities for which the complainants claim that they have violated their rights, expressed in numbers and percentages, taking into account only the complaints declared inadmissible by the OI, (a complaint may involve more than one institution responsible), are as follows:

- *Courts* – 470 complaints or 28 %
- *Ministries* – 336 complaints or 20 %
- *Municipalities* – 254 complaints or 15 %
- *Private persons* – 90 complaints or 6 %
- *Police* – 85 complaints or 5 %
- *Foreign authorities* – 84 complaints or 5 %
- *Private companies* – 64 complaints or 4 %
- *PAK (former KTA)* – 64 complaints or 4 %
- *Publicly Owned Enterprises* – 43 complaints or 3 %
- *Public Prosecutions* – 31 complaints or 2 %
- *Other* – 128 complaints or 8 %

From the analysis of cases rejected by OI, divided by the responsible public authorities, against which have been submitted most frequently complaints as well as the problems outlined by the complainant, can be drawn important conclusions, which additionally complete the overview of the human rights situation from the perspective of objectively existing cases, but which are inadmissible by OI, based on its legal powers.

⁴⁰⁹ *Ibid*, Article 20, paragraph 19, section 1.3.2: "The complaint was filed after the deadline set by the law."

4.1.1. Inadmissible complaints against courts

OI has declared inadmissible 470 citizen's complaints against the courts in 2014. From the content of inadmissible complaints, it is noted that the majority of them are concerning to the claims of the complainants for delay of court proceedings. The rest of the complaints are related to: dissatisfaction with the decisions of the courts, the financial inability of engaging a lawyer, drafting of complaints, non-execution of court decisions, requests for legal advice, etc.

The largest number of the complaints declared inadmissible, since based on complainant's allegations and evidence presented, it was concluded that the parties have not used the legal remedies available, or are in their use. The rest of the complaints were rejected after finding that there was no violation or mismanagement in the respective complaints, for the reason that they were outside the OI's jurisdiction or even lack of interest of the complainants.

In all these cases, the complainants were informed and advised regarding their claims primarily to the prolongation of proceedings (whether or not there are delays), they were also informed about the legal remedies available to them, the opportunity for drafting complaints for free in the Agency of Free Legal Aid etc. Also, the parties were informed of the legal powers of OI and the possibility that they appear again if the situation does not change even after the use of legal remedies or after the expiration of defined time limits without the action of responsible instances.

4.1.2. Inadmissible complaints against Ministries

OI has declared inadmissible 336 complaints against ministries. Most of these complaints are against MLSW, respectively Department of Kosovo Pension Administration (DPAK) and CSW, during the reporting period. A major concern is the refusal of the complainants' requests for different categories of pensions, social welfare or even their termination.

During 2014, there have been a doubling of the number of complaints declared inadmissible against DPAK, compared to last year. A considerable number of complaints is related to various ministries' decisions (particularly regarding labor disputes), silence of the government authorities to the complaints of citizens, inadequate medical treatment, etc.

Almost half of the abovementioned complaints were declared inadmissible, since the parties have not used the legal remedies available. The rest of the complaints were rejected because from the claims of the complainants and the evidence presented, it was not found any violation of human rights or mismanagement, the parties have been in use of legal remedies, complaints were outside the jurisdiction of the OI etc.

4.1.3. Inadmissible complaints against municipalities

OI has declared inadmissible 254 citizen complaints against municipalities, during the reporting year. These complaints mainly are concerning to the issue of housing, labor

disputes, property rights, the failure of the compensation for the work done, lack of financial support of municipalities to citizens with difficult material conditions etc.

OI has rejected around 40% of these complaints since it found no violations or mismanagement, while for the rest of complaints the parties were guided and advised on legal remedies at their disposal to address their issues to relevant municipal authorities, etc.

4.1.4. Inadmissible complaints against foreign authorities and private persons

Out of the total number of complaints declared inadmissible, there is a significant number of complaints (174 complaints) against private individuals and foreign authorities.

Complaints against private persons, concern mainly to the: the protection of property, various disagreements, marital rights, etc. Whereas, for the complaints against foreign authorities, as the main concern it is raised non-payment of pension from Serbia, but also the difficulties encountered by the complainant in the event of exercising requests for pensions or other issues from foreign countries.

In these cases it is noticed the absence of the complainant's knowledge of OI's constitutional and legal powers. However, in most of these cases apart from that the parties are notified of the OI's legal competences, they are advised about the steps to be followed and the responsible bodies and institutions for realization of their rights.

4.1.5. Conclusion

The data presented evidence that from the total number of complaints submitted to the OI, 74% of the total number of complaints submitted during 2014, have been declared inadmissible immediately after their review, on the basis of the legal powers of the OI. Nearly half of these complaints being declared inadmissible were refused either for the reason that the complainants have not used the legal remedies or have been in use of the legal remedies.

In cases of failure to use legal remedies, complainants have visited OI, to advice with regard to the protection of their rights and effective legal remedies available to them. In cases where the parties are in use of the legal remedies, it is obvious the distrust against responsible bodies for the resolution of their cases. In most of these cases, the parties visit the OI hoping that it will help their cases to be resolved in shortest possible time and in the fairest manner possible, or that the OI will take over the role of defense counsel. This is a clear sign of increasing trust to the OI, although it is not lawful for the Ombudsperson to take this role and does not take it in any case.

From the aforementioned, in spite of the loss of trust in public authorities and demand for greater readiness of the responsible institutions in handling of the cases and requests of citizens, it is noted lack of information to citizens upon legal remedies to protect their rights at responsible institutions on one side, but also for not recognizing mandate of the OI, on the other side, on its legal competences (powers).

Recommendation

- *It is indispensable for an awareness and information campaign for the legal rights and obligations of the citizens, as well as on the mission and constitutional and legal competences of the OI, which would influence the education of citizens upon effective legal remedies available and consequently diminish the number of inadmissible complaints in OI.*

4.2. Statistical presentation of cases for 2014

In the tables below are presented in detail the total number of complaints submitted to the OI during 2014. These tables present all types of actions and cases in absolute figures. Cases resolved by OI are presented here also, reports of the cases investigated and recommendations issued in the reports, failures of the responsible authorities to respond to the letters of the OI, etc.

	The total number of complaints filed in OI	2224
	<i>The number of persons involved in the complaints filed</i> ⁴¹⁰	2956
<i>Ethnicity of complainants</i>		
	Albanians	1938
	Serbs	145
	Bosnians	34
	Roma	33
	Ashkali	22
	Turks	21
	Egyptians	18
	Other	13
<i>Gender complainants submitted in OI</i>		
	Male	1717
	Female	507
<i>Responsible authorities against which the complaints were addressed (a complaint may contain more than one responsible party)</i>		
	Courts	665
	Ministries	474
	Municipalities	400
	Police	125
	Private persons	91

⁴¹⁰ A complaint may have some complainants, who claim that their rights have been violated by public authorities.

	Foreign authorities	87
	Privatization Agency of Kosovo	76
	Private companies	70
	Publicly Owned Enterprises	53
	State Prosecutions	42
	Other	183

Table 6: Complaints filed in by citizens to the OI during 2014

	The number of complaints declared inadmissible	1637
<i>The legal ground of inadmissibility of complaints based on the Law on Ombudsperson</i>		
	No violation, mismanagement - Article 20, point 1.1	487
	Non-use of legal remedies - Article 20, point 1.4	468
	In use of legal remedies - Article 20, point 1.3	338
	Outside jurisdiction - Article 19, point 1.3.1	270
	Non-interest, failure of party - Article 20, point 1.2	43
	Submitted after deadline – Article 19, point 1.3.2	31

Table 7: Declared inadmissible complaints during 2014

	Cases opened for investigation from complaints filed in by citizens	587
	Opened cases <i>ex officio</i>	15
<i>Ethnicity of citizens based on cases investigated</i>		
	Albanians	470
	Serbs	73
	Roma	12
	Bosnians	10
	Turks	8
	Other	14
<i>Gender of complainants based on the cases investigated by OI</i>		
	Male	450

	Female	137
<i>Responsible authorities of the cases investigated by OI (a complaint may contain more than one responsible party)</i>		
	Courts	195
	Municipalities	147
	Ministries	139
	Police	40
	State Prosecutions	12
	Privatization Agency of Kosovo	11
	Publicly Owned Enterprises	10
	Private Companies	6
	Other	59

Table 8: Cases opened for investigation at the OI during 2014

	The right to fair and impartial trial	180
	Protection of property	95
	The right of work and exercise of profession	82
	Health and social protection	63
	The right to legal remedies	52
	Prohibition of torture, cruel, inhuman or degrading treatment	39
	Rights of the accused	34
	The right of access to public documents	28
	Right of child	26
	Right to education	26
	Equality before the law	26
	Court protection of rights	18
	Responsibility for living environment	10
	Right of privacy	8
	Right to life	8
	Freedom of movement	7

	Right of marriage and family	7
	Human dignity	7
	Cases for mediation	6
	Right to freedom and security	4
	Right to election and participation	4
	Right of personal integrity	2
	Religious confessions	1
	Freedom of association	1

Table 9: The subject of the cases investigated based on the rights guaranteed by the Constitution (a case may involve more than one violation of the rights guaranteed)

	Number of total closed cases	534
<i>The legal ground for closing these cases based on the Law on Ombudsperson</i>		
	Positively selected in accordance with the request of the complainant - Article 19, paragraph 1.5.	296
	Inadmissible, in use of legal remedies - Article 20, paragraph 1.3	81
	Inadmissible, no violations, mismanagement - Article 20, paragraph 1.1	81
	Inadmissible, non-use of legal remedies - Article 20, paragraph 1.4	40
	Closed due to the complainant's disinterest, failure of the party - Article 20, paragraph 1.2	22
	Closed with report	12
	Inadmissible, outside jurisdiction - Article 19, paragraph 1.3.1	1
	Inadmissible, anonymous complaint - Article 19, paragraph 1.3.3	1

Table 10: Total number of the cases closed by OI in 2014 (not only 2014 cases, but also registered cases and closed earlier this year)

JUDICIAL AND PROSECUTORIAL SYSTEM		
	Basic Court in Prishtina	52
	Court of Appeal in Prishtina	32
	Basic Court in Gjilan	18
	Special Chamber of Supreme Court in Kosovo	17
	Basic Court in Prizren	17

	Basic Court in Pejë	14
	Basic Court in Gjakovë	13
	Judicial Council of Kosovo	9
	Basic Court in Mitrovicë	9
	Basic Court in Ferizaj	8
	Supreme Court of Kosovo	4
	Basic Prosecution in Prishtina	3
	Basic Prosecution in Gjakovë	3
	Other institutions (with only one case)	8
GOVERNMENT AUTHORITIES		
	Kosovo Correctional Service	51
	Ministry of Labor and Social Welfare	35
	Ministry of Internal Affairs	15
	Ministry of Education, Science and Technology	7
	Ministry of Agriculture, Forestry and Rural Development	4
	Ministry of Health	3
	Ministry of Environment and Spatial Planning	3
	Kosovo Government	3
	Ministry for Returns and Communities	3
	Ministry of Foreign Affairs	3
	Ministry of Infrastructure	2
	Other institutions (with only one case)	10
LOCAL AUTHORITIES		
	Municipality of Ferizaj	22
	Municipality of Prizren	18
	Municipality of Gjakova	16
	Municipality of Prishtina	14
	Municipality of Lipjan	9

	Municipality of Gjilan	8
	Municipality of Mitrovica	7
	Municipality of Partesh	6
	Municipality of Peja	4
	Municipality of Malisheva	4
	Municipality of Vushtrri	4
	Municipality of Leposaviq	4
	Municipality of Obiliq	4
	Municipality of Kamenica	2
	Municipality of Klina	2
	Municipality of Graçanica	2
	Municipality of Drenas	2
	Municipality of Shtërpce	2
	Municipality of Fushë Kosova	2
	Municipality of Deçan	2
	Municipality of Viti	2
	Municipality of Istog	2
	Other institutions (with only one case)	9
OTHER RESPONSIBLE PARTIES		
	Police of Kosovo	40
	University of Prishtina	14
	KEDS	12
	Privatization Agency of Kosovo	11
	Kosovo Property Agency	3
	Foreign Authorities	3
	Presidency of Kosovo	3
	Central Election Commission	3
	Assembly of Kosovo	3

	Kosovo Energy Corporation	3
	University Clinical Center of Kosovo	2
	Water Company Prishtina	2
	Kosovo Customs	2
	Radio Television of Kosovo	2
	National University Library	2
	Other institutions (with only one case)	14
Private parties		7

Table 11: Responsible Authorities of individual cases investigated by OI (a case can have more than one responsible party)

Responsible Authority	<i>Number of letters sent from OI</i>	Number of letters remained without responses
JUDICIAL AND PROSECUTORIAL SYSTEM		
Basic Court in Prishtina	52	11
Special Chamber of the Supreme Court	24	4
Kosovo Judicial Council	9	2
Basic Court in Peja	4	1
Basic Prosecutor's Office in Mitrovica	1	1
Constitutional Court of Kosovo	1	1
EULEX Mission	1	1
GOVERNMENT AUTHORITIES		
Ministry of Labor and Social Welfare	7	5
Ministry of Foreign Affairs	3	3
Ministry of Agriculture, Forestry and Rural Development	3	3
Ministry of Education, Science and Technology	3	3
Ministry of Communities and Returns	3	2
Department of Forensic Medicine	2	2

Ministry of Public Administration	1	1
LOCAL AUTHORITIES		
Municipality of Prizren	7	4
Municipality of Prishtina	9	5
Municipality of Graçanica	3	2
Municipality of Peja	3	2
Municipality of Mitrovica	3	2
Municipality of Klllokot	2	2
Municipality of Drenas	2	2
Municipality of Leposaviq	2	2
OTHER PUBLIC INSTITUTIONS		
University of Prishtina	8	3
Presidency of Kosovo	6	2
Police of Kosovo	6	2

Table 12: Failures of the competent authorities to respond to the letters of OI

	Reports on investigated cases (by the complaints of citizens)	10
	Reports on cases investigated <i>ex officio</i>	3
	<i>Recommendations in the Reports of investigated cases</i>	28
	Request for interim measures	2

Table 13: Reports with recommendations and requests for interim measures of OI

Responsible Authority	<i>Recommendations implemented</i>	<i>Recommendations not implemented</i>	<i>Pending for implementation</i>
Assembly of Kosovo		1	7
Ministry of Agriculture, Forestry and Rural Development			3
Ministry of Labor and Social Welfare	1	3	
Ministry of Infrastructure	2	1	
Ministry of Internal Affairs		2	

Government of Kosovo		2	
Ministry of Foreign Affairs		1	
Privatization Agency of Kosovo		1	
Municipality of Gjilan	1		
Kosovo Property Agency		1	
Ministry of Communities and Returns		1	
Kosovo Judicial Council	1		
Total	5	13	10

Table 14: Implementation of the recommendations from the reports on investigated cases by the OI

4.3. Graphic presentation of statistics

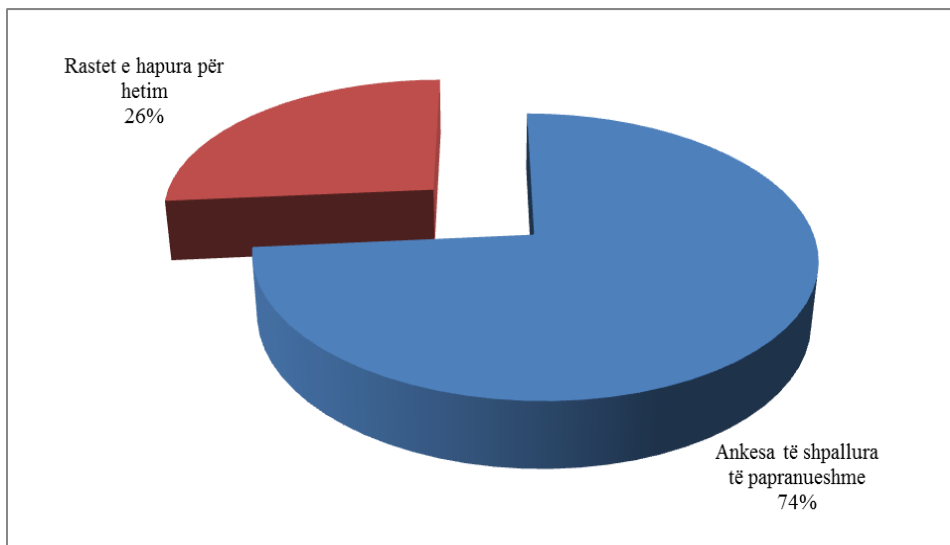


Figure 1: Review of the complaints filed in to the OI during 2014

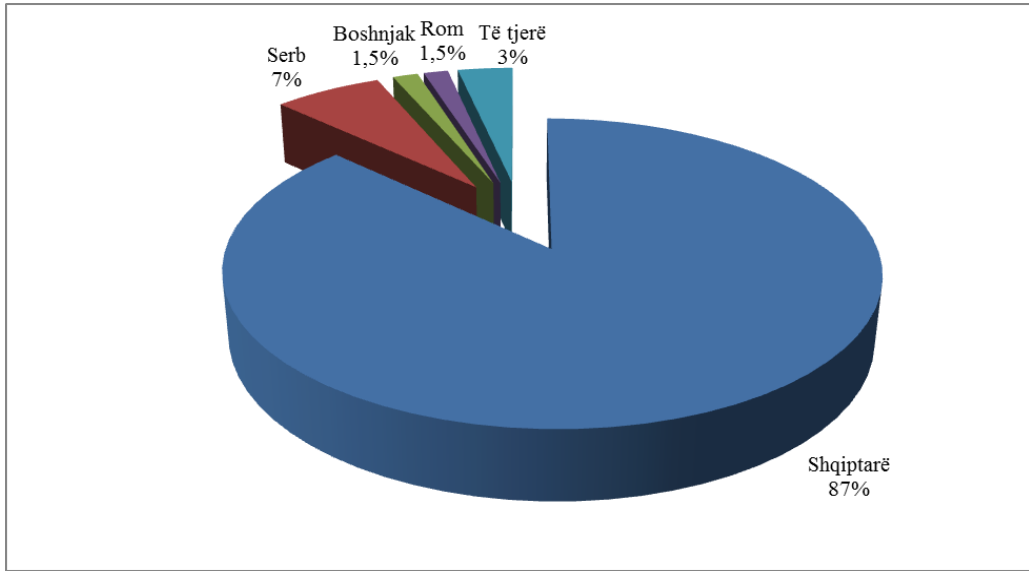


Figure 2: Ethnicity of citizens with submissions to the OI during 2014

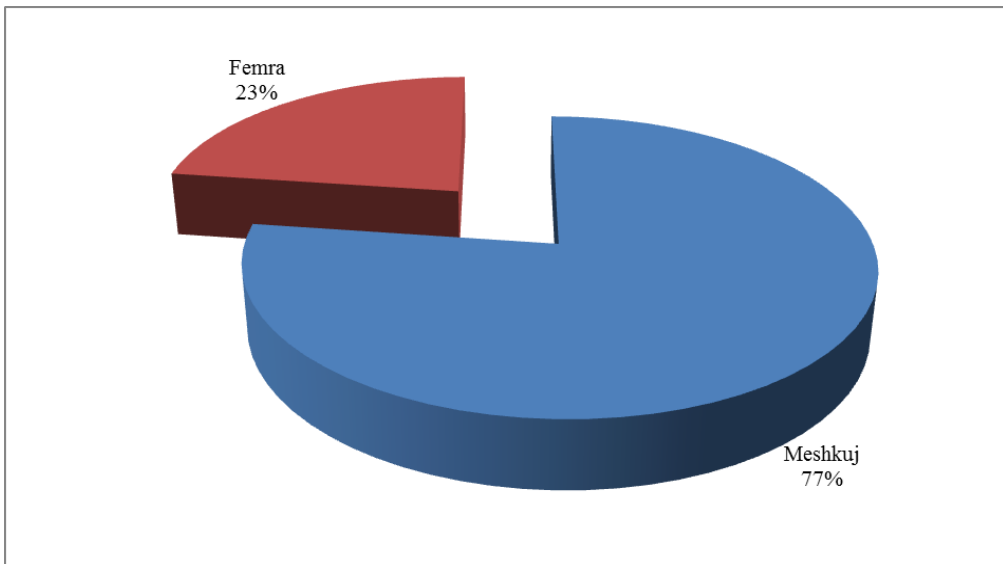


Figure 3: Gender-based citizens' complaints filed in the OI during 2014

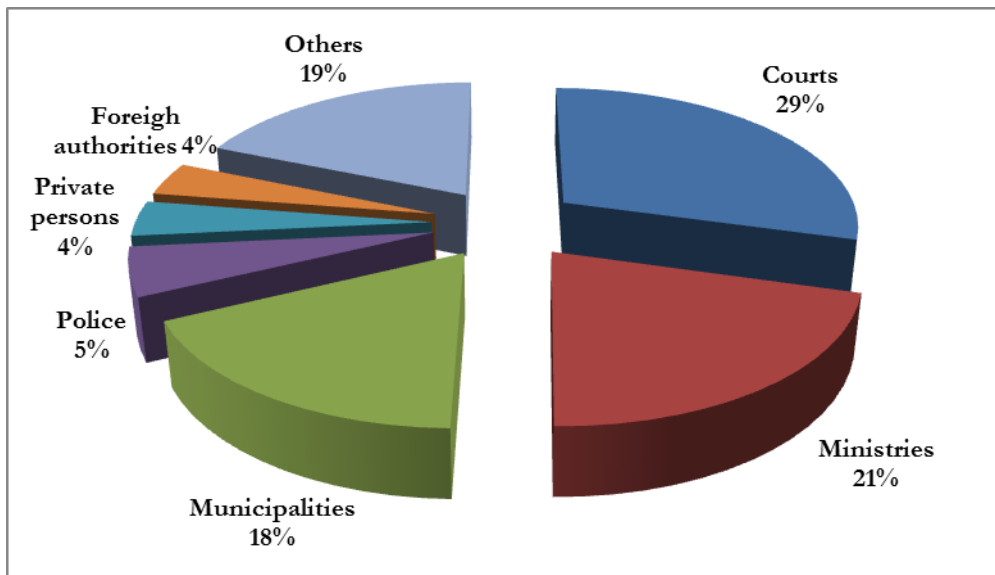


Figure 4: Responsible authorities of complaints filed in the OI during 2014

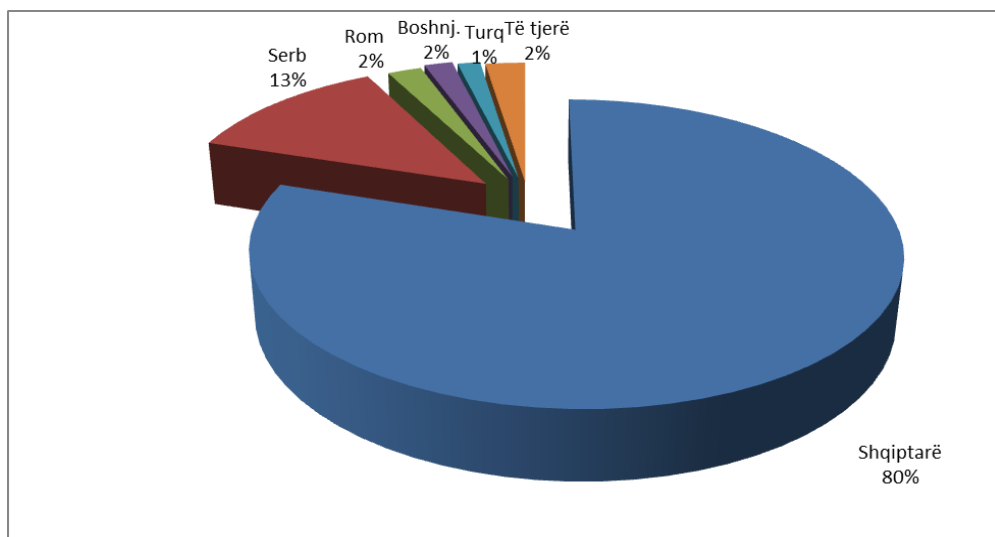


Figure 5: Ethnicity of citizens according to open cases for investigation during 2014

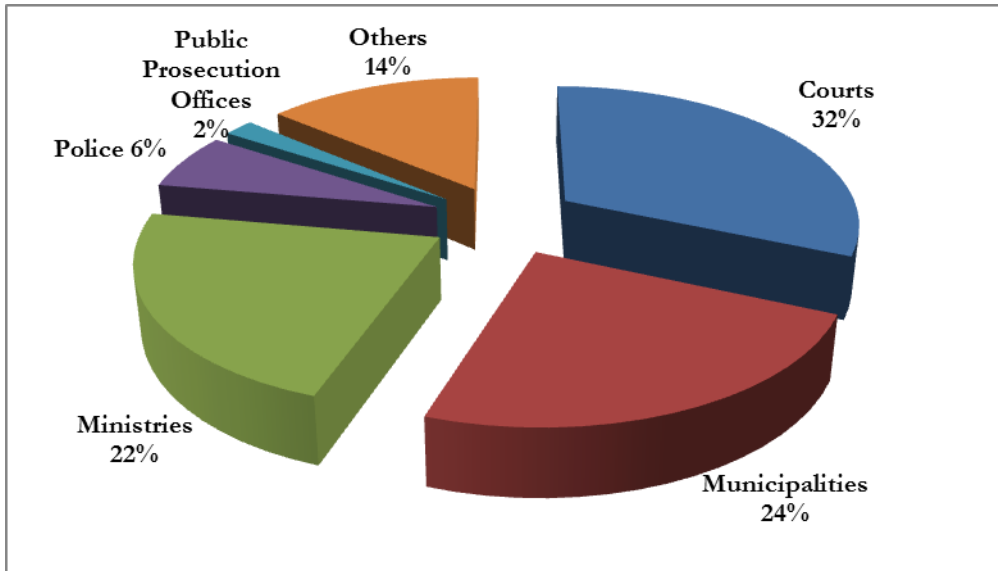


Figure 6: Authorities responsible for the cases investigated by OI

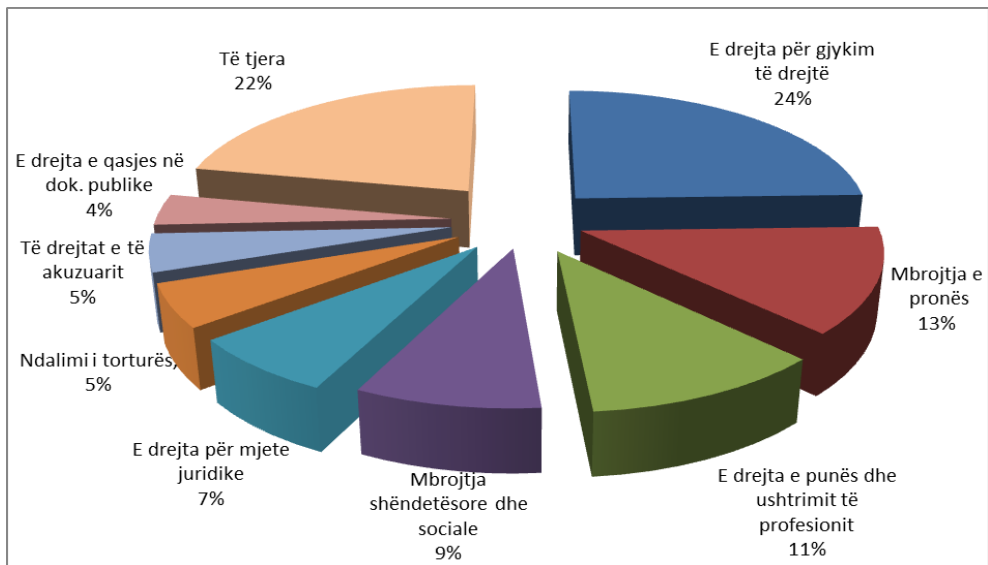


Figure 7: Subject of the cases investigated based on the rights guaranteed by the Constitution

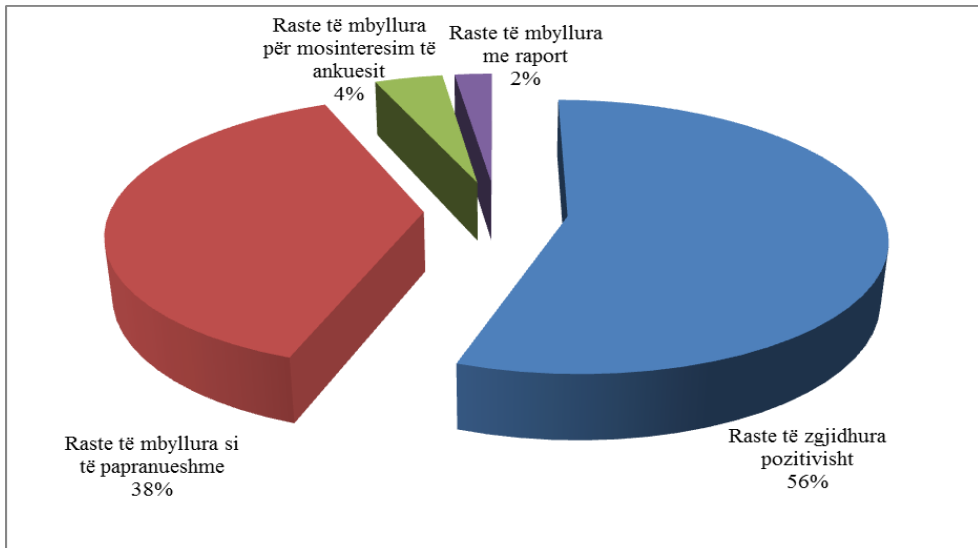


Figure 8: Cases closed by OI in 2014
(not only 2014 cases, but also earlier registered cases closed this year)

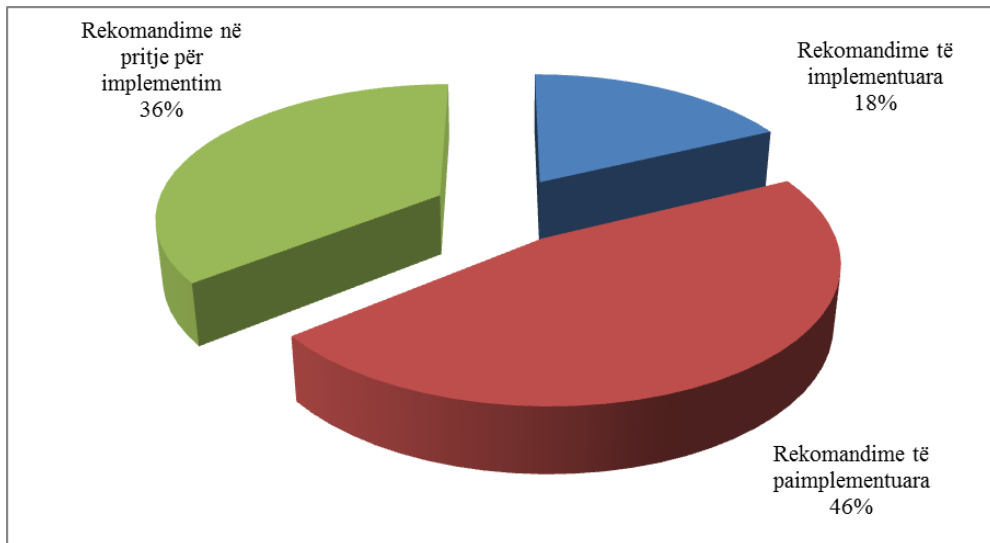


Figure 9: Implementation of the recommendations in the reports on cases investigated by OI

Abbreviations

PAK	Privatization Agency of Kosovo
KPA	Kosovo Property Agency
ACA	Anti-Corruption Agency
EPA	Environmental Protection Agency
AMO	Association of Mediterranean Ombudsmen
SAK	Statistical Agency of Kosovo
ASAK	Agency of State Archives of Kosovo
SAPPD	State Agency for Protection of Personal Data
EU	European Union
ICK	Islamic Community of Kosovo
HSP	High Security Prison
BSPK	The Union of Independent Trade Unions of Kosovo
NOCSE	Network of Ombudsmen for Children of Southeast Europe
DKPA	Department of Kosovo Pension Administration
PDH	Property Directorate and Housing
DFDIL	Department of Families of Martyrs, War Invalids and Families of Civilian Victims
MDE	Municipal Directorate of Education
DAD	Department against Discrimination
UDHR	Universal Declaration of Human Rights
DHPGJSK	Special Chamber of the Supreme Court of Kosovo
ECMI	European Centre for Minority Issues
ENOC	European Network of Ombudsmen for Children
EOI	European Institute of Ombudsmen
EULEX	Mission of the European Union Rule of Law
GCR	Group for Children's Rights
ECHR	European Court of Human Rights
CCK	Constitutional Court of Kosovo
OI	Ombudsperson Institution
ICCNI	International Coordinating Committee of National Institutions
KJI	Kosovo Judicial Institute
IIO	International Institute of Ombudsmen
IFPK	Institute of Forensic Psychiatry in Kosovo
KPI	Kosovo Police Inspectorate
NIHR	National Institutions for Human Rights
IMH	Institute of Mental Health

KEDNJ	European Convention on Human Rights
KEK	Kosovo Energy Corporation
KEDS	Kosovo Energy Distribution Services
ESC	Economic and Social Council
KJC	Kosovo Judicial Council
MA	Municipal Assembly
KKSB	Municipal Community Safety Council
MEC	Municipal Election Commission
CPHRF	Council for the Protection of Human Rights and Freedoms
CPJC	Council for Protection and Justice for Children
KOMF	NGO Coalition on the Rights of the Child
SOC	Serbian Orthodox Church
IOBK	Independent Oversight Board of Kosovo
KPC	Kosovo Prosecutorial Council
IMC	Independent Media Commission
CCRK	Criminal Code of the Republic of Kosovo
CPCRK	Criminal Procedure Code of the Republic of Kosovo
CEC	Central Election Commission
PC	Polling Council
FVL	Final Voters List
LAPD	Law on Access to Public Documents
LGBT	Lesbian, Gay, Bisexual and Transgender
MPA	Ministry of Public Administration
MLGA	Ministry of Local Government Administration
MEST	Ministry of Education, Science and Technology
MAFRD	Ministry of Agriculture, Forestry and Rural Development
MoJ	Ministry of Justice
MCR	Ministry of Communities and Returns
NMPT	National Mechanism for Prevention of Torture
MESP	Ministry of Environment and Spatial Planning
MPB	Ministry of Internal Affairs
MPMS	Ministry of Labor and Social Welfare
MSH	Ministry of Health
KBA	Kosovo Bar Association
OHCHR	Office of the High Commissioner for Human Rights
NGO	Non-governmental organization
UNO	United Nations Organization
OSCE	Organization for Security and Cooperation in Europe

OWV	Organization of War Veterans
PD	Persons with disabilities
CRP	Conditional Release Panel
CC	Correctional Center
KRCTV	Kosovo Rehabilitation Center for Torture Victims
UCCK	University Clinical Center of Kosovo
DC	Detention Center
CSW	Center for Social Work
VC	Voting Center
RTK	Radio Television of Kosovo
KCS	Kosovo Correctional Service
KPS	Kosovo Probation Service
KLA	Kosovo Liberation Army
UNDP	United Nations Program for Development
UNICEF	United Nations Fund for Children
UNHCR	United Nations High Commissioner for Refugees
UP	Prishtina University
USAID	United States Agency for International Development
PS	Polling Stations
OCL	Office of the Commissioner for Languages
OCR	Office of Communities and Returns
OPM	Office of the Prime Minister
ODP	Office of the Disciplinary Prosecutor
OGG	Office for Good Governance